

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.680 OF 2018

DISTRICT : NASHIK

Shri Sahebrao R. Ahire.)
Age : 56 Yrs., Occu.: Govt. Service as Principal,)
Govt. ITI, Having office at Camp Road, Malegaon)
District Nashik and Residing at Sai Bungalow,)
Krishi Nagar, Camp road, Malegaon,)
District : Nashik.)...Applicant

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Skill Development & Entrepreneurship)
Department, Having office at)
Mantralaya, Extension Building,)
Mumbai 400 0032.)
2. Shri Vilas Bhaurao Suryawanshi.)
Principal, ITI Malegaon, Dist. : Nashik.)...Respondents

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Ms. S.T. Suryawanshi, Presenting Officer for Respondent No.1.

Respondent No.2 absent though served.

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

DATE : 13.12.2018

JUDGMENT

1. In this Original Application, the challenge is to the transfer order dated 29th June, 2018 whereby the Applicant has been transferred from the post of Principal, I.T.I, Malegaon, Nashik to the post of Head Master, Government Technical Secondary School, Shrirampur, District Ahmednagar invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts are as follows :

At the time of impugned transfer order dated 29.06.2018, the Applicant was working on the post of Principal, ITI, Malegaon, Nashik and was transferred to the post of Head Master, Government Technical Secondary School, Shrirampur, District Ahmednagar and in his place, Respondent No.2 has been posted. Earlier, at the time of general transfers of 2016 also, he was working as Principal, ITI, Malegaon, District Nashik. That time, he made representation to Respondent No.1 for retention at the same place citing the reasons of health problem and family difficulties. However, his request was not considered and by order dated 13.07.2016, he was transferred to the post of Vice-Principal, ITI, Dhule. Being aggrieved by it, he had challenged the said transfer order by filing O.A.No.833/2016 in this Tribunal. When the said O.A. had come up for final hearing in the month of February 2018, the general transfers of 2017 were due in three months. Therefore, this Tribunal by order dated 05.02.2018 continued interim relief granted to the Applicant and directed not to relieve him with further direction to the Respondents that his representation for retention be considered in general transfers of 2018. With this direction, O.A.833/2016 was disposed of.

3. The Government of Maharashtra has formulated transfer policy in terms of G.R. dated 09.04.2018 and options were called for the general transfers of 2018. Accordingly, the Applicant has given three options viz. ITI, Malegaon where he was working (retention), ITI, Nandgaon and ITI, Satana. Thereafter again, he was called upon to furnish options in terms of Circular dated 24.04.2018 issued by the Respondents. In pursuance of it, he again gave three options viz. ITI, Malegaon (retention), ITI, Nandgaon and ITI, Manmad of District Nashik. His wife is serving in Zilla Parishad School, Daregaon, Taluka Malegaon, District Nashik. As such, in view of Government policy and options given by him, he was expecting transfer of his choice. However, by impugned order dated 29.06.2018, he came to be transferred to Shrirampur, District Ahmednagar.

4. The Applicant has challenged the impugned transfer order *inter-alia* contending that the transfer was in contravention of Government policy dated 09.04.2018, as the place of choice is not given. Secondly, it is mid-term transfer, being issued in the month of June though general transfers are required to be issued in the month of April / May and thirdly, no special case is made out for such mid-term transfer, and therefore, it is in contravention of Section 4(4)(ii) and 4(5) of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' (hereinafter referred to as "ROTA Act 2005"). According to him, this is not an exceptional case to warrant his mid-term transfer. Though he was due for transfer, it is in violation of the provisions of 'ROTA Act 2005' being issued in June, 2018. He was also due to retire within next three years, which has not been considered by the Respondents while transferring him and it is also a breach of Government policy. On these pleadings, the Applicant prayed to quash and set aside the impugned order.

5. The Respondents resisted the application by filing their Affidavit-in-reply (Page Nos.94 to 107 of the Paper Book) *inter-alia* denying that the transfer is in

contravention of 'ROTA Act 2005'. The Respondents contend that the Applicant was due for general transfers in 2018 having stayed there for 6 years and 8 months. Indeed, out of his 28 years of service, his total stay at Malegaon was for about 24 years. In terms of Government policy and G.R. dated 09.04.2018, the Applicant at the time of general transfer of 2018 had given 3 choices viz. retention in Malegaon, ITI, Nandgaon and ITI, Satana. In so far as retention at Malegaon is concerned, it was out of question, as he had already stayed at Malegaon continuously for 6 years and 8 months apart from his earlier posting at Malegaon. Whereas, the post at Nandgaon and Satana was not vacant, and therefore, there was no question of posting him at these places. As regard post of Manmad, it was filled-in through direct recruitment and was earlier frozen due to Courts order. The Applicant has not given 10 options as required to be given and deliberately gave only 3 options from same District. At the time of general transfers of 2018, the subject was discussed in the meeting of Civil Services Board on 30.05.2018 and considering the 24 years tenure of Applicant at Manmad and vacancy position vis-à-vis, the Applicant was posted at Shrirampur, District Ahmednagar on vacant post from the point of administrative convenience. In fact, it was general transfer, transferring 33 employees, but due to administrative reasons, the file was not processed further quickly and got delayed. As it was delayed by one month, the approval of Hon'ble Chief Minister as next higher authority as per provisions of 'ROTA Act 2005' was taken. As such, the transfer has been effected after following the procedure and mandatory requirement of the provisions of 'ROTA Act 2005'. With these pleadings, the Respondents prayed to dismiss the application.

6. The Applicant again filed Affidavit-in-rejoinder (Page 147 of P.B.) reiterating the contentions raised in the O.A.

7. On hearing Mr. A.V. Bandiwadekar, learned Advocate for the Applicant and Ms. S.T. Suryawanshi, learned Presenting Officer, what emerges from the

pleadings and their submissions is that the impugned transfers are challenged on the following grounds.

- (A) Though the Applicant has given three options in terms of Government policy dated 09.04.2018, his options are not considered.
- (B) He was due to retire in next three years, but retention at Malegaon was rejected and it is also in contravention of Government policy dated 09.04.2018.
- (C) It being the mid-term transfer, no special case is made out and no such reasons to that effect are recorded, and therefore, the impugned transfer is in contravention of Section 4(4)(ii) and 4(5) of 'ROTA Act 2005'.
- (D) Constitution of Civil Services Board is not proper and not in terms of G.R. dated 20.04.2016.

Reasons :

8. Admittedly, the Applicant was in Group 'B' and was due for transfer because of tenure of six years and eight months at Malegaon in view of his transfer to Malegaon on 31.07.2011. Furthermore, it is pertinent to note that, earlier also he was at same place from 07.07.1990 to 30.04.2006 i.e. for 15 years and 9 months. Thereafter, for one year and one month, he was at Jalgaon. Then again, he came to Malegaon on 10.06.2007 and stayed there upto 11.02.2008. Thereafter, from 11.02.2008 to 30.07.2011 for three years and five months, he was at Dhule. Then again from 31.07.2011, he was transferred at Malegaon and continued till the passing of impugned order. As such, there is no denying that, out of total 28 years' service, he was at Malegaon for 24 years, which is very unusual and strange. Even at the time of impugned transfer, he had given only three options. First – retention at Malegaon which was out of question, Second – Nandgaon and Third – Satana which falls in the same District. Thus, apparently,

he does not want to go out of Nashik District and desires to retire at the same place. Whereas, the other Government servants are being transferred at every three years. Be that as it may, now the question comes, whether the impugned order is unsustainable on the grounds raised by the learned Advocate for the Applicant.

9. In so far as options in terms of Government policy dated 09.04.2018 is concerned, the Applicant has given three options. First – retention at Malegaon, Second – Nandgaon and Third – Satana. Thereafter, the Government policy was reviewed and 10 options were to be given by the employee. Thus again, the Applicant gave options on 24.04.2018 (Page No.54 of P.B.) claiming retention at Malegaon, Second – Nandgaon and Third – Manmad. It is amply clear from the Affidavit-in-reply filed by Respondents that, Nandgaon and Satana was not vacant, and therefore, the question of giving posting at that places does not survive. As regard Manmad, that posting was embroiled in litigation in view of stay of Hon'ble High Court. After the stay was vacated, it was filled-in by direct recruitment only on 24.09.2018. The Respondents have also produced a copy of stay order passed in Writ Petition No.1177/2017, dated 23.04.2018. This being the position, no fault can be found with the Respondents for not giving posting as per choice, which were limited to three places only.

10. True, the Applicant is due to retire on 31.05.2021. As such, he had three years' service in balance at the time of impugned transfer order. Whereas, as per Government policy dated 09.04.2018, policy decision was taken that the employee who is due to retire within one year from 31st May should not be transferred and in case, employee is going to retire within a period of less than one year, then preference should be given to his choice of posting. Whereas, in the present case, the Applicant had three years' service in balance, and therefore, there is no question of breach of the policy having not given him posting at Nandgaon, Satana or Manmad which were in fact out of question for

the Applicant's posting for the reasons stated above. Only because of Applicant's wife is serving in Malegaon Taluka, that cannot be sole reason to continue him at the same place, when he had already spent 24 years out of 28 years at Malegaon. Indeed, if such request to continue at Malegaon is accepted by the administration, it will send wrong signal and would affect the moral of other Government servants. I, therefore, find no substance in the submission advanced by the learned Advocate for the Applicant in this regard.

11. Now, coming to the compliance of Section 4(4)(ii) and 4(5) of 'ROTA Act 2005', no doubt the impugned order has been passed on 29.06.2018, and therefore, it has to be termed 'mid-term transfer' within the meaning of provisions of 'ROTA Act 2005'. In fact, the Applicant was due for general transfer and stayed at Malegaon for 6 years and 8 months, but even then, in view of Clause 7 of Government Circular dated 11.02.2015, it has to be termed as 'mid-term transfer'. As per Clause 7 of Government Circular dated 11.02.2015, the transfer should not be made other than April and May, even if the concerned employee has continued at the same place for more than three years except for special reasons and with the approval of highest competent authority. Thus, the plain reading is that, only because the employee has completed more than three years, his transfer should not be made other than April and May, save and except the situation covered by Section 4(4)(ii) and 4(5) of 'ROTA Act 2005'. Undoubtedly, the transfer order being made on 29.06.2018, it has to be termed as 'mid-term transfer' as rightly pointed out by the learned Advocate for the Applicant and in view of order passed in ***O.A.No.738/2010 (Dr. (Mrs) Shobhana K. Tehra Vs. The State of Maharashtra) decided no 14.07.2010.***

12. Indeed, the facts of the present case are very peculiar in nature, as the entire process for transfer was initiated as a general transfer. By impugned order dated 29.06.2018, in all, 33 employees were transferred showing it general transfer after obtaining approval of Civil Services Board as well as next highest

competent authority. It is thus quite clear that the process was initiated, but it was rolled over to the month of June and transfer orders were issued on 29.06.2018. As it could not be processed in the month of May itself, the approval of Hon'ble Chief Minister was taken as required under Section 4(4)(ii) and 4(5) of 'ROTA Act 2005'.

13. The perusal of minutes of Civil Services Board dated 30.05.2018 (Page Nos.129 to 133 of P.B.) reveals that the Applicant's case was considered and he was posted on vacant post at Shrirampur. Thus, undoubtedly, the process was completed at the end of May, 2018, but actual transfer orders were issued at the end of June, 2018. It is for this reason, the file was placed before the Hon'ble Chief Minister, who was pleased to approve minutes and endorsed the decision of Civil Services Board to transfer the Applicant on vacant post at Shrirampur.

14. Here, I would like to reproduce Section 4(4) and 4(5) of 'ROTA Act 2005' for perusal.

"4.(4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May :

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely :-

- (i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave ;
- (ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.

(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.”

15. Thus, in case of transfer other than month of April and May, employee can be transferred mid-term in the circumstances specified in Clause (i) and Clause (ii) reproduced above. Here, Clause (i) is clearly attracted as the transfer has been made on vacant post. There is also a reference in the minutes of Civil Services Board meeting that the post at Shrirampur is vacant, and therefore, the Applicant was posted there. This being the position, the transfer squarely covered by Section 4(4)(i) of 'ROTA Act 2005'. There is also compliance of Section 4(4)(ii), as it was placed before the Hon'ble Chief Minister who was pleased to approve the same as per the requirement of Section 4(4)(i).

16. The learned Advocate for the Applicant sought to assail the impugned order contending that, no reasons are recorded to show it as a special case, and therefore, in absence of recording or reasons, the impugned order is unsustainable. Here, one need to look into the subject in entire context. Only because reasons in so many words are not recorded that itself does not vitiate the impugned order as it was on vacant post, are therefore, does not require to record any other reasons. It is only in case of 4(4)(ii), the reasons are required to be recorded where transfer is necessitated due to some exceptional circumstances. In the present case, the facts are quite different, as it was processed as a general transfer, but having got delayed by one month, placed before highest Competent Authority i.e. Hon'ble Chief Minister, who accorded his sanction. As such, having considered the issue in proper perspective and the context, mere absence of reasons in so many words does not vitiate the impugned order. In fact, the impugned transfer order is squarely covered by Section 4(4)(i) being on vacant post. As such, the submission of learned Advocate for the Applicant in this behalf holds no water.

17. The learned Advocate for the Applicant also made feeble attempt to show that the impugned transfer was politically motivated due to interference by Hon'ble Minister, Skill and Development Department. He has pointed out that, there is an endorsement on the file (Page No.133 of P.B.) made by the Hon'ble Minister that, in view of transfer of Applicant from Malegaon, on his post, the Respondent No.2 i.e. Mr. Vilas Bhaurao Suryawanshi be transferred. True, there is no reference of transfer of Respondent No.2 at Malegaon in place of Applicant and in view of endorsement made by the Hon'ble Minister, the Respondent No.2 was posted on the consequent vacancy at Malegaon in view of transfer of the Applicant to Shrirampur. In my considered opinion, this will not have any adverse effect on impugned transfer, as a posting of Respondent No.2 was consequent to the transfer of Applicant, who was overdue for transfer.

18. An attempt was also made by the learned Advocate for the Applicant to show that the members of Civil Services Board were not actually present in person in the meeting dated 30.05.2018, but it was signed later on. In this behalf, he referred to the signatures below the minutes of Civil Services Board. On Page No.129 below the signature of Secretary, it is mentioned "Secretary through representative". However, it is made clear by the learned P.O. by filing the copy of extract from the concerned file of Civil Services Board wherein the presence of the members is recorded and their signatures were also obtained. It reflects that, all the members were present in person in the meeting dated 30.05.2018 and their signatures are also appearing against their names. The reference of presence through representative (Page No.129) seems to be mistake due to cut and paste practice which has been explained during the course of arguments. Therefore, it cannot be said that the members of Civil Services Board were not present in the meeting as sought to contend by the learned Advocate for the Applicant.

19. For the foregoing discussion, it is amply clear that the impugned transfer though termed as 'mid-term' was made on vacant post because of delay in issuance of impugned order is squarely covered under the situation contemplated in Section 4(4)(i) and 4(5) of 'ROTA Act 2005'. It has been approved by the Hon'ble Minister and the sanction was accorded to the same by Hon'ble Chief Minister being next highest competent authority as per Schedule of Section 6 of 'ROTA Act 2005'. Suffice to say that the impugned transfer order is in consonance with the provisions of 'ROTA Act 2005' and the objections raised are devoid of merits.

20. Needless to mention that the transfer orders can be interfered only when it is found in contravention of mandatory provisions, arbitrary or *malafide*. In this behalf, it would be appropriate to refer the Judgment of Hon'ble High Court in **V.B. Gadekar, Deputy Engineer Vs MHADA : 2007 (6) BOM CR 579**, wherein it has been held as follows :

"Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power."

21. The necessary corollary of aforesaid discussion leads me to sum-up that the application being devoid of merit deserves to be dismissed. Hence, I pass the following order.

ORDER

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

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

Mumbai

Date : 13.12.2018

Dictation taken by :

S.K. Wamanse.

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