

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.220 OF 2019**

**DISTRICT : SANGLI**

Shri Vaibhav Ganpat Tambe. )  
Age : 34 Years, Occu.: Sub-Divisional )  
Agriculture Officer, Vita, Dist.: Sangli and )  
R/at. C/o. Shri Madhukar S. Patil, )  
Shahunagar, Vita, Tal.: Khanapur, )  
District : Sangli. )...**Applicant**

**Versus**

The State of Maharashtra. )  
Through Secretary, )  
Department of Agriculture, )  
Horticulture and Dairy Development )  
Mantralaya, Mumbai – 400 032. )...**Respondent**

**Mr. M.B. Kadam holding for Shri S.S. Dere, Advocate for Applicant.**  
**Mr. A.J. Chougule, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 08.04.2021**

**JUDGMENT**

1. The Applicant has challenged the order dated 05.03.2019 issued by Respondent – Government of Maharashtra thereby transferring him on non-executive post viz. Additional Project Manager (Nodal Officer), District Catchment Area Desk and Information Desk, Ahmednagar,

invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to the O.A. are as under :-

The Applicant was serving as Deputy Director, Agriculture, Solapur from 2009 to 2013. Thereafter, he was transferred as Sub-Divisional Agriculture Office, Wadsa, District Gadchiroli, which was executive post. Later, he was suspended by order dated 04.09.2014 for alleged misappropriation and involvement in Drip Irrigation Schemes causing heavy loss to the Government. He had challenged the suspension by filing O.A.No.735/2014 before M.A.T, Bench at Nagpur wherein by order dated 09.02.2015, directions were given to Respondents to take review of suspension of the Applicant in terms of G.R. dated 14.10.2011. Accordingly, review was taken and suspension was revoked by order dated 20.10.2015 and he was posted at Ahiri, District Gadchiroli on executive post. In general transfer of 2018, he was then transferred as Sub-Divisional Agriculture Officer, Vita, District Sangli by order dated 08.06.2018. In the meantime, complaint was made to Hon'ble Lokayukta, Maharashtra State, Mumbai alleging that despite involvement of the Applicant in serious misconduct, on revocation of suspension, he was given executive post which was in contravention of G.R. dated 14.10.2011 and Circular dated 20.04.2013 which *inter-alia* provides where a Government servant is suspended, then on revocation of suspension, he should be given non-executive post in other Division. The Hon'ble Lokayukta made recommendation on 12.09.2018 directing the Government to take appropriate steps in terms of Circular dated 20.04.2013. It is in pursuance of said recommendations, the Government by order dated 14.10.2018 transferred the Applicant as Additional Project Manager (Nodal Officer), District Catchment Area Desk and Information Desk, Ahmednagar. However, that transfer order was not in consonance with Section 4(5) of 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), since there was no approval of Hon'ble Chief Minister to the same. The Applicant has challenged the transfer order dated 20.04.2018 by filing O.A.No.985/2018 before this Tribunal. In O.A.No.985/2018, by interim order, liberty was given to the Applicant to take remedial measures and to rectify the mistake crept in transfer order dated 24.10.2018.

3. Accordingly, the Government again placed the matter before Civil Services Board (CSB) and on the approval of Hon'ble Chief Minister confirmed the transfer and posting of the Applicant as Additional Project Manager, (Nodal Officer), District Catchment Area Desk and Information Desk, Ahmednagar on non-executive post by order dated 05.03.2019 in compliance of Section 4(5) of 'Transfer Act 2005'. This order is again challenged by the Applicant in the present O.A.

4. Shri M.B. Kadam holding for Shri S.S. Dere, learned Advocate for the Applicant sought to assail the impugned order contending that though initially, the Applicant was suspended by order dated 04.09.2014, after his revocation, he was posted at executive post at Ahiri, and thereafter, in general transfer, he was again transferred on executive post as Sub-Divisional Agriculture Officer, Vita, District Sangli, and therefore, the Government cannot change his posting on non-executive post. Thus, according to him, once the Government had taken conscious decision to post him on executive post, the impugned transfer order giving him non-executive post is unsustainable in law, albeit, it was on the recommendation made by Hon'ble Lokayukta. He further pointed out that though the period of more than six years from alleged period of misconduct is over, till date, no departmental enquiry is initiated nor any criminal prosecution is launched against the Applicant, and it is indicative of innocence of the Applicant. On this line of submission, he urged that the impugned transfer order is unsustainable in law.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer has pointed out that in terms of G.R. dated 14.10.2011 as well as Circular dated 20.04.2013, the Applicant was not entitled for posting on executive post, but inadvertently, he was given executive post and the mistake was rectified by the Government in pursuance of recommendation made by Hon'ble Lokayukta. However, initially, the approval of Hon'ble Chief Minister was not taken, but later matter was again placed before CSB and after its recommendation, the Hon'ble Chief Minister being highest competent authority had approved the transfer and posting of the Applicant on non-executive post invoking Section 4(5) of 'Transfer Act 2005' read with G.R. dated 14.10.2011 and Circular dated 20.04.2013. He, therefore, submits that the challenge to the impugned order holds no water.

6. In view of the submission advanced at bar, the small issue posed for consideration is whether the impugned order dated 05.03.2019 suffers from any legal infirmity and answer is in negative.

7. The facts giving rise to the Original Application as narrated in opening paragraph of the judgment is not in dispute. The Applicant was suspended by order dated 04.09.2014 but it was revoked and he was reinstated in service. After reinstatement, he was posted at Ahiri, District Gadchiroli on executive post. Thereafter, in general transfer of 2018, he was then transferred as Sub-Divisional Agriculture Officer, Vita, District Sangali by order dated 08.06.2018. The vital question arose as to whether the Applicant was entitled for posting on executive post. Only because at the time of reinstatement, he was posted on executive post wrongly and thereafter in general transfer of 2018, he was posted again on the executive post at Vita, District Sangali that itself will not create any right much less legal enforceable in favour of the Applicant so as to claim the posting on executive post.

8. Material to note that in terms of G.R. dated 14.10.2011 as well as Circular dated 20.04.2013, the Government had given specific instructions *inter-alia* that where a Government servant is reinstated in service on the background of charge of serious misconduct and suspension, he or she should not be given executive post. It further specifically provides that such a Government servant should be given non executive post in other division. Despite, this clear instructions, the Applicant was given posting on executive post to which he was not entitled in terms of G.R. dated 14.10.2011 and Circular dated 20.04.2013. It was brought to notice of the Hon'ble Lokayukta who recommended the Government to take appropriate action in terms of G.R. dated 14.10.2011 and Circular dated 20.04.2013. Accordingly, the Applicant was transferred by order dated 14.10.2018 as Additional Project Manager (Nodal Officer), District Catchment Area Desk and Information Desk, Ahmednagar. However, it was not done with approval of Hon'ble Chief Minister as required under Section 4(5) of 'Act 2005'. But later, the defect was rectified by placing the matter again before the Civil Services Board and the Hon'ble Chief Minister who is competent authority for mid-term and mid-tenure transfer accorded his approval and confirmed his posting as Additional Project Manager (Nodal Officer), District Catchment Area Desk and Information, District Ahmednagar which is non executive post. Thus, in effect the illegality crept in transfer order dated 20.04.2018 has been rectified by issuance of fresh order dated 05.03.2019. Suffice to say, in terms of G.R. dated 14.10.2011 and Circular dated 20.04.2013, the Applicant was not at all entitled for posting on executive post in view of his involvement in alleged Drip Irrigation Schemes causing heavy loss to the Government.

9. The rationale behind the object of G.R. dated 14.10.2011 and Circular dated 20.04.2013 is to maintain probity in administration and a person who is charged for serious misconduct should not be given executive post on his reinstatement till he is exonerated from the charges. If a person involved in serious misconduct and

misappropriation of Government money, is reposted on executive post, it would be deleterious to the public administration and would sent wrong signal to public.

10. True, though the period of 5-6 years are over, no D.E. is initiated nor criminal offence is registered against the Applicant. However, in my considered opinion, this aspect itself cannot be construed that the Applicant has got clean chit and exonerated from the charges. In reply, the Respondents made it clear that file is in process for initiating regular D.E. under Rule 8 of Maharashtra Civil Service (Discipline & Appeal) Rules 1979. True, the Respondents ought to have initiated the disciplinary action in right earnest and it is quite belated. However, the delay on the part of Respondents for initiating departmental action against the Applicant would not *ipso-facto* entitled the Applicant to claim the posting on executive post.

11. Learned Counsel for the Applicant sought to make much capital of one report dated 07.03.2015 written by Joint Director, Agriculture, Pune to the Government in response to queries raised by the Government in the matter of Drip Irrigation Project , Malshiraj Tal. Dist. Solapur. In letter, it is stated that in between 19.02.2012 to 08.03.2012 during the tenure of Applicant, he did not submit any proposal of Drip Irrigation Scheme for Malshiraj Taluka. It appears that the Applicant was holding additional charge of Sub-Divisional Officer, Phandarpur and as per letter in that capacity, he did not forwarded any such proposal. This letter was in response to certain queries raised by the Government and was not final decision. It is clarified by the Respondents in reply that preliminary inquiry was conducted by vigilance squad and irregularities for the payment of Rs.27 Lakhs were noticed and in subsequent inquiry, amount had gone up to 10 Crore. In respect of scam, the FIR No.151/2013 and 27/2015 were registered in Malshiraj Police station and investigation is under progress as per the directions given by the Hon'ble High Court in Criminal PIL No.51/2015. It is not clear whether the Applicant is named accused in FIR. Be that as it may, it is clear from

the reply that the Government is initiating D.E. against the Applicant for alleged irregularities in Drip Irrigation Scheme. Therefore, the report dated 07.03.2015 cannot be construed as a clean chit to the Applicant from the charges for which he was suspended.

12. Be that as it may, in present O.A. limited issue is whether the impugned transfer order dated 05.03.2019 suffers from any legal infirmity and the answer is obviously negative. By the said order, illegality crept in earlier order i.e. absence of approval of Hon'ble Chief Minister is rectified. Learned P.O. has also placed on record the file noting along with minutes of CSB meeting. Its perusal clearly reveals that inadvertently the Applicant was posted on executive post and the same was rectified by giving him non executive post. Such situation necessarily qualify a special case or administrative exigency within a meaning of Section 4(5) of 'Act 2005' which *inter-alia* provides that the competent authority in such case after recording reasons in writing with approval of highest competent authority can transfer a Government servant before completion of his tenure.

13. The totality of the aforesaid discussion leads me to sum up that no exception can be taken in impugned transfer order dated 05.03.2019 and challenge to the same is devoid of merit. O.A., therefore, deserves to be dismissed. Hence the following order:-

**ORDER**

Original Application is dismissed with no order as to costs.

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

Place : Mumbai  
Date : 08.04.2021  
Dictation taken by :  
Vaishali Mane

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