

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 478 OF 2016

DISTRICT :

Shri Nitin Sampatrao Mane,)
Aged 42 Yrs, Working as)
Deputy Chief Executive Officer)
[Gram Panchyat], Zilla Parishad,)
Pune, [Proposed to be transferred)
therefrom], Having Office at Pune,)
R/O. I/502, Lake Vista Society,)
Shani Nagar, Ambegaon Bk, Pune.)
Address For Service of Notice :)
As above.)...**Applicants**

VERSUS

1. The State of Maharashtra,)
Through Principal Secretary)
Rural Development Department,)
Having Office at Mantralaya,)
Mumbai - 400 032.)
2. Smt. S.A. Kadu-Dhote,)
Aged Adult, Occ. Government)
Service as Block Development)
Officer, Panchayat Samiti,)
Mulshi, Dist. Pune,)
transferred in place of the)
Petitioner at the above)
referred place.)
3. The Cheif Executive Officer,)
Zilla Parishad, Pune,)
Having Office at Pune.)....**Respondents**



Shri A.V. Bandiwadekar, learned Advocate for the Applicant.

Shri M.D. Lonkar, learned Special Counsel for the Respondent No.1.

Smt. Punam Mahajan, the learned Advocate for the Respondent No.2.

Mrs Puntambekar learned advocate for Respondent No.3.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 04.08.2016

ORDER

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant, Shri M.D. Lonkar, learned Special Counsel for the Respondent No.1, Smt. Punam Mahajan, the learned Advocate for the Respondent No.2. and Mrs Puntambekar, learned advocate for the Respondent No.3.

2. This Original Application has been filed by the Applicant challenging the order dated 4.6.2014 transferring him from the post of Deputy Chief Executive Officer (Gram Panchayat), Zilla Parishad, Pune to the post of Lecturer, Gram Sevak Training Centre, Manjari, Dist-Pune. He has also challenged the transfer of the

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Respondent no. 2 to the post of Deputy Chief Executive Officer (Gram Panchayat), Zilla Parishad, Pune from the post of Block Development Officer, Panchayat Samiti, Mulshi, Dist-Pune.

3. Learned Counsel for the Applicant argued that the Applicant has been transferred without completion of his three years tenure in the post of Deputy Chief Executive Officer (Gram Panchayat), Zilla Parishad, Pune. The Applicant was posted in that post by order dated 30.5.2014 and he has been transferred by order dated 4.6.2016 to Gram Sevak Training Centre, Manjari, Dist-Pune. Learned Counsel for the Applicant argued that the order is not only mid-tenure but mid-term also and exceptional circumstances and/or special reasons for such a transfer were necessary as per Section 4(4)(ii) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (the Transfer Act). However, the Applicant was transferred on unverified complaint of Gram Sevaks Union. Learned Counsel for the Applicant stated that the Respondent no. 1 had already transferred the Respondent no. 2 in his post by order dated 20.5.2016 and the Applicant was relieved by the Respondent no. 3, when the post occupied by the Applicant was not vacant, as there was no order transferring him from that post. The order of transfer of the Applicant was issued much later on 4.6.2016.

Learned Counsel for the Applicant stated that the Respondent no. 1 had asked Commissioner, Pune Division on 7.10.2015 and 12.5.2016 to inquire into the complaints against the Applicant received from Maharashtra Rajya Gram Sevak Union dated 12.8.2015 and 12.10.2015. However, without waiting for the report, the Respondent no. 1 decided to transfer the Applicant in violation of instructions of Government in Government circular dated 11.2.2015.

4. Learned Counsel for the Applicant argued that the Respondent no. 2 is posted in Pune District from 2005. Civil Services Board has not recommended her transfer as Dy. C.E.O (Gram Panchayat), Pune. However, Minister did not accept the recommendation of the Civil Services Board and posted her in Applicant's place without assigning any reason for differing with the recommendations of the Civil Services Board in violation of law laid down by Hon'ble Supreme Court in **T.S.R SUBRAMANIAN & ORS Vs. UNION OF INDIA & ORS : AIR 2014 SC 263**. Learned Counsel for the Applicant argued that the meeting of the Civil Services Board was not valid, as it was attended by only two of the three Members.

5. Learned Special Counsel for the Respondent no. 1 argued that the Applicant has not been transferred as defined in the Transfer Act, as his headquarters has



not changed. He is posted as Lecturer in Gram Sevak Training Centre at Manjari which is in Haveli Taluka of Pune District. Pune City is also in the same Taluka. Learned Special Counsel argued that Hon'ble Bombay High Court in many cases have held that such 'transfers' are not covered by the Transfer Act. Learned Special Counsel stated that the meeting of the Civil Services Board was held in absence of one Member, and the absence has been satisfactorily explained. On that ground, recommendations of the Civil Services Board cannot be held to be invalid. Learned Special Counsel argued that Hon'ble Bombay High Court in Kore's case has held that only requirement for mid-tenure or mid-term transfer is that there should be some material for such transfer. This Tribunal is not required to ascertain the adequacy of the material on record. There was no malafide in the transfer of the Applicant. Learned Special Counsel stated that if two views are possible, in a case, the Administrator's view cannot be dismissed lightly. Test of a view taken by a prudent person in the circumstances has to be applied. In the present case, the proposal to transfer the Applicant has the approval of the Hon'ble Chief Minister (C.M). Learned Special Counsel for the Respondent no. 1 argued that the Applicant is a Group 'A' officer belonging to Maharashtra Development Service. He is expected to maintain highest standards of integrity. However, he is facing a departmental enquiry on very serious charges of misconduct that he undertook

a foreign tour without permission of the Government and remained absent during the official function on Maharashtra Day (1st May). Learned Special Counsel argued that the Applicant cannot challenge the transfer of the Respondent no. 2 as he has no locus standi in that matter. It is the prerogative of the Respondent no. 1 to post any officer in his place. Learned Special Counsel stated that the grievance of the Applicant that he is placed to work under an officer junior to him in Gram Sevak Training Centre is misplaced, as the Annual Confidential Reports (ACRs) of the Principal and Lecturers are written by the Chief Executive Officer of Pune Zilla Parishad.

6. Learned Advocate Mrs Punam Mahajan, argued on behalf of the Respondent no. 2 that her transfer order dated 20.5.2016 has been issued after following the procedure laid down in the Transfer Act. The Respondent no. 2 had not requested to be posted in place of the Applicant. However, as there were serious complaints against the Applicant, he was transferred on the recommendations of the Civil Services Board in accordance with the provisions of the Transfer Act. Learned Advocate Mrs Mahajan argued that the Applicant is beneficiary of a letter dated 19.5.2016, purportedly from the Gram Sevak Union informing the Respondent no. 1 that they had withdrawn their complaint against the Applicant. This letter has

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subsequently been found to be bogus and inference must be drawn that this bogus letter must have been sent to the Respondent no. 1 at the behest of the Applicant. Divisional Commissioner, Pune had failed to conduct enquiry against the Applicant, though the Respondent no. 1 had asked him to do so. These facts indicate that the Applicant had not approached this Tribunal with clean hands.

7. Learned Advocate Mrs Puntambekar argued for the Respondent no. 3 that the role of the Respondent no. 3 is limited in the transfers of the Applicant and the Respondent no. 2. As the Respondent no. 2 was posted as Deputy C.E.O (Gram Panchayat), by order dated 20.5.2016, the Respondent no. 3 relieved the Applicant as per clause 7 of the aforesaid order.

8. The issues raised by the Applicant in this Original Application and the response of the Respondents is discussed below:-

It is a fact that the Applicant had not completed his tenure of 3 years when he was transferred by order dated 4.6.2016. His was a mid-tenure transfer order which requires approval under section 4(5) of the Transfer Act citing special reasons and approval of the immediately superior Transferring Authority mentioned in the table of Section 6 of the Act. It is also true that

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transfer order of the Applicant was issued on 4.6.2016, which is not in the month of April or May. Approval under section 4(4)(ii) of the Transfer Act was required. It is also true that the order of transfer dated 4.6.2016 has approval of Hon'ble Chief Minister. As such, the only question which remains is whether there were any exceptional circumstances or special reason for the mid-tenure and mid-term transfer of the Applicant. Learned Special Counsel for the Respondent no. 1 has argued that if there were some reasons for the Transfer, this Tribunal should not look into whether the reasons were adequate or not. He argued that such an approach will be outside the scope of judicial review. This is no doubt true. However, the reasons cited for transfer should be in conformity with the instructions issued by the State Government. Government has issued circular dated 11.2.2015 regarding transfers. Para 4 of the Circular provides that an employee should not be transferred merely on complaint. In the present Original Application, it is the case of the Applicant that he is transferred merely on the complaint of the Gram Sevak Union. This Tribunal had directed the Respondent no. 1 to produce the original file for perusal. Copies of relevant file notings are kept on record. It is seen that the meeting of the Civil Services Board was held on 24.5.2016 to consider mid-term/request transfers of Maharashtra Development Service, Group 'A' officers. Name of the Applicant is at Sr. No. 90. It is mentioned that there was a complaint

against the Applicant from the Gram Sevak Union, on which report was sought from Divisional Commissioner, Pune. However, there is no mention that the report was actually received. In fact, no report was received from the Divisional Commissioner, Pune, who was asked to inquire into complaint against the Applicant received from the Gram Sevak Union. It is recommended by the Civil Services Board that:-

“ तकासीच्या अनुषंगाने बदली प्रस्तावित करण्यात येत आहे.”

It is quite clear that the Applicant was proposed to be transferred on mere complaint, which was not verified, though the Commissioner, Pune Division was asked to inquire into it by letter dated 7.10.2015 and reminder dated 12.5.2016. The Applicant was transferred as Lecturer, Gram Sevak Training Centre, Manjari, Pune by order dated 4.6.2016. The minutes of the meeting of the Civil Services Board are signed by only two of the Members, the third Member was evidently absent. The proposal was then submitted for approval of Minister (Rural Development) on 27.5.2016.

9. Before that there was another meeting of the Civil Services Board held on 13.4.2016 to consider general transfers. The Respondent no. 2 was recommended for transfer to a vacant post, though she has requested for posting as Assistant Commissioner

(Enquiries) at Pune or Joint Chief Executive Officer, Vasundhara Project, Pune. In the note submitted to the Minister on 16.4.2016, it is mentioned that Civil Services Board has recommended her transfer as Assistant Commissioner (Enquiries) Pune. Her name is at Sr. no 19. This proposal has a total of 57 names. Minister (R.D) did not approve the proposal of transferring the Respondent no. 2, as proposed by the Civil Services Board and ordered that she may be posted as Deputy C.E.O (Gram Panchayat), Pune. It is ordered that: "Shri N.S. Mane यांच्या प्रस्तावित बदलीने रिक्त होणा-या पदी". There is no date on which Minister (Rural Development) passed these orders. It is also mentioned in the order of Minister (Rural Development) that regarding Shri Mane and others, who will be without posting due to the orders of Minister (Rural Development), separate proposals may be submitted to the Minister. The proposal to transfer the Applicant was accordingly considered in Civil Services Board Meeting on 24.5.2016. As the order transferring the Respondent no. 2 was issued on 20.5.2016, the approval of Minister (Rural Development) must have been given before that date. From this chain of events, it is clear, that there was initially no proposal to transfer the Applicant. However, the decision to transfer the Applicant from the post of Dy. C.E.O (Gram Panchayat), Pune was taken sometime between 16.5.2016 and 20.5.2016 by the Minister (Rural Development). There is nothing on record to show as to why Minister (Rural Development) decided

to do so. It appears that the Civil Services Board recommended transfer of the Applicant in its meeting held on 24.5.2016 to the post of Lecturer, Gram Sevak Training Centre, Manjari as ~~the~~^{his} post was ordered to be filled by the Respondent no. 2. Though Minister (Rural Development) had not directed that the Applicant may be posted as Lecturer, Gram Sevak Training Centre, the Civil Services Board made that recommendation. It was probably required to justify transfer of the Applicant, which was found in the pending complaint against the Applicant from the Gram Sevak Union. It is evident that there was absolutely no reason to transfer the Applicant before completion of his tenure, when Minister (Rural Development) decided to transfer the Applicant. Subsequent reasons given in the Civil Services Board meeting dated 24.5.2016 is obviously an afterthought, to somehow find some justification for transfer of the Applicant. The transfer of the Applicant has been ordered without any consideration of provisions of Section 4(4)(ii) and 4(5) of the Transfer Act.

10. Learned Special Counsel had argued that the Applicant has no locus to challenge the transfer of the Respondent no. 2. However, the events narrated above clearly show that the decision to transfer the Applicant was the direct result of the decision to post the Respondent no. 2 in his place. It is also seen that the decision of the Minister (Rural Development) to post the

Respondent no. 2 in the place of the Applicant was without assigning any reason. The Minister did not approve the recommendations of the Civil Services Board in this regard. Hon'ble Supreme Court in the case of **T.S.R SUBRAMANIAN & ORS Vs. UNION OF INDIA & ORS : AIR 2014 SC 263** has held that:

“28. Civil Services Board consisting of high ranking in-service officers, who are expert in their respective fields, with the Cabinet Secretary at the Centre and Chief Secretary at the State level, could be a better alternative (till the Parliament enacts a law), to guide and advice the State Government in all service matters, especially on transfers, postings and disciplinary action etc. though their views also could be overruled by the political executive, but by recording reasons which would ensure good governance, transparency and accountability in governmental functions.” (emphasis supplied).

In the present case, no reasons for differing with the recommendation of the Civil Services Board in the matter of transfer of the Respondent no. 2 have been given by Minister (Rural Development). That order directly affects the Applicant. The orders transferring the Respondent no. 2 in place of the Applicant clearly violates the law laid down by Hon'ble Supreme Court and the Applicant is vitally interested in the transfer order dated 20.5.2016 of

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the Respondent no 2. It cannot be said that he has no locus stand in this matter.

11. Learned Special Counsel for Respondent no. 1 argued that the Applicant was posted at Manjari, which is 15 kms from the place where the Applicant was posted. Both the places are in Pune District and there is no change in Head Quarters. This is mentioned in para 2 of the affidavit in reply of Respondent no. 1 dated 28.6.2016. Reliance is placed on the judgment of Hon'ble Bombay High Court in W.P no 7554 of 2013 with two others dated 22.11.2013. Hon'ble High Court has observed in para 25 of the judgment that:-

“Suffice it to note that the Tribunal in each case must find out whether the Transfer Act, 2005 is attracted or not. Sometimes an order placing an officer from one table to another table within the same city may be passed and unless and until materials are produced to demonstrate and prove that it is a transfer, the Tribunal is not required to find out as to whether the compliance with the provision of the Transfer Act 2005 has to be made.”

It is seen that change of job at one Headquarters has not been treated as transfer under the Transfer Act by Hon'ble Bombay High Court in the case of Rajendra Shankar Kalal Vs. State of Maharashtra in Writ Petition

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no 8898/2010 decided on 30.11.2010. This Tribunal has held in many cases that Head Quarters will mean a city (within the limits of a Municipal Corporation), a town (within the limits of a Municipal Council) or a village (within the limits of a village Panchayat). Any other definition of Head Quarters will be totally arbitrary. The argument of the Respondent no. 1 that Manjari, which is admittedly outside limit of the Pune Municipal Corporation, should be treated as same Head Quarter as Pune, as it is only 15 kms from Pune cannot be accepted. The question, if that contention is accepted, which will arise is why 15 kms and why not 25 kms and so on. The contention of the Respondent that by order dated 4.6.2016, the Head Quarters of the Applicant has not change is without any legal basis and has to be rejected. As a result, the order dated 4.6.2016 is a transfer order under the Transfer Act.

Uh 10.12. The Applicant had argued that the meeting of the Civil Services Board dated 24.5.2016 cannot be treated as valid. It was not attended by all the Members. It is not necessary to go into that matter as the Civil Services Board meeting was held to justify decision already taken by the Minister (Rural Development) to transfer the Applicant from the post of Dy. C.E.O (Gram Panchayat), Pune. Similarly, whether the complaint of Gram Sevak Union was withdrawn or not is not very relevant. There is nothing on record to indicate that the

Minister (Rural Development) was aware of the complaint of the Gram Sevak Union against the Applicant, when she decided to transfer him (by order posting the Respondent no.2 in his place) sometime between 16.5.2016 to 20.5.2016. Similarly, the facts of Departmental Enquiries was not placed before (truncated) Civil Services Board in the meeting held on 24.5.2016 and there is no way the Minister (Rural Development) could have considered that fact or considered the notice of C.E.O., Zilla Parishad, Pune dated 20.5.2016 to the Applicant regarding his misconduct during the visit of the Panhayat Raj Committee of State Legislature to Pune Zilla Prishad.

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13. The Applicant had claimed that he had been asked to work under his junior. The Respondent no. 1 in his reply had denied this fact and stated that ACRs of both the Principal and Lecturers of the Gram Sevak Training Centre, Manjari are written by Chief Executive Officer, Zilila Parishad, Pune. However, as per Government Circular dated 7.5.2013, ACR of Lecturer in Gram Sevak Training Centre is written by the Principal. The contention of the Respondent no. 1 in this regard is obviously wrong.

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14. It is not necessary to consider numerous other issues raised by the parties in this Original Application. It is clear that the orders dated 20.5.2016 posting the

Respondent no. 2 in place of the Applicant and subsequent order dated 4.6.2016 posting the Applicant as Lecturer in Gram Sevak Training Centre, Manjari are issued in clear violation of Section 4(4)(ii) and 4(5) of the Transfer Act and the law laid down by Hon'ble Supreme Court in T.S.R Subramanian's case (supra) and are unsustainable.

15. Having regard to the aforesaid facts and circumstances of the case, the impugned orders dated 20.5.2016 and 4.6.2016 are quashed and set aside. The Respondent no. 1 will repost the Applicant as Deputy Chief Executive Officer (Gram Panchayat), Zilla Parishad, Pune within a period of four weeks from the date of this order. There will be no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 04.08.2016

Dictation taken by : A.K. Nair.

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