

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 20 of 2022 (SB)

Ashish S/o Murlidhar Raut,
Aged 35 years, Occ. Service,
r/o Dharni, Tahsil Dharni, District Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Water Resources Department,
Mantralaya, Mumbai-32.
- 2) The Chief Engineer,
Water Resources Department,
Amravati Division, Amravati.

Respondents.

S/Shri A.P. Tathod, A. Telange, Advocates for the applicant.
Shri M.I. Khan, learned P.O. for respondent no.1.
Shri S.G. Jagtap, learned counsel for respondent no.2.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 16th March,2022.

Date of Pronouncement of Judgment : 25th March,2022.

JUDGMENT

(Delivered on this 25th day of March, 2022)

Heard Shri A.P. Tathod, learned counsel for the applicant,
Shri M.I. Khan, learned P.O. for respondent no.1 and Shri S.G.
Jagtap, learned counsel for respondent no.2.

2. The applicant is challenging the impugned transfer order dated 5/1/2022. The case of the applicant in short is as under –

3. The applicant was transferred to Dharni by transfer order dated 10/8/2020. He has not completed three years tenure as per the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "Transfers Act,2005"). Even though he is transferred. The impugned transfer order is due to influence of the political leaders. There was no enquiry against the applicant. Hence, the impugned transfer order is liable to be dismissed.

4. The respondent nos.1&2 filed their reply and denied the contention of the applicant. It is submitted that the transfer is an incident of service. The applicant cannot disobey the transfer order. It is submitted that the applicant is working as Assistant Engineer in the Minor Irrigation Sub Division, Dharni. He has completed 1 year, 4 months service at Dharni. During his service thereat, some irregularities noticed by MLA and Hon'ble Minister of State. Therefore upon receiving note of irregularities, the respondent no.2 sent proposal dated 21/9/2021 to the respondent no.1 and recommended to transfer the applicant from the said post. Since the transfer order dated 5/1/2022 was made mid-term, the respondent no.1 sought approval of the competent authority, the Hon'ble Chief Minister, under the provisions of the Transfers Act,2005. After receiving the complaints, the proposal was moved by respondent no.2 for transfer

and it was kept before the Civil Services Board. The Civil Services Board also recommended transfer of the applicant with the approval of the Chief Minister. The transfer order dated 5/1/2022 is issued to the applicant. It is submitted that the respondents have complied the provisions of Section 4 (4) & 4 (5) of the Transfers Act,2005. Hence, there is no illegality in the impugned transfer order. Hence, the O.A. is liable to be dismissed.

5. Heard Shri A.P. Tathod, learned counsel for the applicant. He has pointed out the G.R. dated 11/2/2015 and submitted that as per Clause 8, the respondent no.2 ought to have conducted enquiry, but instead of doing so, he has moved proposal only on the letter issued by the MLA Shri Patel and Minister Shri Bachhu Kadu. The learned counsel for the applicant has pointed out the decision of this Tribunal Bench at Mumbai in O.A.530/2020 and the decision of Hon'ble Bombay High Court in Writ Petition No.2665/2011, decided on 25/7/2011. The learned counsel has relied on the decision of Hon'ble Bombay High Court in Writ Petition No.8987/2018, decided on 12/12/2018.

6. The learned P.O. strongly objected the O.A. He has submitted that transfer is a condition of service. The MLA Shri Patel and Minister Shri Bachhu Kadu made complaint against the applicant and therefore proposal was moved by respondent no.2. The said

proposal was kept before the Civil Services Board and on the recommendation of the Civil Services Board, the respondent no.1 passed the transfer order. There is no malafide on the part of respondents. Hence, the O.A. is liable to be dismissed. In support of his submission, pointed out decision in case of **Dr. Soudamini S. Choudhari Vs. State of Maharashtra & Ors.,2020 SCC Online Bom 9333 : (2021) 2 AIR Bom R 28.** The learned counsel for applicant also pointed out decision in case of **Dr. Nagorao Shivaji Chavan Vs. Dr. Sunil Purushottam Bhamre & Ors. (2019) 13 SCC,788.**

7. The learned P.O. Shri M.I. Khan has submitted that the transfer on the recommendation of MLA cannot be said to be illegal in view of the Judgment of **Mohd. Masood Ahmad Vs. State of U.P. & Ors. (2007) 8 SCC,150.**

8. The learned counsel for respondent no.2 Shri S.G. Jagtap has submitted that transfer on the complaint cannot be said to be illegal. In support of his submission, pointed out the decision of Hon'ble Bombay High Court in case of **Sanjeev B. Kokil Vs. State of Maharashtra, 2013 (2) Mh.L.J., 107.**

9. There is no dispute that the applicant was transferred to Dharni vide order dated 10/8/2020. The applicant has not completed three years normal tenure for transfer as per the provisions of Transfers Act,2005. He was not due for transfer. Even though he is

transferred by order dated 5/1/2022. As per the submission of the respondents, the applicant is transferred because of the complaint of the MLA Shri Patel and Minister Shri Bachhu Kadu.

10. As per the Govt. G.R. dated 11/2/2015, the Transferring Authority cannot transfer the employee only on the basis of complaints. While transferring the said employee, specific reasons are to be recorded. Sub para-8 of the G.R. reads as under –

८. एखाद्या प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचाऱ्याच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधीत अधिकारी/कर्मचाऱ्याची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधीत अधिकारी/कर्मचाऱ्यांच्या तक्रारीसंबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारीमधील गांभीर्य विचारात घेऊन, संबंधीत अधिकारी/कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे याबाबत बदली प्राधिकार्याने ठोस निर्णय घ्यावा. संबंधीत अधिकारी/कर्मचाऱ्याच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधीत अधिकारी/कर्मचाऱ्याला त्याच पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याबाबत बदली प्राधिकार्याने निर्णय घ्यावा. मात्र संबंधीत अधिकारी/कर्मचाऱ्याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिकार्याचे मत झाल्यास त्याबाबतची कारणामिमांसा नमूद करून बदली प्राधिकारी संबंधीत अधिकारी/कर्मचाऱ्याची बदली त्याच्या लगतच्या वरिष्ठ प्राधिकार्याकडे प्रस्तावित करू शकतो. लगतच्या वरिष्ठ प्राधिकार्याकडे असा प्रस्ताव प्राप्त झाल्यास बदली प्राधिकार्याने नमूद केलेली कारणे योग्य आहेत किंवा कसे याची छाननी करून स्वतःचे मत स्पष्ट करून बदली प्राधिकार्याच्या प्रस्तावाला मान्यता द्यावी किंवा बदली प्राधिकार्याचा प्रस्ताव फेटाळून लावण्यात यावा. ज्या प्रकरणात बदली प्राधिकार्याच्या प्रस्तावानुसार गैरवर्तणुकीच्या अनुषंगाने शासकीय अधिकारी/कर्मचारी यांची बदली करण्यात येते अशा प्रकरणात संबंधीत अधिकारी/कर्मचारी यांची बदली केल्यानंतर त्याच्या विरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी.

11. From the reading of the complaints of the MLA Shri Patel and Minister Shri Bachhu Kadu, it appears that there is no specific

allegation against the applicant. No any preliminary enquiry was conducted to substantiate the complaints.

12. The work of the applicant is appreciated by the Chief Engineer. The Certificates of appreciation issued by the Chief Engineer and Superintending Engineer are filed on record. As per these certificates, the applicant has done excellent work. One certificate was issued on 22/10/2021 and another certificate issued by the Superintending Engineer on 1/11/2021. The complaints of MLA Shri Patel and Minister Shri Bachhu Kadu are dated 10/9/2021 and 13/9/2021. It is clear that both the certificates issued by the Chief Engineer and Superintending Engineer are after the complaints made by the MLA Shri Patel and Minister Shri Bachhu Kadu. If there was any complaint or deficiency in duty of the applicant, the Chief Engineer and Superintending Engineer would not have issued such certificates to the applicant.

13. The G.R. dated 11/2/2015 is very clear. As per this G.R., the complaint is to be verified by the Authority. If the employee is transferred on complaint, then thereafter departmental enquiry against such employee should have been initiated. There is nothing on record to show that any show cause notice was issued to the applicant on the basis of complaints of MLA Shri Patel and Minister Shri Bachhu Kadu. In the case of **Somesh Tiwari Vs. Union of India (2009) 2 SCC 592**

referred by this Tribunal Bench at Mumbai. This Tribunal Bench at Mumbai has held in Para nos.20 & 21 as under-

“20. Thus, what turned out from the record is that the anonymous or fictitious and unrelated complaints were used as a tool to transfer the Applicant mid-term and mid-tenure. In other words, the transfer was made on non-existent ground. Only because highest competent transferring authority has approved the transfer, it does not legalize or validate the transfer order, if the same is found based on non-existent material and it is an outcome of non-application of mind. It is well settled that where a Government servant is transferred on complaint without verifying its authenticity, it amounts to punitive action and the same is not sustainable in law. In the present case, the situation is worst, as the first and second complaint being anonymous and fictitious, were already closed by Deputy Inspector General of Registration and Stamps, Pune. Whereas, the third complaint made by Mr. Gaikwad and others has no relevance, as the alleged incident happened with the Applicant was not registration authority at Pune.

21. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court **(2009) 2 SCC 592 (Somesh Tiwari Vs. Union of India)**. Para No.16 of the Judgment is as under:-

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous compliant. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed in lieu of punishment, the same is liable to set aside being wholly illegal.”

14. The Hon'ble Bombay High Court in Writ Petition No.2665/2011 has observed that “ *the petitioner has, however, produced in this court a certificate of appreciation issued by the Executive Engineer of*

Rural Water Supply Department and Zilla Parishad, Nagpur. It is dated 13.6.2011 and the certificate shows that in two prior years he had completed the works of the schemes in best possible manner and there were no complaints against him". It is further observed that "the justification for transfer of the petitioner therefore being pressed into service by respondent nos.1 to 3 before this court is not in existence in the file as put up before Hon'ble Minister. Reason necessitating transfer of the petitioner pressed into service by respondent nos.2 and 3 are not even put by them as special reasons before Hon'ble Minister". Therefore, it is observed that impugned transfer order without recording specific reasons is liable to be quashed and set aside.

15. In the Writ Petition No.8987/2018, it is observed in para-2 as under –

"2. In the order dated 3rd December, 2018, we have recorded the assurance of the State that it will be ensured that the process of transfers will not be influenced by the recommendations made by elected representatives of people and the Hon'ble Ministers who are not concerned with the process of transfers. In terms of the said statement, Mr. Dinesh Kumar Jain, the Chief Secretary of the Government of Maharashtra has filed an Affidavit. The Affidavit dated 12th December, 2018 is taken on record and marked 'A' for identification. Paras-1 and 2 of the said Affidavit reads thus :

"1. I submit that I am filing the present Affidavit for the limited purpose of stating that the process of transfer at the level of the Government will not be influenced by any recommendations made by any political

leaders, members of political parties or any Hon'ble Ministers who are not part of the process of transfers.

2. I submit that all authorities who are competent to effect the transfers will be advised to strictly follow the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 while issuing transfer order."

16. The applicant is transferred only because the MLA and Minister made complaints against him. Both the complaints do not show any specific reason. Both the complaints were not enquired by the Superior Authority as per the G.R. dated 11/2/2015. In the cited Judgments, it is clear that the transfer cannot be a punishment. If it is a punishment, then there should be enquiry against the employee. The impugned transfer order is nothing but punishment, only because, MLA and Minister made complaints against him. Both the complaints are prior to the appreciation certificates issued by the Chief Engineer and Superintending Engineer to the applicant. Both the certificates show that the applicant is doing excellent work in the tribal area. Therefore, the impugned transfer is malafide transfer. Though the proposal was moved by respondent no.2 before the Civil Services Board, but the Civil Services Board has also not recorded any specific reason. Only reason is mentioned that there are complaints of MLA and Minister.

17. The learned P.O. has pointed out decision in case of **Dr. Soudamini S. Choudhari Vs. State of Maharashtra & Ors. (cited**

supra). The order dismissing the complaint of Administrative Tribunal was challenged before the High Court. In para-12 it is observed as under –

*“(12) After such observations, the Court also proceeded to hold as follows:
"14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.”*

18. In the above cited Judgment, it is clear that departmental enquiry was initiated and therefore she was transferred. In the present case, there is no any departmental enquiry, no any show cause notice was issued to the applicant. Hence, the cited Judgment is not applicable to the case in hand.

19. In the case of **Dr. Nagorao Shivaji Chavan Vs. Dr. Sunil Purushottam Bhamre & Ors. (cited supra)**, the Hon'ble Supreme Court has held that "*transfer based on charges of financial irregularities and insubordination found to be substantiated against the appellant, held did not require interference*". In the present case, no such charges are levelled against the applicant. Both the complaints of MLA and Minister appear to be vague. Hence, the cited decision is not applicable to the case in hand.

20. The learned P.O. has pointed out decision in the case of **Mohd. Masood Ahmad Vs. State of U.P. & Ors. (cited supra)**. The Hon'ble Supreme Court has held that "*transfer on the recommendation of MLA – held, did not vitiate the transfer order—*". In the present case there was no any recommendation of transfer by the MLA and Minister, It only shows that the charge of applicant be withdrawn from particular place and moreover both complaints are vague in nature. In the case of **Masood** the transfer of appellant was prior to 2005 before the Transfers Act,2005. The specific provisions are made in Section 4 (4) & 4 (5) of the Transfers Act,2005. The Transferring Authority if wants to transfer any employee before completion of normal tenure, then specific reasons are to be given. In the earlier cited Judgments, it is clear that if transfer is a punishment, then it cannot be effected without holding any enquiry.

21. The learned counsel for respondent no.2, Shri S.G. Jagtap pointed out decision in the case of **Sanjeev B. Kokil Vs. State of Maharashtra (cited supra)**. In the cited Judgment, an enquiry was initiated against the petitioner. The Hon'ble High Court has reproduced the list of the complaints in para-4 of the Judgment. There were various complaints against the petitioner of corruption and rude behavior. The complaints were enquired and during the enquiry, substance was found and therefore he was transferred. In the present matter, the complaints made by the MLA and Minister were not enquired. Even after the complaints, the Chief Engineer and Superintending Engineer issued appreciation certificates to the applicant. It is clear that transfer is malafide because the MLA and Minister not wanted him at a particular post. The applicant has not completed three years tenure as per the Transfers Act,2005, no specific reasons are mentioned by the respondents while transferring him. It appears that the impugned transfer is a punishment on the basis of complaints made by the MLA and Minister, without any enquiry. The transfer order is already stayed by this Tribunal vide order dated 6/1/2022. In that view of the matter, the following order is passed –

ORDER

(i) The O.A. is allowed.

(ii) The impugned transfer order dated 5/1/2022 is hereby quashed and set aside.

(iii) No order as to costs.

Dated :- 25/03/2022

(Justice M.G. Giratkar)
Member (J).

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 25/03/2022

Uploaded on : 26/03/2022ok*