

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 402/2018

Suhas S/o Parshuram Jagtap,
Aged about 39 years, Occ. Service,
Resident of C/o Ashish Aparajeet,
Old Shelud Road, Chikhali, District Buldhana.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Urban Development Department-II,
Mantralaya, Mumbai-32.
- 2) Abhijeet Waikos,
Aged : Major,
Resident of Tasgaon, District Sangli
(C/o Municipal Council, Tasgaon or C/o Kedar Talathi,
Behind Rest House Dandge Layout, Chikhali, Dist. Buldhana.
Permit to serve through email or whatsapp)
Waykos1981@gmail.com/7588018056.

Respondents

Shri M.I. Dhattrak, Advocate for the applicant.

Shri S.A. Sainis, P.O. for respondent no.1.

S/Shri D.M. Kale, R.V. Kamble, Advocates for respondent no.2.

**Coram :- Hon'ble Shri A.D. Karanjkar,
Member (J).**

Dated :- 02/11/2018.

ORAL ORDER -

Heard Shri M.I. Dhattrak, learned counsel for the applicant, Shri S.A. Sainis, learned P.O. for respondent No.1 and Shri S.M. Bhagde, learned counsel holding for Shri D.M. Kale, learned counsel for respondent No.2.

2. The applicant is challenging the transfer order dated 12/06/2018 by which the respondent No.1 transferred the applicant from Chikhli Nagar Parishad, District Buldhana to Mehkar Nagar Parishad, District Buldhana and the transfer order dated 12/06/2018 transferring the respondent No.2 from Nagar Parishad, Tasgaon, District Sangli to Nagar Parishad, Chikhli, District Buldhana.

3. It is contention of the applicant that by order dated 31/08/2017 the respondent no.1 transferred him from Mudked Nagar Parishad, District Nanded to Chikhli Nagar Parishad, District Buldhana. It is submitted that vide order dt/12-6-2018, before expiry of the normal tenure, the respondent No.1 again transferred the applicant from Chikhli to Mehkar on the vacant post and the respondent no.2 was transferred to Chikhali..

4. It is contention of the applicant that there was no administrative exigency or exceptional reason to transfer him from Chikhli and post him at Mehkar on the vacant post. It is claimed that

the career of the applicant was meritorious, there were no complaints against him and under these circumstances his premature transfer was unwarranted.

5. It is second contention of the applicant that the respondent No.1 could have straight way transferred the respondent No.2 from Tasgaon, District Sangli to Mehkar, District Buldhana, as that post was vacant. There was no propriety for transferring the applicant before completion of the normal tenure. It is submitted that the transfer orders of the applicant and respondent No.2 are intentionally passed only to accommodate and to show favour to respondent No.2. It is submitted that the respondent No.1 totally discarded the mandatory provisions under section 4(4) and section 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfers Act"). It is submitted that the transfer is actuated by malice it is malafide exercise of authority and therefore, both the transfer orders are liable to be set aside.

6. The respondent No.1's contention is that both transfer orders are passed in accordance with section 4(4) & 4(5) of the Transfers Act. The respondent No.2 was due for transfer and thereafter the proposal was forwarded to the Civil Services Board.

The Civil Services Board granted approval for transfer and therefore there is no illegality or malafides in the transfer orders. It is contention of the respondent no.1 that as per the recommendations of the Civil Services Board, both transfer orders are issued and therefore there is no merit in this application. The respondent No.2 has for the same reason justified the transfer orders. It is submitted by the respondent No.2 that the transfer order is passed by the respondent no.1 and it was his duty to obey the order.

7. After hearing the applicant, the respondent No.1 and the respondent No.2 it appears that the respondent No.2 was due for transfer therefore that cannot be an issue in this matter. The only issue is instead of posting respondent No.2 at Mehkar, District Buldhana, why the applicant was transferred before expiry of the normal tenure, from Chikhli to Mehkar. The learned P.O. was unable to satisfy me on this count. As the post of Chief Officer, Municipal Council, Mehkar was vacant, the respondent No.1 could have straight way posted the respondent No.2 at Mehkar itself, why it was necessary to disturb the applicant. It is not contention of the applicant that there were serious complaints of misbehaviour or corruption against the applicant, therefore, in the absence of such material, it is not possible to accept that really there was any administrative

exigency to transfer the applicant from Chikhli before expiry of the normal tenure.

8. In this regard, I would like to peruse the provisions under section 4 sub section 4 of the Transfers Act. The proviso to sub section 4 of the Transfers Act is exception to the rule that the government servant shall not be transferred in mid-term. In present case the transfer of the applicant is a mid-term and that too before expiry of the normal tenure. Clause-2 of sub section 4 of the Transfers Act, empowers the Transferring Authority to transfer the government servant on the ground that new post is created or post become vacant due to retirement, promotion, resignation, reservation, reinstatement etc. In present case the post of Chief Executive Officer, Nagar Parishad, Mehkar was already vacant. The respondent No.1 has avoided to say since when the post was lying vacant, therefore it is necessary to consider sub section 4 clause 2. As per clause-2, if the Competent Authority satisfied that transfer is essential due exceptional circumstances or special reason, then authority shall record the special reasons or the circumstances in writing and seek prior approval of the next Higher Authority. Similarly, section 4 sub section 5 of the Transfers Act says that the Competent Authority may, in special cases, after recording the reasons in writing and with prior approval of the immediately Superior, transfer a government servant,

before completion of the normal tenure. In present case it is contention of the respondent No.1 that the Civil Services Board has confirmed the transfers. Here, I would like to point out that the Civil Services Board is not the Superior Authority of the Officer, who issued the transfer orders. Both transfer orders are issued by Joint Secretary Shri S.S. Ghokhale, his Superior Authority was the Minister, holding the portfolio of that department at the relevant time. In present matter this material is not produced before the Tribunal. It is not contended in the reply that prior approval of the superior authority was sought and all circumstances were placed before that authority for the consideration.

9. Merely because, the words administrative exigency or exceptional circumstances are mentioned in the transfer order, it does not mean that it is compliance of the statutory provisions under the Transfer Act. is not sufficient compliance. The legal requirement is that the transfer order itself exhibit that there were really strong circumstances for transferring the government servant before expiry of the normal tenure or mid-term transfer. In case of **Pradip Kumar Kothiram Deshbhratar Vs. State of Maharashtra & Ors., 2011 (5) ALL MR 580.** In paragraph 21 following observations are made by the Hon'ble Lordships :-

“(21) Perusal of note, as approved by Hon’ble Minister at page 165, again does not show any specific application of mind in so far as the transfer inter se of the petitioner and respondent no.5 is concerned. The specific cases which can be said to be looked into by the Hon’ble Minister are already mentioned by us above. Whether this fact which we have noticed is looked into by Hon’ble Minister or not is not very clear. Section 4 (5) permit competent authority in special cases to transfer the petitioner after recording reason in writing and that too with prior approval of Hon’ble Minister. Thus, Section 4 (5) of the 2005 Act contemplates such premature transfers only in exceptional cases. The facts above show that request made by the President of Zilla Parisad and recommendation of Hon’ble Minister has been the only reason for treating the proposal as special case. This is not contemplated by Section 4 (5) of 2005 Act and reasons to be recorded for permitting such transfers must be spelt out and must be found to be in the interest of administration. Those reasons cannot be only the wish or whim of any particular individual and such transfers cannot be ordered as special case to please the particular individual for mere asking. On the contrary, records show that respondent no.2 and 3 have not recorded any special reasons at all. These respondents are not satisfied with relevance of reasons placed before Hon’ble Minister. Hence, they have developed a new story in an attempt to justify that transfer before the Court. We, therefore, do not

find compliance of provisions of Section 4 (5) r/w Sec.6 of 2005 Act in the present matter.

10. Similarly in case of **Kishor Shridharrao Mahske Vs. Maharashtra OBC Finance and Development Corporation, 2013 (3) ALL MR 116**. In paragraph 7 it is mentioned that the transferred government servant must know the reasons for his transfer and provisions of section 4 sub section 5 of the Transfers Act are mandatory and said provisions cannot be bye-passed mere writing the words exceptional reasons in the transfer order. In present case after reading both the transfer orders, it appears that nothing is said as to the special reasons for transferring the applicant from Chikhli Nagar Parishad to Mehkar Nagar Parishad.

11. In this case it is very surprising that the transfer order is dated 12/06/2018 and on 13/06/2018 the respondent No.2 joined his duty at 10.30 a.m., if distance between Tasgaon and Chikhli is considered, then one may draw the inference that respondent No.2 was aware that he would be transferred at Chikhli and therefore he was present at Chikhli and he joined at 10.30 a.m. Keeping in view these circumstances, as the post of the Chief Officer, Mehkar was already vacant, there was no propriety to transfer the applicant from Chikhli to Mehkar. The respondent No.1 straight way could have transferred the respondent No.2 to Mehkar to avoid the complications.

That considering the conduct of respondent No.2 submitting the joining report on the following day on 13/06/2018 is sufficient to demonstrate that something or was cooked, therefore, I accept the submission of the applicant that his transfer is actuated by malice and he was transferred only for showing favour to the respondent no.2. In view of these facts, it cannot be said that the transfer is lawful in terms of section 4 sub section 4 and sub section 5 of the Transfers Act. I, therefore, hold that both the transfer orders are illegal and cannot be sustained. In the result, the following order :-

ORDER

The application is allowed. The impugned orders dated 12/06/2018 transferring the applicant from Chikhli to Mehkar and transferring the respondent No.2 from Tasgaon to Chikhli are hereby set aside. The O.A. stands disposed of with no order as to costs.

(A.D. Karanjkar)
Member (J).

dnk.

Dated :- 02/11/2018.