

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.562 OF 2021

**DISTRICT: SOLAPUR
SUBJECT : TRANSFER**

Smt. Jasmine Nainuddin Shaikh,)
Age – 36 years, Working as Block Development Officer,))
Office at Panchayat Samiti, North Solapur,))
Residing at-104, Awing, Flora Casa Apartment,))
Near IMS School, Jule Solapur, Dist.- Solapur)... **Applicant**

Versus

State of Maharashtra,))
Through Principal Secretary,))
Rural Development Department,))
Mantralaya, Mumbai- 400 032.)... **Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : A.P. Kurhekar, Member (J)

DATE : 03.03.2022.

JUDGMENT

1. The Applicant has challenged transfer order dated 09.08.2021 issued by Respondent – Government of Maharashtra thereby transferring the Applicant mid-term and mid-tenure from the post of Block Development Officer (B.D.O.), Panchayat Samiti, North Solapur, District Solapur to Panchayat Samiti, Risod, District Washim, invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. The Applicant is serving in the cadre of B.D.O. (Group 'A'). Government by order dated 15.09.2020 transferred and posted the

Applicant as B.D.O. Panchayat Samiti, District Solapur. She being Group 'A' officer is entitled for 3 years tenure at Solapur. However, abruptly she has been transferred by order dated 09.08.2021 from Solapur to Washim on ground of complaints. The Applicant has therefore challenged the Transfer order dated 09.08.2021 *inter-alia* contending that it is malafide transfer order and there being no approval of Hon'ble Chief Minister it is in contravention of Section 4(5) the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity).

3. Smt. Punam Mahajan, learned Advocate for the Applicant sought to contend that though the Applicant is shown transferred on the complaint made by one Smt. Rajani Bhadkumbe (Chairman), Panchayat Samiti, Solapur it is bad in law for want of approval of Hon'ble Chief Minister who is competent authority for mid-tenure transfer. Secondly, Smt. Rajani Bhadkumbe is in habit of making frequent complaints against the B.D.Os. who were posted at Panchayat Samiti, District Solapur and has pointed out that during the tenure from 2015 to 2020, thirteen B.D.Os. were transferred on her complaints, hardly completing 3 to 4 months tenure. Adverting to this aspect she tried to contend that the complainant is in habit of making fake complaints and several officers have fallen prey to such mischievous complaints.

4. Whereas, learned P.O. sought to contend that in view of complaints of Smt. Rajani Bhadkumbe and report of Chief Executive Officer, Solapur dated 27.07.2021, transfer was necessitated. However, she fairly concedes that the approval of Hon'ble Chief Minister as mandated under Section 4(5) of Transfer Act 2005, is not obtained. She tried to contend that while processing file, inadvertently name of the Applicant was included in the list of other B.D.Os. who were due for general transfer and with the approval of Minister in-charge of the Department, transfer order has been issued. She therefore submits that

liberty be granted to the Department to resubmit the file of the Applicant for approval of Hon'ble Chief Minister. In this behalf, in para 4 of Affidavit-in-Reply Respondents states as under:-

“It is clearly mentioned that in case of transfer of a Government servant before completion of his tenure of post approval of immediate superior authority is necessary. But inadvertently name of applicant was included along with Block Development Officers due for General transfer and after approval of Hon'ble Minister, Rural Development Department order of transfer of applicant was issued along with order of other Block Development Officers. There was serious complaint against applicant. Therefore, it is not suitable to continue applicant on the post of Block Development Officer, Panchayat Samiti, North Solapur, District Solapur. It is submitted that applicant was relieved from the post of Block Development Office, Panchayat Samiti, North Solapur, District Solapur on 11.08.2021. Therefore, department requested to the Hon'ble Tribunal that liberty may be granted to resubmit the file of applicant for post-facto approval towards immediate superior authority i.e. Hon'ble Chief Minister.”

5. In view of above, it is explicit that after recommendation of Civil Services Board, transfer order has been issued as if it is general transfer. Whereas, admittedly she had hardly completed one year in the present post at Solapur and has been transferred mid-term and mid-tenure. The Applicant's tenure is 3 years. As such, if mid-tenure transfer is necessitated on complaints or on account of administrative exigencies or as a special case, Respondent is required to comply Section 4(5) of Transfer Act 2005 which is as under.

“4(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.”

6. Admittedly, the Applicant's competent transferring authority is Hon'ble Chief Minister but she is transferred with the approval of Minister of the Department only. This being the position *ex-facie* impugned transfer order is in blatant violation of Section 4(5) of Transfer

Act 2005 and liable to be quashed. It is for this reason, Tribunal has granted interim relief by order dated 20.08.2021.

7. Insofar as this submission advanced by learned P.O. to resubmit the file to Hon'ble Chief Minister for approval is concerned, now that stage is already gone. The *ex-post-facto* approval is unknown to law.

8. In view of above, without making any comment on the veracity of complaint, impugned transfer order being totally bad in law for want of approval of Hon'ble Chief Minister is liable to be quashed. Hence the following order.

ORDER

- A) O.A. is allowed.
- B) Impugned Transfer order dated 09.08.2021 is quashed and set aside.
- C) Interim relief granted by the Tribunal is made absolute.
- D) Respondent is at liberty to take recourse of law afresh as may be permissible in law.
- E) No order as to costs.

**Sd/-
(A.P. Kurhekar)
Member (J)**

Place: Mumbai
Date: 03.03.2022
Dictation taken by: N.M. Naik.