

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 235 OF 2020

DIST. : JALGAON

Sunil s/o Kautik Thakur,)
Age. 32 years, Occ. Service,)
Muktainagar, Dist. Jalgaon) -- **APPLICANT**

V E R S U S

(1) The State of Maharashtra,)
Through : Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai - 32.)

(2) The Collector,)
Collector Office, Jalgaon.) -- **RESPONDENTS**

APPEARANCE :- Shri S.D. Dhongde, learned Advocate for
the applicant.

: Shri V.R. Bhumkar, learned Presenting
Officer for the respondents.

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 1st June, 2021

O R D E R

1. Challenge in this Original Application is made to the impugned transfer order dated 8.7.2020 (Annex. A-3 page 19 of paper book) issued by the respondent no. 2 i.e. the Collector, Jalgaon thereby transferring the applicant from the post of Clerk-Typist in the office of the Sub Divisional Officer, Jalgaon to the

vacant post of Clerk-Typist in the office of Tahsildar, Muktainagar, Dist. Jalgaon.

2. The Applicant was working as a Clerk-Typist in the office of the respondent no. 2 – the Collector, Jalgaon pursuant to the earlier transfer order dated 31.5.2018 (Annex. A-1 page 10 of paper book). The applicant said to have been working there with utmost sincerity and honesty and there were no complaints from his superiors about his performance. Considering the joining of the applicant in the office of Sub Divisional Officer, Jalgaon, he would have been due for transfer only in the month of May / June, 2024. However, by the singular order dated 8.7.2020 passed by the respondent no. 2 the applicant has been transferred from the post of Clerk-Typist in the office of the Sub Divisional Officer, Jalgaon to the vacant post of Clerk-Typist in the office of Tahsildar, Muktainagar, Dist. Jalgaon. The said impugned transfer order dated 8.7.2020 passed by the respondent no. 2 is at Annex. A-3 page 19 of paper book.

3. It is the contention of the applicant that he was suffering from illness and therefore he availed medical leave for the period from 18.4.2020 to 8.5.2020 and in support thereof he also annexed the medical certificate. However, the respondents issued him a show cause notice dated 5.5.2020 and vide order dated

27.5.2020 (Annex. A-5 page 23 of paper book) the respondent no. 2 stopped 2 annual increments of the applicant for a period of 2 years with cumulative effect on future increments. Moreover, by another order dated 4.5.2020 (Annex. A-6 page 26 of paper book), the period of absence of the applicant from 18.4.2020 to 30.4.2020 was treated as without pay. Thirdly by the impugned order dated 8.7.2020 passed by the respondent no. 2 the applicant has been transferred from Jalgaon to Muktainagar, Dist. Jalgaon. Hence, the applicant is facing triple jeopardy. The impugned order is punitive in nature and it is issued in violation of the provisions of section 3 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005). The applicant has obeyed the impugned transfer order in order to avoid any inconvenience to the administration during the current pandemic situation. The impugned order is, therefore, not tenable and is liable to be quashed and set aside.

4. Shri Pankaj Premchand Lokhande, Tahsildar (Revenue) in the office of the District Collector, Jalgaon has filed affidavit in reply on behalf of the respondent no. 2 and opposed the O.A. The respondents justified the impugned transfer order of the applicant contending that the said transfer order of the applicant is issued

in accordance with the provisions of section 4(4) (ii) and 4(5) of the Transfer Act, 2005. Moreover, the applicant has been transferred to a vacant post. The Government Resolution dated 7.7.2020 issued by the Government (Annex. A-2 page 17 of paper book) keeping in abeyance the general transfers is not applicable to the case of the applicant. It is the specific contention of the respondents that the applicant was in habit of availing medical leave on falls grounds thereby causing inconvenience to the administration during the current pandemic situation. In view of the same, due proposal dated 27.5.2020 (page 44 of paper book) was sent by the respondent no. 2 for seeking approval and after obtaining the due approval of the respondent no. 1 dated 24.6.2020 (page 46 of paper book) the applicant has been transferred by the impugned order. The contention of triple jeopardy raised by the applicant has no legal basis. The order of stoppage of 2 annual increments of the applicant with cumulative effect on future increments is passed by giving show cause notice to the applicant and after considering the explanation dated 11.5.2020 given by him. The impugned transfer order is passed by the respondent no. 2 following the provisions contained in G.R. dated 11.2.2015 (Annex. R-1 page 39 of paper book) in proper perspective.

5. The applicant filed rejoinder affidavit, which is at page 59 of paper book and denied the adverse contentions raised by the respondents in their affidavit in reply. He further contended that as per G.R. dated 4.5.2020 in order to curtail the expenses on transfers of the Government employees, the general transfers of the year 2020 were banned. Further by G.R. dated 7.7.2020 the transfer of only 15% employees, who are due for transfer in general transfers, is allowed. The impugned transfer order of the applicant dated 8.7.2020 is in contravention of both these G.Rs.

6. I have heard the arguments advanced by Shri S.D. Dhongde, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents, at length.

7. Considering the facts and circumstances of the present case as narrated above, it is evident that the impugned order of transfer dated 8.7.2020 issued by the respondent no. 2 in respect of the applicant is midterm and mid tenure transfer order. By the time of issuance of the impugned transfer order the applicant admittedly had completed only the tenure of about 26 months. It is the contention of the respondents that the impugned order is passed in accordance with the provisions of section 4(4)(ii) and 4(5) of the Transfer Act, 2005. Incidentally, the respondents have

also contended that the applicant has been transferred on a vacant post.

8. Considering as above, the provisions of sections 4(4)(ii) and 4(5) of the Transfer Act, 2005 need consideration and interpretation. The said provisions are as follows :-

“4.(4) *The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May :*

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely :-

(i) -- -- -- --

(ii) *where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.*

(5) *Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of immediately superior Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”*

9. Section 4(4)(i) of the Transfer Act, 2005 deals with midterm transfer and it is permissible to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave. Admittedly no

proposal is sent for transfer of the applicant under section 4(4)(i) of the Transfer Act, 2005. In view of the same this provision of the Transfer Act, 2005 would not be applicable.

10. Respondents have specifically come out with a contention that the impugned order is passed in view of the provisions of section 4(4)(ii) of the Transfer Act, 2005, which speaks of midterm and mid tenure transfer where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority. It is also the contention of the respondents that they have followed the requisite guidelines contained in the G.R. dated 11.2.2015 (Annex. R-1 page 39 of paper book).

11. In this regard the respondents have placed on record the copy of proposal dated 27.5.2020 (page 44 of paper book) sent by the respondent no. 2 to the respondent no. 1 for according approval to the impugned transfer of the applicant. It is submitted U/s 4(4)(ii) and 4(5) of the Transfer Act, 2005. Thereby it is contended by the respondents that the negligence and misconduct of the applicant during his tenure in the office of the Sub Divisional Officer, Jalgaon is exceptional circumstance and special reason for issuance of the impugned transfer order. It also

specifies that the applicant had availed Earned Leave during the period from 29.4.2019 to 15.5.2020 in all on 5 occasions. The said proposal is approved by the respondent no. 1 vide its communication dated 24.6.2020 (page 46 of paper book). The respondents have justified their action taken against the applicant for dereliction / negligence of duty vide order dated 27.5.2020 (Annex. A-5 page 23 of paper book) thereby 2 annual increments of the applicant were stopped for the period of 2 years with cumulative effect on future increments. They have also justified the order dated 4.5.2020 (Annex. A-6 page 26 of paper book), whereby the absence period of the applicant for the period from 18.4.2020 to 30.4.2020 is treated as without pay.

12. Perusal of above said facts as reflected in the concerned documents would show that the respondent no. 2 has dealt with the disciplinary action against the applicant for his alleged dereliction / negligence of duty by way of availing earned leave for longer period from time to time. Over and above, the applicant has been transferred midterm and mid tenure by the impugned order dated 8.7.2020. Learned Advocate for the applicant submits that in view of above scenario, the impugned transfer order of the applicant is punitive in nature and the applicant is facing triple

jeopardy, which is not sustainable in the eyes of law. I find much substance in the said contention of the applicant.

13. No doubt, the respondent no. 2 has followed the due procedure as laid down in section 4(4)(ii) and 4(5) of the Transfer Act, 2005 together with necessary instructions issued by the Government in the G.R. dated 11.2.2015. However, I have to consider whether the reason stated by the respondents for the impugned midterm & mid tenure transfer of the applicant is falling in the category of exceptional circumstance or special reason. The said provisions of section 4(4)(ii) and 4(5) of the Transfer Act, 2005 do not specify as to what would form exceptional circumstance or special reason, but perusal of the proposal dated 27.5.2020 (page 44 of paper book) sent by the respondent no. 2 to the respondent no. 1 and its approval by the respondent no. 1 vide communication dated 24.6.2020 (page 46 of paper book) would show that inconvenience being caused to the administration due to alleged dereliction or negligence or misconduct of the applicant in performing the duty. At the cost of repetition, I would mention that the respondent no. 2 has already dealt with the said reasons of negligence or dereliction of duty of the applicant by stopping his 2 annual increments for a period of 2 years with cumulative effect on future increments vide order

dated 27.5.2020 (Annex. A-5 page 23 of paper book) and treating the absence period of the applicant as without pay vide order dated 4.5.2020 (Annex. A-6 page 26 of paper book). The respondents have gone further to transfer the applicant on the same ground.

14. In view of above, in my considered opinion, the ground raised by the respondents for the impugned transfer of the applicant cannot fall under the category of exceptional circumstance or special reason more particularly when the respondents have already dealt with the applicant by taking the recourse of disciplinary action. In view of the same the impugned transfer order can be said to be colorable order or punitive order. In view of the same, the impugned order of transfer does not specify the real purport of section 4(4)(ii) and 4(5) of the Transfer Act, 2005.

15. No doubt, learned Advocate for the applicant has submitted that the impugned transfer order is issued by the respondents against the provisions of the G.Rs. dated 4.5.2020 & 7.7.2020, but it appears that necessary instructions are issued by the respondent no. 1 subsequently regarding applicability of the G.R dated 4.5.2020. Those instructions are incorporated in the G.R. dated 7.7.2020 which reads as under :-

“तसेच, सर्वसाधारण बदल्यांव्यतिरिक्त काही अपवादात्मक परिस्थितीमुळे किंवा विशेष कारणामुळे बदल्या करावयाच्या असल्यास, अशा बदल्या देखील दि. ३१ जुलै २०२० पर्यंत बदली अधिनियमातील तरतूदी विचारात घेऊन करण्यात याव्यात.”

It view of the same, it cannot be said that powers of respondents under section 4(4) & 4(5) of Transfer Act, 2005 are withdrawn. But in this case, those powers are not exercised in accordance with law.

16. In view of foregoing discussion, in my considered opinion, the impugned transfer order dated 8.7.2020 (Annex. A-3 page 19 of paper book) issued by the respondent no. 2 i.e. the Collector, Jalgaon thereby transferring the applicant from the post of Clerk-Typist in the office of the Sub Divisional Officer, Jalgaon to the vacant post of Clerk-Typist in the office of Tahsildar, Muktainagar, Dist. Jalgaon is not sustainable in the eyes of law and is liable to be quashed and set aside. Hence, I proceed to pass the following order :-

ORDER

- (i) Original Application No. 235/2020 is hereby allowed and disposed of.
- (ii) The impugned transfer order dated 8.7.2020 (Annex. A-3 pages 19 & 20 of paper book) issued by the

respondent no. 2 - the Collector, Jalgaon thereby the applicant has been transferred from the post of Clerk-Typist in the office of the Sub Divisional Officer, Jalgaon to the post of Clerk-Typist in the office of Tahsildar, Muktainagar, Dist. Jalgaon is hereby quashed and set aside.

- (iii) The respondents are directed to repost the applicant on the post on which he was working before issuance of the impugned transfer order i.e. on the post of Clerk-Typist in the office of Sub Divisional Officer, Jalgaon, within a period of one month from the date of this order.

There shall be no order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place : Aurangabad
Date : 1st June, 2021