

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.545 OF 2020

DISTRICT : PUNE

Shri Bharat Angad Waghmare.)
Age : 52 Yrs., Working as District)
Resettlement Officer, Pune and having)
Office in the Office of District Collector,)
Pune, New Building, A-Wing, Ground Floor,)
Pune – 1 and residing at Kumar Pride)
Marg, B1-601, Senapati Bapat Marg,)
Pune – 400 016.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Revenue & Forest Department)
[Revenue], Having office at)
Mantralaya, Mumbai – 400 032.)
2. Shri Uttam Patil.)
Aged : Adult, Working as District)
Supply Officer, Solapur.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

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

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

DATE : 03.01.2022

JUDGMENT

1. The Applicant has challenged the transfer order dated 01.10.2020 issued by Government whereby he is transferred from the post of District Resettlement Officer, Pune to Deputy District Election Office, Solapur invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Following are the facts giving rise to this O.A.

(i) The Applicant is serving in the cadre of Deputy Collector and by order dated 22.11.2018, he was posted as District Resettlement Officer, Pune and accordingly joined there.

(ii) The Applicant is entitled for 3 years' tenure in terms of Section 3(1) 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).

(iii) While Applicant was working as District Resettlement Officer, Pune, the Secretary, Disaster Management Relief and Resettlement Committee by his letter dated 26.02.2020 along with letter of Divisional Commissioner, Pune dated 23.12.2019 requested the Government to transfer the Applicant from the post of District Resettlement Officer, Pune in view of various complaints against him in 123 land allotment matters.

(iv) Civil Services Board (CSB) in its meeting dated 05.08.2020 recommended mid-tenure transfer of the Applicant in view of complaints.

(v) On recommendation of CSB, the Hon'ble Chief Minister accorded sanction for mid-tenure transfer of the Applicant and consequent to it, the Applicant is transferred by impugned order dated 01.10.2020 which is under challenge in the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned transfer order on following grounds :-

(a) Since Applicant was posted as District Resettlement Officer, Pune by order dated 22.11.2018, he was entitled to 3 years' normal tenure as guaranteed under the provisions of 'Transfer Act 2005', but he is transferred mid-tenure without there being any such special case or administrative exigency as contemplated under Section 4(5) of 'Transfer Act 2005'.

(b) There is no specific and categorical approval to the mid-tenure transfer of the Applicant by competent authority i.e. Hon'ble Chief Minister.

(c) Though Committee headed by Deputy Commissioner, [Resettlement], Pune was constituted to inquire into the complaints in the matter of 123 cases of land allotment orders issued by Applicant without waiting for the report of the Committee, the Applicant is transferred hastily, and therefore, it amounts to punitive transfer on non-existent allegation of misconduct.

(d) The proposal for transfer of the Applicant is initially by Shri Nimbalkar, Secretary, Disaster Management and Resettlement Committee and he himself acted as one of the Member of CSB, and therefore, it vitiates the recommendation made by CSB.

4. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer sought to defend the impugned transfer order *inter-alia* contending that in view of serious complaints in the functioning of Applicant as District Resettlement Officer, Pune the transfer was necessitated. She has further pointed out that the Committee was constituted to inquire into the allotment of lands by Applicant but due to Covid-19 situation and death of one of the member of the Committee, the report was not finalized. However, immediate transfer of the Applicant was

necessitated, and therefore, without waiting for report of Committee, the matter was placed before the CSB and after its recommendation, the next competent transferring authority i.e. Hon'ble Chief Minister has approved the transfer of the Applicant, as contemplated under Section 4(5) of 'Transfer Act 2005'. She thus submits that the transfer is in consonance with the provisions of 'Transfer Act 2005' and interference, is not warranted.

5. Needless to mention, an order of transfer is an administrative order and ordinarily, it is an incidence of service. Therefore, it should not be interfered with except where *malafides* on the part of authority are proved. The transfer which is made on the ground of complaint is punitive in nature and punitive transfer cannot be made without any inquiry and satisfaction of the competent authority. Where transfer is mid-tenure, it has to be shown that the matter has been examined objectively and transfer is necessitated as a special case on account of administrative exigencies and it should be in compliance of Section 4(4) and 4(5) of 'Transfer Act 2005'.

6. At this juncture, it would be apposite to reproduce Section 4(5) of 'Transfer Act 2005', which is as under :-

“4(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of immediately superior Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

7. In view of submissions advanced at the Bar, the crux of the matter is whether transfer of the Applicant without waiting for the report of Committee constituted to inquiry into the allegation of misconduct in the matter of allotment of lands is punitive or was it necessitated on account of administrative exigencies.

8. Undoubtedly, the Applicant was transferred without waiting for the report of Committee constituted for this purpose. In this behalf, the perusal of letter dated 04.09.2019 (Page No.51 of P.B.) reveals that Divisional Commissioner, Pune came across the news published in Dainik Pudhari dated 17.07.2019, and therefore, he scrutinized the record in the matter of allotment of lands by the Applicant and noticed serious irregularities and illegalities by the Applicant. He, therefore, wrote letter dated 04.09.2019 to District Collector, Pune for detail enquiry. In the letter, the Divisional Commissioner stated as under :-

“उपरोक्त विषयान्वये दैनिक पुढारी मधील दिनांक १७/०७/२०१९ रोजी प्रसिद्ध झालेल्या बातमीची प्रत सोबत जोडून पाठविण्यात येत आहे. तरी सदरील बातमीपत्राचे अवलोकन करावे.

सदरील बातमीमध्ये मागील काही दिवसापूर्वी जिल्हा प्रशासनाने पुनर्वसन जलदगतीने व्हावे म्हणून पर्यायी जमीन वाटपाचे अधिकार थेट जिल्हा पुनर्वसन अधिकारी यांना दिले आहेत. नेमका याच गोष्टीचा फायदा जिल्हा पुनर्वसन कार्यालयाने उचलला असून, जिल्ह्यात सर्वाधिक प्रलंबित असणारा पानशेत वरसगाव प्रकल्पाच्या फाईली बाजूला सारत मलाईदार खाती असणा-या वीर प्रकल्पग्रस्तांच्या कुलमुखत्यार धारक एजंट लोकांची चांदी होत असल्याचा आरोप पानशेत आणि वरसगाव धरण ग्रस्त करू लागले आहेत असा आरोप जिल्हा पुनर्वसन कार्यालय, पुणे यांच्यावर करण्यात आलेला आहे.

सदरील वृत्तपत्रातील बातमीस अनुसरून (उपायुक्त), पुनर्वसन पुणे यांना याबाबत सविस्तर चौकशी करून अहवाल सादर करणेचे निर्देश दिले आहेत. सदरील निर्देशान्वये जिल्हा पुनर्वसन कार्यालयाकडील पानशेत, वरसगाव व वीर प्रकल्पांशी संबंधित जमीन वाटपाबाबतचे पारित करणेत आलेले आदेश, विशेष नोंद वही आणि जमीन वाटपासाठी प्रलंबित असणारे सर्व अर्ज इत्यादी कागदपत्रे सादर करणेबाबत वारंवार केलेल्या पाठपुराव्यानंतर ती दिनांक २९/४/२०१९ रोजी संबंधित कार्यालयाकडून या कार्यालयाकडे दाखल करण्यात आलेली आहेत.

जिल्हा पुनर्वसन कार्यालयाकडून प्राप्त झालेल्या जमीन वाटपाबाबतच्या संचिका, विशेष नोंद वहा व जमीन वाटपासाठी प्रलंबित असणारे अर्ज यांची तपासणी केली असता, खालील प्रमाणे त्रुटी/गंभीर दोष निदर्शनास आले आहेत.’’

9. The Divisional Commissioner also summarized various irregularities and illegalities in detail in the later part in letter dated 04.09.2019. On receipt of it, the Committee was constituted to enquire into 123 land allotment matters done by the Applicant during his tenure. It is on this background, the Secretary, Disaster Management Relief and Resettlement Department (Shri Nimbalkar) again wrote letter dated 26.02.2020 to the Government for transfer of the Applicant.

10. Accordingly, the matter was placed before CSB in its meeting held on 05.08.2020. The CSB, recommended transfer of the Applicant invoking Section 4(5) of ‘Transfer Act 2005’, as seen from page Nos.72 & 73 of Paper Book). The CSB also noted non-receipt of report of Committee because of death of one of the member of the Committee. As

such, the CSB was conscious about non-receipt of report of the Committee but recommended for transfer of the Applicant in view of serious complaints in the matter of allotment of lands by the Applicant.

11. Thus, material to note that the transfer was not done only on the basis of some news reported in Newspaper. It is manifest from the letter dated 04.09.2019 written by Divisional Commissioner to Collector, Pune that he inspected the record and found serious illegalities in the matter of allotment of lands by the Applicant. He recommended for detail inquiry. It is further noticed from the record that Show Cause Notice was also issued to the Applicant to which he submitted his reply. True, the copy of reply is not forthcoming on record but the fact remains that the Show Cause Notice was given to the Applicant and he tendered his explanation. Suffice to say, this is not a case where transfer order was issued on the basis of news reported in the Newspaper rather it is a case of transfer after some enquiry by Divisional Commissioner, Pune as well as after giving Show Cause Notice to the Applicant.

12. Now let us see whether there was any urgency or administrative exigency to transfer the Applicant without waiting for the report of Committee constituted in this behalf. Ordinarily, when Committee is constituted, further action of transfer/disciplinary action is normally taken on receipt of report of the Committee. However, there is no such inflexible Rule to that effect. It all depends upon the fact situation. As such, where transfer is necessitated and competent authority is satisfied about the necessity of immediate transfer, then it need not wait for the report of Committee. In this behalf, reference is required to be made to the decision of Hon'ble Supreme Court in **(2004) 4 SCC 245 (Union of India Vs. Janandhan Debanath & Anr.)**. In Para No.14, the Hon'ble Supreme Court held as under :-

“14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was

misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs."

13. Suffice to say, only because Government issued transfer order without the report of Committee, that itself ipso-facto will not render the transfer order illegal. The requirement is whether the case of administrative exigency is made out and where there is other material on record establishing administrative exigency, then transfer order cannot be questioned for non-receipt of Committee report.

14. Shri Bandiwadekar, learned Advocate for the Applicant tried to contend that there is no specific approval to the transfer of the Applicant by Hon'ble Chief Minister, and therefore, transfer is vitiated. I find no merit in his submission. The file noting is placed on record at Page Nos.75 & 76 of Paper Book. It has to be read as a whole and not in piecemeal. It's perusal reveals that the approval of Chief Minister was pertaining to 104 transfers. There is specific mention in the very beginning of file noting that recommendation made by CSB except some other recommendations, which are at Serial Nos.46, 95 and 143 were accepted. In other words, except recommendation of 46, 95 and 143, all other recommendations were accepted. The Applicant's Serial Number in the minutes of CSB meeting is at 144. The approval of Hon'ble Chief Minister is at Page No.79 of P.B. As such, it is explicit from the file noting that the recommendation made by CSB for transfer of the Applicant has been approved by Hon'ble Chief Minister.

15. True, Shri Nimbalkar who has recommended for transfer of the Applicant by his letter dated 26.02.2020 himself acted as one of the member of CSB. Adverting to this aspect, Shri Bandiwadekar, learned Advocate for the Applicant sought to contend that he should not have acted as a member of CSB and should have recused himself being a member of CSB. In my considered opinion, on that ground alone, the transfer order cannot be said vitiated, since CSB was consists of 4 members headed by Additional Chief Secretary (Revenue). It is more so when recommendation of transfer of Applicant is based upon letter dated 04.09.2019 written by Divisional Commissioner wherein he mentioned severe illegalities in the land allotment matters by the Applicant.

16. It is well settled that reasons for transfer need not be elaborate as indecision of Court of law. Existence of reasons on record is a matter capable of objective verification. Whereas, satisfaction is to the reasons is the matter of subjective satisfaction. Once, test of existence is satisfied subjectivity of satisfaction could not be gone into by the Tribunal, unless it is a case of malafide exercise of powers. Tribunal cannot substitute, it's opinion for that of competent authority. In present case impugned order cannot be termed malafide or colorable exercise of powers.

17. Shri Bandiwadekar, learned Advocate for the Applicant sought to place reliance on the decision **2015 (2) Mh.L.J. 679 (State of Maharashtra Vs. Dr. Padmashree Bainade)** wherein it has been observed that where transfer is effected without taking disciplinary enquiry, it will be transfer based on misconduct and being punitive is unsustainable in law. In Para No.23 of the Judgment, the Hon'ble High Court held as under :-

“23. The transfer is a part of service contract and/or the service jurisprudence. “Transfer is an incidence of service” “Reason to be recorded” cannot read to mean, no reason should not be communicated at any circumstances, specially when it is obligatory on the part of the State to act fairly, transparently and reasonably. The decision needs to be

actuated by consideration based on law and the record and certainly not an extraneous consideration. Unreasoned order is always vulnerable to challenge and stated to be mala fide. The State/ Authority needs to act bona fide. Therefore, cannot be restricted to means for and / or with the private record/ department. It must be reflected before taking any action/ order. Perversity or irrationality, bona fide legality of reasons difficult to test, if not disclosed at the time of order / action itself. It is normally the unreasoned mid-term order or such orders are vulnerable to challenged. An executive order on undisclosed or unreasoned foundation of alleged misconduct and dereliction of duty is also vulnerable to challenge on the ground of malice in law. Such undisclosed burdened mid-term order of transfer affects the status of the employee, it violates the service conditions thus illegal, though it is administrative order. It has civil consequence. The principle of natural justice is applicable. The State Act and not any guidelines govern such State Government transfer order, such transfer order is arbitrary, irrational and violates Article 14 of the Constitution of India.”

18. In ***Padmashree Bainade’s*** case (cited supra), the transfer was made on the basis of complaint of misconduct, but there was no proper reasoning to bring it within the ambit of special case as contemplated under Section 4(5) of ‘Transfer Act 2005’. Whereas, in the present case, transfer order is based and founded upon the report of Divisional Commissioner who examined the record and noticed material illegalities in the allotment of land by the Applicant. Therefore, it cannot be said that transfer is unfounded or malicious. This authority is of little assistance to the Applicant in the present situation.

19. Shri Bandiwadekar, learned Advocate for the Applicant further referred the decision of Hon’ble Supreme Court ***(2020) 1 SCC (L & S) 705 (Dr. Nagorao S. Chavan Vs. Dr. Sunil P. Bhamre & Ors.)***. In that case, transfer was based on charges of financial irregularities and insubordination. The charges were found substantiated in the enquiry conducted in the matter. The transfer was, therefore, upheld. Adverting to this decision, the learned Advocate for the Applicant sought to contend that there has to be final report of the Committee before effecting mid-tenure transfer. The perusal of Judgment does not reveal that Hon’ble Supreme Court had laid down any such ratio that transfer cannot be effected without report of Enquiry Committee. In that case, in fact situation, the transfer was effected on receipt of Enquiry Committee

report. Whereas, in the present case, without waiting for report of Committee, the Applicant is transferred. However, as stated above, the transfer is based upon various illegalities noticed by Divisional Commissioner. Suffice to say, it cannot be said that the transfer order being issued without waiting for enquiry report is vitiated.

20. As stated above, the transfer orders are made in exercise of administrative exigencies to meet exigencies of service and in public interest. It is for the executive how to run it's affairs and it does not fall within the judicial domain. Unless transfer orders are in conflict with the Rules are found malicious or in patent arbitrary exercise of powers, the Tribunal should not interfere with the same. In the present case, it cannot be said that the transfer is effected in arbitrary exercise of powers or malicious. On the contrary, the transfer found necessitated on account of serious illegalities in the functioning of the Applicant and the same is approved by the competent transferring authority, as contemplated under Section 4(5) of 'Transfer Act 2005'. The challenge to the transfer is, therefore, devoid of merit and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 03.01.2022

Dictation taken by :

S.K. Wamanse.

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