

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.586 OF 2019**

**DISTRICT : SATARA**

Shri Dilip Ramchandra Shetake. )  
Age : 44 Years, Working as Surveyor in the )  
Office of Dy. Superintendent of Land )  
Records, Karad and residing at A/P )  
Vidyanagar Saidapur, Row House No.7, )  
Samarth Colony, Behind Sai Garden, )  
Tal. Karad, District : Satara. )...**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, )  
New Administrative Building, )  
2<sup>nd</sup> Floor, Camp, Pune – 411 001. )
3. The Collector. )  
Near LIC Building, Powai Naka, )  
Satara – 415 001. )...**Respondents**

**Mrs. Punam Mahajan, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

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

**DATE : 23.07.2020**

## **JUDGMENT**

1. Being aggrieved by transfer order dated 31.05.2019 issued by Collector, Satara thereby ignoring the options given by the Applicant for general transfer, the Applicant has filed the present O.A.

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

The Applicant was serving in the cadre of Surveyor in the Office of Deputy Superintendent of Land Record, Karad, District : Satara and was due for transfer in general transfer of 2019. In terms of G.R. dated 9<sup>th</sup> April, 2018 which *inter-alia* provides for transfer by considering the options were given by the Applicant. He had given options viz. Gadhinglij, Karveer and Kolhapur. He requested for transfer for any one of these places for the education of his children and taking care of parents. However, none of his options was considered and by impugned transfer order dated 31.05.2019, the Collector, Satara transferred him to Phaltan citing administrative reason. The Applicant has challenged the order dated 31.05.2019 contending that he is subjected to discrimination and the impugned order is unsustainable in law.

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

4. In view of submissions advanced at the Bar, the following facts are undisputed.

(i) The Applicant has completed his normal tenure at Karad and was due for transfer in general transfer of 2019.

(ii) By issuance of G.R. dated 09.04.2018, the Government has taken policy decision to effect the transfers of the employees considering their choices, so that their difficulties could be alleviated.

(iii) In terms of G.R. dated 09.04.2018, the Applicant had given option for transfer at Gadhinglij, Karveer and Kolhapur.

(iv) The posts asked for by the Applicant at Gadhinglij, Karveer and Kolhapur were vacant.

5. The Applicant has also filed Affidavit-in-sur-rejoinder (Page Nos.59 to 62 of Paper Book) *inter-alia* raising the ground of discrimination and pointed out that the Respondents have transferred 7 employees in general transfer of 2019 though they were not due for transfer and some of them were given the posting asked for by the Applicant in his options form. There is no counter Affidavit in the form of Sur-rejoinder to the Affidavit-in-rejoinder filed by the Applicant.

6. Needless to mention that, now the transfers are governed by the provisions 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). Besides, the Government of Maharashtra has taken policy decision by issuance of G.R. dated 09.04.2018 whereby instructions are given to consider the options given by the employee. In terms of decision in Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**, the transfers are required to be approved by CSB.

7. True, the transfer is an incident of service and Government servant has no right to ask for a particular post or to continue or retain at one place. However, where the Government of Maharashtra has taken policy by G.R. dated 09.04.2018 to effect transfers with counseling considering the options given by the Applicant, then it is imperative on the part of Respondents to act fairly and to consider the choices given by the employee. Indeed, the very object of G.R. dated 09.04.2018 is to alleviate the difficulties and inconvenience likely to be faced by the employee, if he is posted at inconvenient place and to avoid further litigation.

8. Now turning to the facts of the present case, material to note the reason mentioned by CSB while ignoring the options given by the Applicant. In CSB minutes (Page No.52 of P.B.), it is stated “बदलीचे कारण संयुक्तीक नसल्याने शिफारस करण्यात येत नाही.” It is astonishing to note that the CSB rejected the options given by the Applicant, as if he was not due for transfer and was asking for transfer for one or other reasons. As the Applicant was due for transfer, there is no question of giving any reason for transfer. This shows total non-application of mind and cavalier functioning of CSB. One can understand, if the request of the Applicant for transfer as per his choice places is not possible due to certain administrative reasons but it is not so.

9. In reply, the Respondents sought to contend that considering the vacancies in Satara District, the Applicant was given posting at Phaltan in Satara District. However, this is nothing but improvement and after thought version, as the same is not reflected in the minutes of CSB. The reason given in CSB minutes is that the reason for transfer given by the Applicant is not acceptable. Suffice to say, the reason mentioned by CSB is totally erroneous. Therefore, the ground now taken in reply that the Applicant was given posting at Phaltan on administrative ground is hardly sustainable. Once the Applicant has given options, those were required to be considered and if the same are not acceptable, the reasons are required to be recorded, so that entire process of transfer is fair and transparent. However, this is not so and in the present matter, the CSB seems to have forgotten that the Applicant was due for transfer and rejected the option given by him under wrong assumption that he was not due for transfer but asking for transfer on request.

10. Furthermore, as rightly pointed out by the learned Advocate for the Applicant that in general transfers of 2019, seven employees viz. Ramesh T. Gambhire, Nitiin M. Parit (wrongly typed as 'Patil' in rejoinder), Sushil Kumar Patil, Snehal Barad, Snehal Magdum, Vivek Bharkal and Santosh Kendre were not due for transfer but they were transferred on their request citing personal difficulties despite non-recommendation of CSB.

What is surprising to note that out of these 7 employees, 2 employees viz. Nitin Parit and Snehal Barad were given posting in Kolhapur, which was the option given by the Applicant while submitting his options in general transfers. Thus, the position emerges that, some of the employees though they were not due for transfer were accommodated accepting their request transfer and they were given posting on the places given by the Applicant. Thus ex-facia the Applicant is subjected to discrimination and his options were totally ignored while considering his case for general transfer. No explanation is forthcoming from the Respondents as to why the employees named in Sur-rejoinder were transferred out of turn. If there are any such administrative difficulties for retention of sufficient employees in Satara District, then they should not have been transferred and they ought to have been retained at the same place, as they were not due for transfer.

11. For the aforesaid reasons, I have no hesitation to sum-up that the impugned transfer order is outcome of unfair and arbitrary process. There is no application of mind and it is in defiance of G.R. dated 09.04.2018.

12. Shri A.J. Chougule, learned P.O. was asked to take instructions from the Respondents about the vacancy position as on today, so that the Applicant can be accommodated without disturbing others. Accordingly, Shri Chougule had taken instructions from Shri K.R. Tawere, Deputy Director and submitted that 2 posts are vacant at Gadhinglij and 3 posts are vacant at Karveer, District Kolhapur. The Applicant in fact had given option of Kolhapur while submitting option form in general transfer of 2019 and the post in Kolhapur District at Gadhinglij and Karveer are vacant. Therefore, the Applicant needs to be accommodated and transferred at Gadhinglij or Karveer. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned order dated 31.05.2019 is quashed and set aside.
- (C) The Respondents are directed to accommodate and transfer the Applicant at any one of the post, which are lying vacant at Gadhinglij or Karveer within two months.
- (D) No order as to costs.

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

Mumbai

Date : 23.07.2020

Dictation taken by :

S.K. Wamanse.

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