

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO. 928 OF 2016

DISTRICT : THANE

Smt. Lata Narayan Koli @ Lata Ravikant Patil,)
Age: 48 years,)
Working as Assistant Entertainment Tax)
Officer, Western Suburban, Dist. Mumbai)
Suburban, in the office of below named)
Respondent No. 2,)
R/o. Anusaya Dham, 4th Floor, Kopari Gaon,)
Thane (E).)
)...Applicant

VERSUS

1. The Divisional Commissioner,)
Konkan Division, Having office at)
Konkan Bhawan, 1st Floor,)
Navi Mumbai - 400 614.)
2. The District Collector,)
Mumbai Suburban, Having office at)
Bandra, Mumbai-51.)
3. Shri G.R. Aalone,)
Aged Adult, Occ. Naib Tahasildar (Revenue))
in the office of the Tahasildar, Kurla,)
Dist. Mumbai Suburban.)

RK

4. The State of Maharashtra,)
Through Principal Secretary (Revenue))
Revenue & Forest Department, Having office)
at Mantralaya, Mumbai – 400 032.)**Respondents**

Shri A.V. Bandiwadekar, learned Advocate for the Applicant.
Smt K.S. Gaikwad, learned Presenting Officer for the
Respondents 1, 2 & 4.

Shri M.D. Lonkar, Learned Advocate for the Respondent 3.

CORAM : Shri Rajiv Agarwal, Vice-Chairman
DATE : 23.11.2016
PER : Shri Rajiv Agarwal (Vice-Chairman)

J U D G E M E N T

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant, Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents 1, 2 & 4 and Shri M.D. Lonkar, learned Advocate for the Respondent 3.

2. This O.A. has been filed by the Applicant challenging the order dated 14.09.2016 transferring her from the post of Assistant Entertainment Duty Officer, Western Suburbs, Mumbai Suburban District to the post of Election Naib Tahsilder, Bandra, M.L.A. Constituency, Mumbai.

3. Learned Counsel for the Applicant argued that the Applicant was posted as Assistant Entertainment Duty

Officer, Western Suburbs on 06.02.2014. She is entitled to a tenure of three years in that post. However by order dated 14.09.2016, the Applicant has been transferred mid-term and mid-tenure in violation of section 4 (4) (ii) and 4 (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (the Transfer Act). Learned Counsel for the Applicant argued that she has been transferred on a complaint of some M.L.A. for Worli Assembly Constituency. However, there is no reason for that particular M.L.A. to make any complaint against the Applicant as the Applicant is not posted in his constituency. Learned Counsel for the Applicant argued that Govt. has delegated powers to transfer Naib-Tahsildars (Group 'B' post) to Divisional Commissioners by Order dated 23.06.2016 As per 1 (B) of this order, the Divisional Commissioners are required to act on the report of the concerned Collectors. In the present case, this requirement was not fulfilled. Learned Counsel for the Applicant argued that this Tribunal by judgment dated 16.06.2016 in O.A. No. 889/2015 has held that special powers of transfer before completion of tenure of a Govt. Servant and for mid-term transfer cannot be delegated. The Transfer Act has provided protection to Govt. servants against such transfers and decision for such transfers can be taken at a higher level. There is no provision in the transfer Act to delegate Special Powers of transfers. The impugned order is passed by the Division Commissioner, who cannot be delegated powers of mid-tenure or mid-term transfers of Group 'B' officers like

the Naib Tahsildars. Learned Counsel for the Applicant argued that impugned transfer order is bad in law and it may be quashed and set aside.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent nos. 1, 2 & 4 that the Applicants has been posted in Mumbai Sub-urban District and there has been no change of H.Q. The Respondent No.1 is Divisional Head and has powers to transfer Group 'B' officers within his Division. By order dated 23.06.2016, the powers to transfer Naib Tahsildars have been delegated under section 6 of the Transfer Act to Division Commissioners. The Respondent No.1 is empowered to order transfer, even mid-term and mid-tenure transfer, of Naib Tahsildars. Learned P.O. stated that the Civil Services Board has considered this issue in its meeting held on 12.09.2016 and it noted that there was a complaint against the Applicant, which was found substantiated. As the complaint was regarding Govt. revenues, it was decided to transfer the Applicant to another post. Learned P.O. argued that the impugned order has been passed in full compliance with the provisions of the Transfer Act.

5. Learned Advocate Shri M.D. Lonkar argued on behalf of the Respondent No.3, that the Respondent No.3 has been posted as Assistant Entertainment Duty Officer, Western Suburbs in place of the Applicant and by transfer of the Applicant, her headquarters has not changed. In the cases of


Kalal, Shivdas and Lonandkar, Hon'ble Bombay High Court has held that there is no transfer under the Transfer Act, when H.Q. of a Govt. servant does not change. In the case of **R.S. Kala v/s. State of Maharashtra in W.P. No. 8892 of 2010, Hon'ble High Court** has held accordingly. In the present case, no circumstances exists to point out that the Applicant has been transferred to accommodate any other person (in the present case the Respondent No.3). The Applicant's H.Q. does not change and it remains at Bandra. No inconvenience of any sort is caused to her by the impugned transfer order. Learned Counsel for the Respondent No.3 argued that the judgment of this Tribunal dated 19.03.2015 in O.A. No. 69/2015 is clearly distinguishable as the Applicant in that case was retiring in a few days and the person transferred in his place was not eligible for such posting. Learned Counsel for the Respondent No.3 contended that it is not necessary that an M.L.A. may bring irregularities committed by Govt. servants in his Constituency only to the notice of the Govt. In the present case, Shri Sunil Shinde, M.L.A. has brought to the notice of the Respondent No.1 that the Applicant has been a miss in discharging her duties in maintaining records of Entertainment Duty Collected by her. Learned Counsel for the Respondent No.3 stated that considering the nature of misconduct of the Applicant, she was rightly shifted. Learned Counsel for the Respondent No.3 argued that this Tribunal had not struck down the order delegating power of Special Transfers to lower authorities in O.A. No. 889 & 890 of 2015

RH

by judgment dated 16.06.2016. He cited the judgment of Hon'ble Supreme Court in the case of **Pune Municipal Corporation v/s. State of Maharashtra & others : (2007) 5 SCC 211**, wherein it was held that no order passed by competent Authority can be ignored unless a finding is recorded that it is illegal, void or not in consonance with law. In the present case, Govt. order dated 23.06.2016 has not been challenged by the Applicant and, therefore, any order passed under that order, has to be held as valid.

6. Both the Applicant and the Respondent No.3 had cited various other judgments, which are discussed hereinafter.

7. It is seen that the Applicant was promoted as Naib Tahsildar on 21.01.2009 and has been posted in Mumbai in various offices from that date. She joined the present post of Assistant Entertainment Duty Officer, Western Suburbs on 06.02.2014. The case of the Applicant is that she has not completed her tenure of 03 years in that post. The Respondent No. 3, has, however, strongly relied on the judgment of Hon'ble Bombay High Court dated. 30.11.2010 in the case of **R.S. Kala vs. State of Maharashtra in W.P. No. 8892 of 2010**. He also relied on judgment of Hon'ble Bombay High Court dated 22.11.2013 in the case of **Pradip B. Lonandkar v/s. State of Maharashtra & Others in W.P. No. 7554 of 2013**. In para 22 of Lonandkar's case, Hon'ble High Court has held as follows:



“To our mind, therefore the label attached or nomenclature cannot be decisive or conclusive. The Transfer Act, 2005 defines the term ‘**transfer**’ in the manner referred to above essentially because an innocuous exercise in a given case and being termed as shifting an officer from one office to another, change in assignment or job to the performed would well amount to a transfer and may require interference if some has been done arbitrarily malafide and frequently.”

8. What Hon'ble High Court is held that unless a transfer in the same headquarters is done arbitrarily, malafide and frequently, it may not be a transfer under the Transfer Act. In O.A. No. 69/2015, this Tribunal concluded that the Applicant in that case was needlessly distributed two months before his retirement that too to give undue benefits to his replacement, who was sought to be given benefits, to which he was not entitled. In short, facts and circumstances in O.A. No. 69/2015 was such that the transfer of the Applicant therein was held to be arbitrary and based on extraneous considerations. In the present case, the minutes of the meeting of the Civil Services Board held on 12.09.2016 give the following reasons for transfer of the Applicant:

अ.क्र.	अधिका-याचे संपूर्ण नांव	पूर्ण पदनाम	सध्याच्या पदावर कोणत्या दिनांकापासून	मगणी केलेले पद/ शिफारस	नगरी सेवामंडळाने केलेली शिफारस	कारण
७	श्रीमती लता कोळी	सहायक करमूणक शूल्क अधिकारी, पश्चिम उपनगरे	०५.०३.२०१६ पासून आजपर्यंत	--	निवडणूक नायबतहसिलदार १७७ वाद्रे	श्रीमती कोळी यांचेविरुद्ध श्री. सुनिल विसब शिंदे, १८२-वरळी विधानसभा

RB

अ.क्र.	अधिका-याचे संपूर्ण नांव	पूर्ण पदनाम	सध्याच्या पदावर कोणत्या दिनांकापासून	मगणी केलेले पद/ शिफारस	नगरी सेवामंडळाने केलेली शिफारस	कारण
		जिल्हाधिकारी कार्यालय, मुंबई उपनगर			विधानसभा मतदार संघ, जिल्हा मुंबई उपनगर	मतदार संघ, यांनी केलेल्या तक्रारीमध्ये तथ्य आढळत असलेबाबत जिल्हाधिकारी मुंबई उपनगर यांनी अहवाल सादर केला असून त्यांचेविरुद्ध चौकशी प्रस्तावित असल्याने बदली करणेबाबत शिफारस केली.

9. The report of Collector Mumbai Suburban District dated 18.03.2016 is at Exhibit R-3 (Pg. 95 of Paper Book). It is seen that the Respondent No. 3 had requested to be posted as Assistance Entertainment Duty Officer, Western Suburbs in place of the Applicant. The question is whether it can be concluded that the Applicant was transferred to accommodate the Respondent No.3. It is seen from the minutes of C.S.B meeting that the Applicant was transferred on the compliant of M.L.A., which was inquired into by Collector, Mumbai Suburban District on the instructions of Divisional Commissioner. Letter of the Respondent No.1 to Collector is dated 28.12.2015 and there were reminders dated 13.01.2016 & 02.03.2016. The Collector submitted report on 18.03.2016, which has been discussed in C.S.B. meeting. All these documents clearly prove that the enquiry against the Applicant was regarding financial irregularities and it was duly conducted and substance was found by the Collector. Obviously, this has nothing to do with the Respondent No.3. It so happened that proposals for shifting

both of them were discussed in the same meeting of the C.S.B. However, there is no evidence that the Respondent No.1 transferred the Applicant to accommodate the Respondent No. 3.

10. As there was no arbitrariness or malafide, the transfer of the Applicant cannot be termed as a transfer under the Transfer Act. There was no change of H.Q. The Applicant has not been transferred frequently. In fact, she has remained in Mumbai for last seven years. As per the judgment of **Hon'ble High Court in Lanandkar's case (Supra)**, the impugned order does not attract the Transfer Act.

11. In the report of Collector against the Applicant, it is mentioned that:

“पश्चिम उपनगरातील बेरच चित्रपटगृहाचे सेवा शुल्काबाबत सन २०१४-१५ चे हिशोब अद्याप ही त्यांना सादर झालेले नाहीत.”

It was also mentioned that the Applicant had not signed cash book from 04.06.2015 to 01.02.2016. These appear to be serious shortcoming in the working of the Applicant. If she is not able to ensure that all Cinema houses under her jurisdiction submit accounts in time and if she is not examining and signing cash book regularly, this may have serious repurassion on collection of Govt. revenues. Learned Counsel for the Applicant had argued that compliant was made by an M.L.A. from Worli Constituency so it is not relevant. In my view, a representative of people viz. M.L.A. can raise compliant ^{about} ~~absent~~ proper working or lack of it of a

Govt. official anywhere in the State. In the present case, as it happened, the compliant of Shri Shinde, M.L.A. was found to be substantiated. The contention of the Applicant that this compliant could not have been considered for her transfer has to be rejected firmly.

12. The Applicant has relied on various judgment of this Tribunal, which are discussed below:

(i) O.A. No. 781/2014 dated 10.10.2014. It is seen that the order of transfer of the Applicant at the same headquarters was quashed and set aside by this Tribunal. This Tribunal has held that the transfer was ordered in response to a vague letter of State Minister where focus was on place of posting of certain officers. It was unsubstantiated and not accompanied by any documentation. The departmental authorities had pointed out that it would not be proper to transfer the applicant who had assumed charge of his post recently. The facts are quite different here. The complaint against the Applicant was enquired into by the Collector, who found severe irregularities in the working of the Applicant. There is nothing on record to suggest that the Applicant was transferred to accommodate the Respondent No.3. This judgment is clearly distinguishable.

(ii) O.A. No. 266/2016 dated. 22.09.2016. It was held that merely because another employee wants a

particular place to be posted at, it may not be a special reasons or exceptional circumstances. In the present case, the reason for transfer of the Applicant is here failure to discharge here duties diligently. The facts are different and this judgment is distinguishable.

- (iii) O.A. No. 53/2016 dated. 20.09.2016. It was held that when no reasons are assigned for transfer and the only reason is the request for transfer for some other person, such an order is unsupportable. Facts are quite different here and the judgment is not applicable.
- (iv) O.A. No. 478/2016 dated. 04.08.2016. It was held that decision to transfer the Applicant was direct result to post the private Respondent in his place. In the present case, the Respondent No.3 had requested to be posted as Assistant Entertainment Duty Officer, Western Suburbs. However it is seen from the minutes of meeting of Civil Services Board held on 12.09.2016 that the Applicant was transferred due to substantiated compliant. Reasons for transferring the Applicant are such that no fault can be found on the part of the Respondent No.1 to shift her. There is no evidence that the Respondent No.3's request was the reason for transferring the Applicant. There were independent and strong reasons to transfer the

Rh

Applicant. This judgment is clearly distinguishable.

13. Many other judgments are cited by the Applicant and the Respondent No.3, which are not necessary to be discussed. It is quite clear that the Applicant's transfer has not resulted in change of headquarters. It does not suffer from malafide not is it arbitrary. It is not a transfer under the Transfer Act.

14. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)
23.11.2016

Date : 23.11.2016
Place : Mumbai
Dictation by : NMN
D:\Naik\Judgement\2016\09-November\O.A. 928-2016 V-C.doc