

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.577 OF 2020

DISTRICT : SOLAPUR

Shri Pradeep Yashwant Shelar.)
Age : 39 Yrs., Occu.: Tahasildar at Barshi,)
District : Solapur and residing at Shivhira,)
Kasarwadi Road, Barshi, District : Solapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai.)
2. Divisional Commissioner (Revenue),)
Pune Division, Vidhan Bhavan,)
Pune – 1.)
3. The District Collector.)
Siddheshwar Peth,)
Solapur – 413 001.)
4. Shri Sunil Nagnath Sherkhane.)
Tahasildar, Ashta,)
District : Sangli.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondent Nos.1 to 3.

Shri A.V. Bandiwadekar with Shri J.M. Argade, Advocate for Respondent No.4.

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

DATE : 25.02.2021

JUDGMENT

1. The challenge is to the transfer order dated 01.10.2020 whereby the Applicant who is working in the cadre of Tahasildar has been transferred from Barshi, District : Solapur to Tahasildar, Command Area Development Authority (CADA), District : Solapur invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant is serving in the cadre of Tahasildar. The Respondent No.1 - Government of Maharashtra by order dated 07.09.2019 transferred the Applicant as Tahasildar, Barshi, District : Solapur, and accordingly, he joined there. 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 for three years' tenure. However, abruptly, the Respondent No.1 transferred the Applicant by order dated 01.10.2020 mid-term and mid-tenure from Barshi to CADA and posted Respondent No.4 in his place by issuing separate order on same day. The Applicant has challenged the transfer order dated 01.10.2020 *inter-alia* contending that it is mid-term and mid-tenure transfer without proper compliance of Section 4(5) of 'Transfer Act 2005' and the reason shown for transfer are not germane.

3. Shri K.R. Jagdale, learned Advocate for Applicant sought to assail the impugned transfer order on the following grounds :-

(i) It being mid-term and mid-tenure transfer, there has to be special case or administrative exigency of such nature, which would warrant mid-tenure transfer, but it is only on report of Collector, the Applicant is transferred without verifying veracity and genuineness of the report of Collector.

(ii) Though the Applicant is shown transferred attributing certain misconduct and non-performance of duties, in absence of initiation of D.E. by serving charge-sheet, the Applicant could not have been transferred by impugned order dated 01.10.2020.

(iii) There is no compliance of Circular dated 11.02.2015 issued by GAD, Government of Maharashtra, which *inter-alia* provides the procedure for transfer of Government servant on complaint.

(iv) The Civil Services Board (CSB) should consists of four members in terms of G.R. dated 31.01.2014, but in the present case, only three Members were present and there being absence of one Member, the recommendation of CSB is not legal.

4. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer and Shri A.V. Bandiwadkar, learned Advocate for Respondent No.4 supported the impugned order of transfer stating that there is full compliance of Section 4(5) of 'Transfer Act 2005' in letter and spirit and the same has been approved by Hon'ble Chief Minister being highest competent authority for mid-term and mid-tenure transfer as contemplated under Section 4(5) of 'Transfer Act 2005'. He further submits that mid-tenure transfer of the Applicant was necessitated in view of report of Collector dated 15.07.2020, which was in turn forwarded by Commissioner on 20.07.2020 and considering the gravity of misconduct, the CSB had recommended for transfer of the Applicant and in turn it was approved by Hon'ble Chief Minister. It is further pointed out that simultaneously, the proposal for initiation of regular D.E. was also underway and during the pendency of this O.A, the charge-sheet was served upon the Applicant on 10.12.2020 under Rule 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity). On this line of submission, the learned P.O. and Shri A.V. Bandiwadkar, learned Advocate for Respondent No.4 submits that in view of administrative exigency *vis-à-vis* report of Collector, the

transfer was necessitated and it needs no interference in judicial review by this Tribunal.

5. Needless to mention that the transfer is an incident of Government service and no Government servant has a legal vested right to claim a particular place or post, it being exclusively within the domain of the executive. However, in the wake of 'Transfer Act 2005', now transfers are not left to the whims or caprice of executives and those are governed by 'Transfer Act 2005'. If a transfer is found in contravention of express provisions of law or malice, then it has to be interfered with by the Tribunal in judicial review.

6. There is no denying that the Applicant has not completed his normal tenure of three years at Barshi, which is guaranteed under Section 3 of 'Transfer Act 2005'. However, at the same time, Section 4(5) of 'Transfer Act 2005' empowers the Government to transfer a Government servant before completion of his normal tenure in special cases after recording reasons in writing with prior approval of the immediately preceding competent transferring authority mentioned in Table of Section 6 of 'Transfer Act 2005'.

7. Now, turning to the facts of the present case, the file noting produced by the learned P.O. reveals that firstly, the file was placed before the CSB and after its recommendation, it was placed before Hon'ble Chief Minister, who accorded sanction for mid-term and mid-tenure transfer of the Applicant.

8. Now, the question is whether the exercise of transfer carried out by the Government is in colourable exercise of power or whether the transfer is malicious or arbitrary, so as to interfere with the same and my answer is in emphatic negative.

9. The process of transfer of the Applicant had begun in view of report of Additional Deputy Commissioner (Revenue), Pune dated 15.07.2020 addressed to Additional Chief Secretary (Revenue), Mantralaya, Mumbai. The contents of the letter are material, which are as follows :-

“महोदय जिल्हाधिकारी सोलापूर यांनी दिनांक २३/६/२०२० च्या पत्रान्वये तहसीलदार बारशी यांनी त्यांना नेमून दिलेल्या कामकाजात जाणीवपूर्वक हयगत करून कसूर केले असल्याचे दिसून येते. तसेच कोरोना विषाणूंचा प्रादुर्भाव रोखणे कामी केंद्र शासन, राज्य शासन, जिल्हाधिकारी सोलापूर यांचे कडून वारंवार मार्गदर्शक सूचना निर्गमित करण्यात येत आहेत. तथापि, तहसीलदार बारशी यांनी कोरोना विषाणूंचा प्रादुर्भाव रोखणेकामी कोणतेही कामकाज केलेले नसून आपत्ती व्यवस्थापन कायदा २००५ मधील तरतुदींचा भंग केलेला आहे. तसेच वरिष्ठ अधिकारी यांचे सूचनांचे व आदेशाचे अवमान केलेला आहे.

तसेच श्री. प्रदीप शेलार यांचे विरुद्ध यापूर्वीही इकडील क्र.मह/आस्था-२/आरआर/८८८/२०१७, दि.११/१०/२०१७ अन्वये नियम ८ खाली विभागीय चौकशी सुरु करण्याचा प्रस्ताव शासनास सादर केला होता. त्यावेळीही व आताही त्यांनी केलेल्या गैरवर्तनाबाबत/कामातील हलगर्जीपणा बाबत त्यांना कारणे दाखवा नोटीस देऊनही त्यांनी त्यावेळी व आताही नोटीशीच्या अनुषंगाने कोणताही खुलासा सादर केलेला नाही यावरून त्यांचे गैरवर्तन/उर्मटपणा सिद्ध होत आहे.

श्री. प्रदीप शेलार, तहसीलदार बारशी यांच्याविरुद्ध महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ मधील नियम ८ नुसार विभागीय चौकशीचा प्रस्ताव परिशिष्ट १ ते ४ भरून विभागीय चौकशी सुरु करण्याबाबतचा प्रस्ताव समक्रमांकांन्वये (ई-४) कक्षाकडे स्वतंत्ररित्या सादर करण्यात आलेला आहे.

उपरोक्त बाबी विचारात घेता, **श्री प्रदीप शेलार, यांची तहसीलदार बारशी या पदावरून अन्य अकार्यकारी पदावर तात्काळ बदली करणेस विनंती आहे.**”

10. The proposal was accordingly placed before CSB, the minutes of which are at Page No.40 of Paper Book. The Department has specifically mentioned about the receipt of letter of Commissioner dated 15.07.2020 as well as one another letter dated 20.07.2020 and recommended for transfer of the Applicant from Barshi to CADA, District Solapur. It may be noted that in letter, in fact, there is a reference of initiation of regular D.E. for alleged misconduct under Rule 8 of Rules of 1979' and the proposal was also simultaneously moved to the Government. However, the Department in its note placed before CSB adopted soft stand stating that instead of suspending the Applicant, he be transferred to CADA. In so far as recommendation of CSB is concerned, it also recommended for transfer of the Applicant to CADA invoking the provisions of 'Transfer Act 2005'. As such, there is no denying that the matter was placed before the CSB as mandated by Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**. Apart, the Hon'ble Chief Minister was pleased to accord its sanction considering the report of Collector as well as Commissioner.

11. The submission advanced by the learned Advocate for the Applicant Shri K.R. Jagdale that there is no compliance of Circular dated 11.02.2015, particularly, Para No.8 and on that count, the transfer being illegal is devoid of any merit. Clause 8 of Circular *inter-alia* provides that a Government servant should not be transferred merely on the basis of complaint unless it is preliminarily enquired into and the conscious decision is taken by the competent authority. He further provides that if complaint is found substantiated, the appropriate disciplinary action should be initiated. As such, by this Circular, care has been taken that Government servant should not be transferred only on the basis of complaint. The complaint contemplated or meant in Clause 8 obviously refers to complaint made by public or third person. As rightly pointed out by Shri Bandiwadekar, learned Advocate for Respondent No.4 that there is much difference between complaint of public attributing certain misconduct to a Government servant and report of superior officer in respect of deficiencies, omissions, insubordinations, etc. on the part of a Government servant. In the present case, the Additional Commissioner, Pune who is superior and administrative head of Applicant made report attributing specific charges as well as misconduct to the Applicant and has recommended for his transfer. As such, such report cannot be equated to the complaint meant in Circular dated 11.02.2015. This being the position, the report itself was sufficient to take further appropriate action.

12. As stated above, the transfer is an incident of service and where on account of serious charges or misconduct of a person holding an executive post like Tahasildar, his continuation on executive post found hurdle for smooth administration or against public interest and it is substantiated from the record, then such transfer order need not be interfered by the Tribunal. The submission advanced by the learned Advocate for the Applicant that it is not a special case or no reasons are recorded, is totally misconceived and fallacious. This is not a case where no reasons are recorded or a Government servant is transferred simply

under the caption of administrative exigency. On the contrary, this is a case where transfer was found necessitated on account of report made by Additional Commissioner. The charges and imputation invited action under Rule 8 of 'Rules of 1979'. The law does not contemplate recoding of elaborate reasons by competent authority while transferring a Government servant. All that requirement is recording of certain reasons, so as to make out a case of administrative exigency necessitating the transfer of a Government servant, which is sufficiently borne out from material placed on record. Needless to mention that the existence of reasons is a matter capable of objective satisfaction, whereas satisfaction as to reason is a matter of subjective satisfaction. Once the test of existence of reasons is satisfied, the subjectivity of satisfaction cannot be gone into by the Tribunal unless it is a case of *malafide* exercise of power and Tribunal cannot substitute its opinion for that of competent authority.

13. Indeed, the Hon'ble Supreme Court in **(2004) 4 SCC 245 (Union of India and Ors. Vs. Janardhan Debanath & Anr.) decided on 13th February, 2004** held that in transfer matter, the initiation of D.E. for transfer of Government servant should not be insisted upon. The Hon'ble Supreme Court further held that if initiation of regular D.E. is insisted upon before passing order of transfer of a Government servant, then it would frustrate the very purpose and there would be no discipline as well as probity in public administration. Indeed, in the present case, as learned P.O. on instructions submitted that the process of D.E. was simultaneously completed and charge-sheet has been served on 10.12.2020 during the pendency of O.A.

14. Suffice to say, this is not a case where transfer is made only on the basis of report of Additional Commissioner, but simultaneously steps are taken for initiation of regular D.E.

15. Needless to mention that the employer is the best Judge who would appreciate the performance of the employee and his suitability and particular place for his continuation. In the present case, the Additional Commissioner of Pune who had opportunity to observe the performance of the Applicant had noticed serious drawbacks and misconduct on the part of Applicant and has categorically observed that the Applicant has failed to take prompt action to prevent outbreak of Carona-19 pandemic situation and thereby committed breach of provisions of Disaster Management Act, 2005. He further observed that the Applicant had ignored the instructions given by his superior and is guilty of insubordination. Suffice to say, if the objective decision is taken by the competent authority, the Tribunal or Court should not substitute its opinion for that of competent authority. How to run an administration, exclusive fall within the domain of executive and if the decision to transfer the Applicant is taken in exercise of administrative authority to meet the exigency of service or to meet the challenges faced in epidemic because of outbreak of Covid-19 and no malice is pleaded or establishes, the transfer order can hardly be interfered with.

16. The submission advanced by Shri K.R. Jagdale, learned Advocate for the Applicant that absence of one Member of CSB render the recommendation made by CSB invalid is devoid of merit. The perusal of CSB minutes reveals that it was consists of four Members as constituted in terms of Circular dated 31.01.2014, but one of the Member i.e. Joint Secretary was absent, and therefore, he did not sign the minutes of CSB. True, as per Circular dated 31.01.2014, the CSB shall consist of four Members. However, in given situation, if one Member is absent that will not render the recommendation invalid or illegal. All three Members unanimously recommended for transfer of the Applicant. The learned Advocate for the Applicant could not point out any Rule or regulation which fixed coram of Committee. In absence of any such Rule fixing the coram, in my considered opinion, if the decision is taken by majority, that will have to be accepted. Suffice to say, the absence of one Member

have no adverse effect on the recommendation made by CSB, particularly when recommendations are founded upon the report of some competent authority, which has noticed omissions and lapses on the part of Government servant. In the present case, as stated above, the Commissioner had observed serious lapses on the part of Applicant and he opined that the continuation of the Applicant on executive post of Tahasildar would be detrimental to the administration, particularly in Carona-19 pandemic situation. Suffice to say, absence of one Member of CSB does not matter.

17. The cumulative effect of aforesaid discussion leads me to conclude that the challenge to the transfer order is devoid of any merit and O.A. deserves to be dismissed. Hence, the following order.

ORDER

- (A) The Original Application is dismissed.
- (B) Interim stay granted by the Tribunal on 15.10.2020 stands vacated.
- (C) No order as to costs.

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

Mumbai
Date : 25.02.2021
Dictation taken by :
S.K. Wamanse.

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