

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.261 OF 2017

DISTRICT : PUNE


Shri Mahamadsharif B. Patil.)
Working as District Superintendent of)
Land Records and residing at H-3/17,)
Hermes Heritage, Shastri Nagar,)
Maharashtra Housing Board, Pune.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Chief Secretary,)
Mantralaya, Mumbai - 400 032.)
2. Principal Secretary.)
Revenue & Forest Department,)
Madam Kama Marg, Hutatma Chowk)
Mantralaya, Mumbai 32.)
3. Settlement Commissioner and)
Director of Land Records, M.S,)
2 & 3rd Floor, New Building, Camp,)
Oppo. Council Hall, Pune 411 001.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.



P.C. : R.B. MALIK (VICE-CHAIRMAN)

DATE : 22.08.2017

JUDGMENT

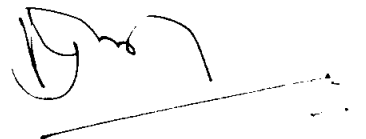
1. The Applicant, a District Superintendent of Land Records calls into question his transfer from Pune to Bhandara.

2. I have perused the record and proceedings and heard Mrs. Punam Mahajan, the learned Advocate for the Applicant and Mrs. K.S. Gaikwad, the learned Presenting Officer (PO) for the Respondents.

3. This OA can be disposed of on a very short point which, however, is one which the Respondents have no answer to. The order of transfer is issued by the Settlement Commissioner who claims to have been delegated the power by a G.R. of 28th June, 2016 issued by the Government in Revenue and Forest Department. The service condition of transfer in this matter is regulated by the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act). As per Section 6(1)(b), the competent transfer authority in case of the Applicant is the



Minister Incharge in consultation with the Secretaries of the concerned Department. The Hon'ble Chief Minister is the immediately higher authority. The second proviso appended thereto does not lay down that the competent transferring authority specified in the table may by general or special order delegate its powers under this Section to any of his subordinate authority. In the ultimate analysis, it must be held that the Respondents cannot successfully established the legality of their action and for which, nothing more needs to be said or done except to rely upon a Judgment of this Tribunal presided over by the then Vice-Chairman in **OAs Nos.889 and 890 of 2015 (Shri Ramchandra A. Morwadkar Vs. The State of Maharashtra and 1 another)** with particular reference to Para 10 thereof. I too had an occasion to deal with such a matter in a recently rendered common Judgment in **OAs 444 and 446 of 2017 (Mr. Harishchandra L. Jadhav Vs. State of Maharashtra and 2 Others and another OA, dated 28.7.2017)**. The facts therein were exactly similar to the present one and posts were also similar. In Para 12 thereof, I referred to Para 10 from **Ramchandra Morwarkar** (supra). The said Paragraph 12 needs to be fully reproduced from **H.L. Jadhav** (supra).



“12. The above discussion must have made it clear that as far as the G.R. of 23rd June, 2016 is concerned, it is legally infirm because the authority viz. the Chief Secretary of the Government under whose signature, it was issued or even the Government were not competent transferring authority for the purposes limited to the Transfer Act. That authority resided in the Hon’ble Minister in consultation with the Secretaries of the concerned Departments. Further, for all one knows, as discussed hereinabove, the provisions of this G.R. are at war with the express provisions of Section 6 of the Transfer Act and both of them are irreconcilable with each other. If that be so, then the said G.R. cannot survive at the expense of the duly enacted provision. To me, the whole thing appears to be so simple, and therefore, subject to the discussion to follow, in view of the fact that the delegation of power was illegal, any order issued thereunder will be no better and it will also be illegal. It is not just a case of curable irregularity but it is case of incurable illegality. Before I turn to the citations which Mr. Lonkar relied upon, I think it



appropriate to consider a common order of this Tribunal (Coram : The Hon'ble Vice-Chairman) in **OAs 889/2015 and 890/2015 (Shri Ramchandra Appa Morwadkar Vs. The State of Maharashtra and one another, dated 16.6.2016)**. Those were also the OAs in which the issue of delegation of powers arose. In these two OAs also, in the impugned orders of transfers, there was a clear reference to Sections 4(1), 4(4) and 4(5) of-course read with Section 6 of Transfer Act. Now, in this background, let me reproduce Paragraph 10 of **Ramchandra** (supra).

“**10.** The impugned order dated 30.5.2015 is purportedly passed under the provisions of section 4(4)(ii) and 4(5) of the Transfer Act. As the order was passed in the month of May, (i.e. on 30.5.2015), there was no need to invoke section 4(4)(ii). However, invoking section 4(5) clearly shows that the Applicant had not completed their tenures. As per section 4(5) of the Transfer Act, such transfers can be made with the prior approval of the ‘immediately superior Transferring Authority’ mentioned in the table of Section 6, in special cases. Admittedly, the ‘Transferring Authority’ as per



section 6 of the Transfer Act is 'Minister-in-charge in consultation with Secretaries of the concerned Departments'. Second proviso to section 6 reads:-

“Provided further that the Competent Transferring Authority specified in the table may be general or special order, delegates its power under this section to any of the subordinate authority.”

Section 6 deals with Transferring Authority and powers to transfer employees of various categories to be exercised by such authorities. This section does not deal with transfer envisaged in section 4 of the Transfer Act, which are so to say extraordinary powers. The terms used in section 4 and 'next higher authority' and 'immediately superior Transferring Authority'. Prior approval of these authorities in writing is required in exceptional circumstances or for special reasons. However, after prior approval is given, the order issued by the Transferring Authority will be valid. Second proviso to section 6 permits delegation of powers under that section only. It cannot be enlarged to include delegation of powers of

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authorities mentioned in section 4(4)(ii) and 4(5), who are not the Transferring Authorities. Learned Counsel for the Applicant contended that section 4 of the Transfer Act deals with cases, where extraordinary powers are being exercised and if such powers are delegated to lower level functionaries, the very purpose of enacting the Transfer Act would be defeated. I agree with his contention fully. The law does not provide for delegation of powers of the authorities under section 4(4)(ii) and 4(5) of the Act and transfer under these sections will have to be with the approval of original authorities mentioned in Table of Section 6, and not by the authorities to whom powers have been delegated, as was done by circular dated 5.12.2014. The impugned order has not been issued with the approval of Hon'ble Chief Minister as required under section 4(5) of the Transfer Act and is unsustainable.”

4. After having done that, nothing more needs to be said or done. Rejecting the submissions to the contrary so assiduously advanced by Mrs. Gaikwad, the learned P.O, I have no hesitation in confirming the interim order made by me in this OA on 27th March, 2017.

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5. The order of transfer herein impugned stands hereby quashed and set aside on the ground set out hereinabove. The interim relief earlier granted is hereby confirmed till such time, as the Applicant becomes due for transfer in accordance with the relevant principles of law. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
VICE-CHAIRMAN
22.08.2017

Mumbai
Date : 22.08.2017
Dictation taken by :
S.K. Wamanse.