

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.530 OF 2020**

**DISTRICT : PUNE**

Shri Gopinath S. Kolekar. )  
Age : 54 Yrs., Occu.: Service as Joint )  
District Registrar, Class-I, Pune (City), )  
District : Pune and residing at Bhoop )  
Apartment, Yerwada, District : Pune. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Revenue & Forest Department, )  
Chamber No.M-7A, Mezzanine Floor,)  
Madam Cama Road, Hutatma )  
Rajguru Chowk, Mantralaya )  
Extension Building, Mumbai – 32. )  
(Copy to be served on the CPO, )  
MAT, Mumbai). )
2. The Inspector General of Registration) )  
and Stamps, M.S, Pune. )
3. Mr. Anil P. Parkhe. ) )  
Age : Major, Occu.: Service as Joint ) )  
District Registrar, Class-I, Nashik. )...**Respondents**

**Mr. S.D. Joshi, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents 1 & 2.**

**Mr. Vaibhav Ugale, Advocate for Respondent No.3.**

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

**DATE : 28.01.2021**

## **JUDGMENT**

1. The Applicant has challenged the transfer order dated 30<sup>th</sup> September, 2020 whereby he was transferred mid-term and mid-tenure from the post of Joint District Registrar, Class-I, Pune to Assistant Inspector General of Registration & Stamps, Desk – 7, Pune invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this O.A. are as under :-

The Applicant is serving in the cadre of Joint District Registrar, Class-I, Pune. He was serving at Aurangabad and by order dated 31<sup>st</sup> May, 2018, he was transferred from Aurangabad to Pune as Joint Registrar, Class-I, Pune City. In terms of Section 3 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), he is entitled to three years' tenure at Pune. However, by impugned transfer order dated 30.09.2020, he was transferred mid-term and mid-tenure invoking Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' and in his place, Respondent No.3 – Shri Anil Parkhe was posted on his request, who was not due for transfer.

3. Shri S.D. Joshi, learned Advocate for the Applicant assailed the impugned transfer order mainly on the following grounds :-

(i) No special case is made out for mid-term and mid-tenure transfer, as contemplated under Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' and the Applicant is transferred under colourable exercise of power on the basis of stale and non-existent complaints.

(ii) Since Applicant is transferred on the basis of non-existent complaints, the transfer is punitive and not sustainable in law.

(iii) The Government transferred the Applicant mid-term and mid-tenure only to give undue favour to Respondent No.3.

4. Per contra, Smt. A.B. Kololgi, learned Presenting Officer sought to contend that in view of complaints against the Applicant, the matter was placed before Civil Services Board (CSB) and on its approval, the matter was referred to Hon'ble Minister of the Department as well as Hon'ble Chief Minister and with their approval, the Applicant has been transferred in compliance of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'. The learned P.O. thus sought to justify the impugned transfer order contending that there is no illegality therein.

5. Whereas, Shri Vaibhav Ugale, learned Advocate appearing on behalf of Respondent No.3 adopted the submission advanced by the learned P.O. contending that in view of complaints against the Applicant, he was transferred with the approval of highest competent transferring authority and in his place, Respondent No.3 was posted. He fairly admits that Respondent No.3 was not due for transfer and had requested for transfer.

6. In view of submission advanced at the Bar, the issue posed for consideration is whether impugned transfer order is sustainable in law and the answer is in emphatic negative.

7. Needless to mention that the transfer is an incident of Government service and unless transfer is in conflict with express provisions of law or malicious, the same should not be interfered with by the Tribunal. However, now, in view of implementation of 'Transfer Act 2005', the transfers of Government servant are regulated and governed by the said Act and it is not left to the whims or caprice of the executive. Section 3 of 'Transfer Act 2005' provides for normal tenure of three years. Whereas, as per Section 4, no Government servant shall ordinarily transferred unless he has completed his tenure of posting of three years

as provides in Section 3. The perusal of Section 4 further reveals that the competent authority is required to issue general transfer orders only once in a year in the month of April or May. Whereas, Section 4(5) of 'Transfer Act 2005' empowers the competent authority to transfer a Government servant before completion of his normal tenure in special cases after recording reasons in writing with prior approval of immediately presiding competent transferring authority mentioned in Table 6 of 'Transfer Act 2005'.

8. The learned P.O. has tendered file noting for the perusal of Tribunal. The perusal of file reveals that in view of alleged complaints received against the Applicant, the matter was placed before CSB and in turn, CSB in its meeting dated 07.08.2020 approved the proposal for transfer of the Applicant from the post of Joint District Registrar, Class-I, Pune to Assistant Inspector General of Registration and Stamps, Pune. It further reveals that once Mr. Dawange, who was posted at Nandurbar by order dated 17.09.2019 was proposed to be posted in place of Applicant. However, interesting to note that while the file was moved before the Hon'ble Minister, the name of Respondent No.3 – Anil Parkhe was inserted and as per his request, he was transferred in place of Applicant and the file was approved by Hon'ble Minister as well as Hon'ble Chief Minister.

9. As such, material aspect to be noted is that the proposal for request transfer of Respondent No.3 - Shri Anil Parkhe was not at all placed before the CSB and his name was inserted only at the level of Hon'ble Minister. Indeed, in terms of decision of Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**, the request transfer of Respondent No.3 was also required to be placed before CSB for its recommendation. True, the recommendations made by CSB are not binding and executive may turn down the recommendation by giving another posting. However, there is no denying that placing of matter before CSB is mandatory.

10. Thus what transpired from the file that on the basis of three complaints, the Applicant was transferred mid-term and mid-tenure. Though there is approval of Hon'ble Chief Minister, the question remains whether the Applicant could have been legally transferred on the basis of alleged complaints.

11. As per Respondent No.1, there were three complaints against the Applicant. The first complaint dated 25.07.2019 (Page No.36 of Paper Book) was anonymous complaint. The second complaint dated 16.11.2019 (Page No.39 of P.B.) was of Advocate Amol Pawar. Whereas, third complaint (Page Nos.42 to 49 of P.B.) have been made jointly by Mr. Kshatriya Gaikwad, Yashwant Pise and Smt. Manish K. Hirde. It does not bear the date of complaint. However, the perusal of report of Collector and President of Corruption Eradication Committee, Pune dated 23.06.2020 (Page No.40 of P.B.) reveals that the said complaint was received in his Office on 24<sup>th</sup> July, 2020. As such, it was recent complaint.

12. As regard first complaint dated 25.07.2019, it was anonymous complaint addressed to Chief Minister and various other authorities attributing corruption and illegalities in the functioning of the Applicant. In so far as this complaint is concerned, it is seen from letter dated 22.11.2019 ('X') that report was called from the Office of Respondent No.2 – Inspector General of Registration and Stamps as well as from the Applicant. Material to note that Respondent No.2 – Inspector General of Registration and Stamps, Pune has recommended to close the complaint in terms of Government Circular dated 25.02.2015 which *inter-alia* states that no action should be taken on anonymous complaint. Thus, the Respondent No.2 recommended the Government to close the complaint.

13. Second complaint dated 16.11.2019 was allegedly made by Advocate Amol Pawar. In so far as this complaint is concerned, the report was called from Deputy Inspector General of Registration and

Stamps. In report, it is seen that Advocate Amol Pawar made a statement that he never made complaint dated 16.11.2019 against the Applicant. He denied his signature on complaint dated 16.11.2019. He further stated that the said complaint has been fictitiously under his name. On the basis of statement of Amol Pawar, Deputy Inspector General of Registration and Stamps, Pune forwarded a proposal to Government on 09.12.2020 that complaint is fictitious and same be closed in terms of Circular dated 25.02.2015.

14. Suffice to say, these two complaints were found fictitious requiring no further action and accordingly, closed in terms of Circular dated 25.02.2015.

15. At this juncture, it would be apposite to refer Circular dated 25.02.2015 (Page No.54 of P.B.) which inter-alia states that anonymous complaint does not require any enquiry and if the contents are vague, it should be closed. It further *inter-alia* states that if there is verifiable material to substantiate the complaint, in that event only, cognizance needs to be taken for further action by calling complainant for verification and where a complainant does not turn up within 15 days, then it should be treated pseudonymous and should be closed. In this behalf, reference of one more Circular dated 11.02.2015 is material whereby detailed instructions were given for procedure to be adopted if transfer is necessitated on complaint before completion of normal tenure. Material to note that this Circular has been issued on the basis of various decisions rendered by the Tribunal, particularly in O.A.No.703/2014 decided on 16.09.2014. Para No.8 of Circular is material, which is as follows :-

“८. एखाद्या प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचा-यांच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधीत अधिकारी/कर्मचा-याची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधीत अधिकारी/कर्मचा-यांच्या तक्रारी संबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारीमधील गांभीर्य विचारात घेऊन, संबंधीत अधिकारी/कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे याबाबत बदली प्राधिका-यांने ठोस निर्णय घ्यावा. संबंधीत अधिकारी/कर्मचा-यांच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधीत अधिकारी/कर्मचा-याला त्याच पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याबाबत बदली प्राधिका-यांने निर्णय घ्यावा. मात्र संबंधीत अधिकारी/कर्मचा-याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिका-याचे मत झाल्यास

त्याबाबतची कारणमिमांसा नमूद करून बदली प्राधिकारी संबंधीत अधिकारी/कर्मचा-याची बदली त्याच्या लगतच्या वरिष्ठ प्राधिका-याकडे प्रस्तावित करू शकतो. लगतच्या वरिष्ठ प्राधिका-याकडे असा प्रस्ताव प्राप्त झाल्यास बदली प्राधिका-याने नमूद केलेली कारणे योग्य आहेत किंवा कसे याची छानबीन करून स्वतःचे मत स्पष्ट करून बदली प्राधिका-याच्या प्रस्तावाना मान्यता द्यावी किंवा बदली अधिका-याचा प्रस्ताव फेटाळून लावण्यात यावा. **ज्या प्रकरणात बदली प्राधिका-याच्या प्रस्तावानुसार गैरवर्तणुकीच्या अनुषंगाने शासकीय अधिकारी/कर्मचारी यांची बदली करण्यात येते. अशा प्रकरणात संबंधीत अधिकारी/कर्मचारी यांची बदली केल्यानंतर त्याच्या विरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी.”**

16. Thus, in terms of Circular dated 11.02.2015, the preliminary enquiry was required to be made to find out the substance, if any, in the complaint and transfer should not be made wholly on the basis of complaint. It further provides that where substance is found in the complaint, a conscious decision is required to be taken by the competent authority whether to transfer such Government servant and to initiate the DE against him.

17. In the present case, the complaint dated 25.07.2019 being anonymous was recommended to be closed and second complaint dated 16.11.2019 was turned out fictitious and recommended for closer.

18. Now, it remains third complaint purportedly made by Mr. Kshatriya Gaikwad and others. The perusal of the said complaint reveals that it was pertaining to registration of one document purportedly produced by one Mr. Anna Chougule on 30.08.1993 which was registered by the Office on 21.02.1997. As per the complainants, the said document was forged and it should not have been registered. On the basis of registration of document, Mr. Anna Chougule allegedly got his name mutated in revenue record. It was a grievance of Mr. Gaikwad and others that the Applicant did not take proper ignorance of their complaint and enclosed their complaint. In so far as this complaint is concerned, I fail to understand how the Applicant is related to the allegations made in the said complaint. Admittedly, the Applicant was not Joint Registrar in Pune at the relevant time and did nothing for registration of the alleged forge document. It was of 30<sup>th</sup> August, 1993 when Applicant was admittedly at some other place and not at Pune. The learned P.O. also could not point out as to how this third complaint

purportedly made by Mr. Gaikwad and others have any relevance or connection with the Applicant.

19. Now, turning to the file noting, all that it is stated in the opening paragraph of the proposal placed before CSB that in view of these complaints, the enquiry is required to be made and Applicant needs to be transferred. The concerned CSB was oblivious of the fact that two complaints dated 25.07.2019 and 16.11.2019 were already closed in terms of Circular dated 25.02.2015. Whereas, the complaint made by Mr. Gaikwad and others has no relevance and connection with the alleged forged documents. When file noting was prepared by Desk Officer Shri Saravane on 09.08.2020 for placing the same before Hon'ble Minister, he too, failed to see that the complaints were anonymous and fictitious. The Secretary, Revenue and Forest Department too simply put his signature on the proposal without bothering to see that the complaints were fictitious and anonymous. No efforts were made to see how complaint made by Mr. Gaikwad and others were relevant for the transfer of the Applicant.

20. Thus, what turned out from the record is that the anonymous or fictitious and unrelated complaints were used as a tool to transfer the Applicant mid-term and mid-tenure. In other words, the transfer was made on non-existent ground. Only because highest competent transferring authority has approved the transfer, it does not legalize or validate the transfer order, if the same is found based on non-existent material and it is an outcome of non-application of mind. It is well settled that where a Government servant is transferred on complaint without verifying its authenticity, it amounts to punitive action and the same is not sustainable in law. In the present case, the situation is worst, as the first and second complaint being anonymous and fictitious, were already closed by Deputy Inspector General of Registration and Stamps, Pune. Whereas, the third complaint made by Mr. Gaikwad and



others has no relevance, as the alleged incident happened with the Applicant was not registration authority at Pune.

21. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court **(2009) 2 SCC 592 (Somesh Tiwari Vs. Union of India)**. Para No.16 of the Judgment is as under :-

*“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed in lieu of punishment, the same is liable to set aside being wholly illegal.”*

22. Furthermore, reference can be made to the decision of Hon'ble High Court in **Writ Petition No.7960/2011 (Harish Baijal Vs. State of Maharashtra)** wherein in Para No.10 held as follows :

*“10. It is well settled that transfer of a government servant is an incident of service and the courts should not interfere with such transfer orders, ordinarily. A government servant holding a transferable post has no vested right to continue at a particular posting or at one place or the other. However, in the State of Maharashtra, the transfer orders are governed by a special statute i.e. the Transfer Act and if the procedure, as set out in the said Act, is not followed while issuing the transfer order, such order would be unsustainable. Similarly, if an order of transfer suffers from malice or if it has been issued by way of victimization or by way of a penal action, the court would be justified in setting aside such order.”*

23. The principles enunciated in these decisions are squarely attracted to the present case, since transfer was founded on non-existent and anonymous complaint, which was already closed and filed without further action. It is thus *ex-facia* that it attracts principles of malice in law, as it is not based on any factor germane for passing an order of transfer.

24. Here, significant to note that it is nowhere the case of the respondents that the complaints referred to above which were already closed being anonymous and fictitious, later those complaints were enquired into and any substance was found therein. It is thus obvious that the transfer was made on totally non-existent ground. In other words, there is total non-application of mind and decision to transfer the Applicant is nothing but arbitrary and *malafide*.

25. It is further obvious that only to accommodate Respondent No.3, the Applicant is displaced on the basis of non-existent material. Here material to note that earlier also, the Applicant was at Pune for three years and transferred to Nashik. He had not completed three years tenure at Nashik, but requested again for Pune and Respondent No.1 obliged him by posting him in place of Applicant without placing his request before CSB, which is in contravention of direction given by Hon'ble Apex Court in **T.S.R. Subramanian** (cited supra).

26. The totality of aforesaid discussion leads me to conclude that the impugned transfer order is not sustainable in law and deserves to be quashed. Hence, I proceed to pass the following order.

### **ORDER**

- (A) The Original Application is allowed.
- (B) The impugned transfer order dated 30.09.2020 is quashed and set aside.
- (C) The Respondent Nos. 1 and 2 are directed to repost the Applicant as Joint District Registrar, Class-I, Pune (City) within two weeks from today.
- (D) The learned Advocate for Respondent No.3 sought stay to the order. Whereas, the learned Advocate for the Applicant opposed the request made by learned Advocate for Respondent No.3 stating that for four months, the Applicant

is away from his post. In view of the reasons recorded in the order, I am not inclined to stay the order.

(E) No order as to costs.

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

Mumbai

Date : 28.01.2021

Dictation taken by :

S.K. Wamanse.

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