

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.561 OF 2019

DISTRICT : KOLHAPUR

Shri Babaso Shankarao Sankpal)
Aged 52 years, working as Copying Clerk in the)
Office of Dy. Superintendent of Land Records,)
Karad.)
R/at 1417, D-ward, Uttreshwar Peth, Kolhaur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary)
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032.)
2. Settlement Commissioner & Director of)
Land Records M.S. Near Administrative)
Building, 2nd floor, Camp, Pune -411001.)
3. The Collector, Near LIC building, Powai)
Naka, Satara – 415001.)....**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

Shri A. J. Chogule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 26.11.2020.

JUDGMENT

1. Being aggrieved by transfer order dated 31.05.2019 issued by the Collector, Satara posting the Applicant in the office of Deputy Superintendent of Land Records, Satara ignoring options given by him, the Applicant has filed the present O.A.

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

The Applicant was serving as Clerk in the office of Deputy Superintendent of Land Records, Karad, District Satara where he joined in 2012. As he was due for general transfer of 2019, in terms of G.R. dated 09.04.2018, he gave options of office of Deputy Superintendent of Land Records, Karveer, Office of City Survey Office, Kolhapur and office of Deputy Superintendent of Land Records, Panhala on the ground of family difficulties. However, his none of the options were considered despite the fact that the options given by him were vacant. The Applicant, has therefore, filed present O.A. challenging the transfer order dated 31.05.2019 inter-alia contending that he is subjected discrimination and his options were rejected in arbitrary manner.

3. The Respondents resisted the O.A. and sought to justify the impugned transfer order contending that the posts in Satara office were required to be filled in from the point of administrative requirement and the Applicant cannot ask for particular post/place as of right.

4. Heard Smt. Punam Mahajan, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

5. Indisputably, the Applicant has completed the normal tenure at Karad and was due for transfer. It is equally true that the transfer

being incident of service, no Government servant can claim particular place or posting as of vested right. However, it should not be forgotten that by issuance of G.R. dated 09.04.2018, the Government has taken policy decision to effect the transfer of employees considering their choices so that their difficulties could be alleviated. It is in terms of G.R. dated 09.04.2018, the Applicant has given three options which were admittedly vacant.

6. The issue of transfer was placed before the Civil Services Board (CSB) for its recommendation in terms of the decision of Hon'ble **Supreme Court in (2013) 15 SCC 732 T.S.R. Subramanian & Ors. Vs. Union of India & Ors.** As the Applicant has sought transfer out of district, the matter was placed before CSB at district level as well as at divisional level. It is surprising to note that the CSB declined to accept the request of the Applicant stating that "बदलीचे कारण संयुक्तीक नसल्याने शिफारस करता येत नाही." (Page No.50 of PB). Similarly, the CSB at divisional level reproduced the recommendation that the request is declined. The Applicant in fact due for transfer and this being the position, there should not have been any occasion to reject the request of the Applicant as if, the request was made for mid-term transfer. It is thus surprising that CSB did not apply mind and it was under assumption that the Applicant had requested for mid-term transfer. There is no mention or whisper in the Minutes of CSB meeting that the Applicant's request for Satara for certain reason was not acceptable.

7. Though, the Respondents sought to contend that the posts vacant in Satara were required to be filled in from the point of administrative exigency, and therefore, the Applicant was posted at Satara., it is nothing but an improvement and after-thought version. As stated above, the reasons given in CSB is that ground for transfer given by the Applicant is not acceptable and no such reason for giving Satara is mentioned. Suffice to say, reason mentioned in the CSB is totally erroneous.

8. Apart, the Respondents have not placed on record the Minutes of meeting whereby it was decided to transfer the Applicant in Satara office to substantiate that the post in Satara office where required to be filled in from the point of administrative exigency. As such, except transfer order, nothing is on record showing the reasons as to why the options given by him were not considered. Needless to mention that in view of policy decision in terms of G.R. dated 09.04.2018, the Respondents were required to act in fair and transparent manner, which is completely missing in the present case.

9. Furthermore, as rightly pointed out by the learned Counsel for the Applicant by filing Affidavit in Rejoinder that at least five employees namely Ramesh Gambhire, Nitin Patil, Sushilkumar Patil, Snehal Barad and Snehal Magdum were transferred before completion of normal tenure of six years. Out of them, Snehal Barad was posted in the office of Deputy Superintendent of Land Records, Karveer (Kolhapur) which was one of the option given by the Applicant. Thus, the Applicant was denied options given by him and on the contrary another person though not due for transfer was accommodated in the place opt by the Applicant. Furthermore, one employee namely Nitin Patil who was serving at Satara was transferred to Ichalkaranji before completion of his tenure. This rather exposes and belied the stand taken by the Respondents that there were vacancies in Satara and those were required to be filled in for administrative reason. If staff at Satara office was falling short then Nitin Patil should not have been transferred from Satara office before completion of his tenure.

10. Thus, the position emerges that some of the employees though were not due for transfer, they were accommodated by accepting their request and they were given posting as per their choices. However, request of the Applicant was not at all considered. In other words, *ex-facie*, the Applicant is subjected to discrimination.

11. Indeed, in connected **O.A.586/2019 (Dilip R. Shetake v/s State of Maharashtra & Ors.) decided on 23.07.2020** in exactly similar situation, O.A. was allowed on same ground. In this O.A, I see no reason to deviate and to take different view.

12. For aforesaid discussion, I have no hesitation to sum up that the impugned transfer order is outcome of unfair and arbitrary process. It is in defiance of G.R. dated 09.04.2018.

13. Shri A. J. Chougule, learned Presenting Officer was asked to take instructions from the Respondents about vacancy position as on today so that the Applicant can be accommodated without disturbing others. Accordingly, learned Presenting Officer had taken instructions and tendered a letter dated 25.11.2020 issued by Superintendent Office of Deputy Director of Land Records, Pune stating that there are vacancies in the office of Deputy Superintendent Of Land Records, Karveer, City Kolhapur and in the office of Deputy Superintendent Of Land Records, Panhala. Shri A. J. Chougule, leaned P.O. when asked, he further clarifies that the post of Clerk and Surveyor are inter changeable. Letter is taken on record and marked by letter 'X'. The Applicant has given options for the office of Deputy Superintendent Of Land Records, Karveer, City Kolhapur and Panhala. Now, those still being vacant. The Applicant, therefore, can be accommodated at any one of the place. Hence, the following order.

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer orders dated 31.05.2019 is quashed and set aside.
- (C) Respondents are directed to accommodate and transfer the Applicant at any one of the post in the office of Deputy Supt. Of Land Records, Karveer, City Kolhapur or in the office of Deputy

Superintendent of Land Records, Panhala, Dist. Kolhapur
within six weeks from today.

(D)No order as to costs.

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

Place : Mumbai
Date : 26.11.2019
Dictation taken by : VSM
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