

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.784 OF 2023

DISTRICT : NASHIK

Sub.- Transfer

Shri Rajeev Tukaram Shinde.)
Age : 53 Yrs, Working as Sub-Division)
Water Conservation Officer in the office of)
Soil & Water Conservation Sub-Division,)
Surgana, Tal.: Surgana, District : Nashik)
R/o. C/o. Dhanak Flat No.8, Ruhi Society)
No.3, Tarwala Nagar, Dindori Road,)
Nashik – 4.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Soil & Water Conservation)
Department, Mantralaya,)
Mumbai – 400 032.)
2. Shri Rajendra Pandurang Dhum.)
Aged : Adult, Occu.: Government)
Service as Sub-Divisional Water)
Resources Officer now posted as)
Soil and Water Conservation)
Sub-Division, Surgana,)
District : Nashik.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondent No.1.

Shri Harish Bali, Advocate for Respondent No.2.

CORAM : DEBASHISH CHAKRABARTY, MEMBER-A

DATE : 15.02.2024

JUDGMENT

1. The Applicant who is from cadre of Sub-Divisional Water Conservation Officer by invoking the provisions of 'Section 19' of the 'Administrative Tribunals Act 1985' has challenged the Government Order dated 03.07.2023 of Soil and Water Conservation Department by which he was shifted out from post of Sub-Divisional Water Conservation Officer, Sub-Division Surgana, District Nashik to be replaced by Respondent No.2 who was granted 'Temporary Extension' even after repatriation to Water Resources Department and allowed to continue serving in Soil and Water Conservation Department.

2. The Applicant was represented by Shri C.T. Chandratre, learned Advocate and Shri A.J. Chougule, learned Presenting Officer represented the Respondents.

3. The learned Advocate for Applicant stated that Applicant came to be appointed on 'Temporary Promotion' to the post of 'Sub-Divisional Water Conservation Officer, Sub-Division Surgana, District Nashik by Government Order dated 17.04.2023 of Soil and Water Conservation Department. The Applicant was amongst 145 officers who were given 'Temporary Promotion' in the cadre of Sub-Divisional Water Conservation Officer.

4. The learned Advocate for Applicant then stated that thereupon Applicant had joined on the post of Sub Divisional Water Conservation Officer, Surgana Sub-Division, District Nashik on 24.04.2023 upon belated repatriation of Respondent No.2 to his 'Administrative Department' which is Water Resources Department in accordance with 'Policy Decision' in GR Water Soil Conservation Department, dated 31.05.2017 by which Soil and Water Conservation Department was

newly established upon being carved out from Water Resources Department.

5. The learned Advocate for Applicant further stated that it was pertinent to note that the Government Order dated 03.07.2023 of Soil and Water Conservation Department is ambiguously worded as “आता उक्त संदर्भ क्र. 9 च्या आदेशात अंशतः बदल करून श्री. राजेंद्र पांडुरंग धूम यांना उपविभागीय जलसंधारण अधिकारी, मृद व जलसंधारण उपविभाग, सुरगाणा, जि. नाशिक या पदावर एक वर्षाच्या कालावधीकरिता मुदतवाढ देण्याचा शासनाने निर्णय घेतला आहे.” and it was issued only with intention to bypass the provisions of law as enshrined in ‘The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.’

6. The learned Advocate of Respondent No.2 stated that he had been working earlier on post of Sub-Divisional Water Conservation Officer, Sub-Division Surgana, District Nashik. He further stated that Respondent No.2 was transferred on 10.08.2020 as Sub-Division Water Conservation Officer, Sub Division Surgana, District Nashik and thus had served there for less than 3 years when he was replaced by Applicant on 17.04.2023.

7. The learned Advocate for Respondent No.2 then stated that while working as Sub-Division Water Conservation Officer, Sub Division Surgana, District Nashik, he had undertaken several works which would have been left half way complete and thus adversely affected the welfare of local people, especially Agriculturists. So, the Soil and Water Conservation Department has justiciably given Temporary Extension of 1 Year to Respondent No.2 on post of Sub-Division Water Conservation Officer, Sub-Division Surgana, District Nashik.

8. The learned PO referred to Affidavit-in-Reply filed on 13.07.2023 on behalf of Principal Secretary, Soil and Water Conservation Department and stated that Applicant had been promoted and posted as Sub-

Divisional Water Conservation Officer, Sub-Division Surgana, District Nashik as per Order dated 17.4.2023 of Soil and Water Conservation Department. Thereafter, as per recommendation made by CSB as well as approval received from 'Competent Transferring Authority' and next 'Superior Transferring Authority, the Government Order dated 03.07.2023 of Soil and Water Conservation Department was issued by which Respondent No.2 has been given 'Temporary Extension' of 1 Year to again serve on post of Sub-Divisional Water Conservation Officer, Sub-Division Surgana, District Nashik.

9. The learned PO further referred to Affidavit-in-Reply filed on 13.07.2023 on behalf of Principal Secretary, Soil and Water Conservation Department and stated that request had been made for transfer of Respondent No.2 as there were complaints about his work while serving on post of Sub-Divisional Water Conservation Officer, Sub-Division Surgana, District Nashik. Pursuant to such complaints, the Regional Water Conservation Officer, Soil and Water Conservation Department, Nashik was informed to submit his 'Self-Explanatory Report'. The Regional Water Conservation Officer, Soil and Water Conservation Department, Nashik had recommended that services of Respondent No.2 should be repatriated to Water Resources Department as he had not given option for 'Permanent Absorption' in establishment of Soil & Water Conservation Department. Thereupon, as per 'Policy Decision' taken by Government Resolution dated 31.05.2017 of Soil and Water Conservations Department, the Respondent No.2 was repatriated to Water Resources Department by Government Order dated 22.02.2022 of Soil and Water Conservation Department. However, the earlier complaints made regarding work of Respondent No.2 came to be withdrawn and based on proposal submitted by District Water Conservation Officer, Nashik; services of Respondent No.2 were sought again for the post of Sub-Divisional Water Conservation Officer, Sub-Division Surgana, District Nashik.

10. The learned PO fairly admitted that despite repatriation of Respondent No.2 by Water Resources Department vide Government Order dated 22.02.2022 of Soil and Water Conservation Department; he kept working on post of Sub-Divisional Water Conservation Officer, Sub-Division Surgana, District Nashik without being actually relieved by Soil and Water Conservation Department so as to join thereafter in Water Resources Department.

11. The learned PO again referred to Affidavit-in-Reply filed on 13.07.2023 on behalf of Principal Secretary, Soil and Water Conservation Department and concluded her arguments by contending that Government Resolution dated 31.05.2017 of Soil and Water Conservation Department was issued based upon approval given by 'State Cabinet'. She emphasized that although Respondent No. 2 was an officer of the Water Resources Department but he was working for long time on deputation in Soil and Water Conservation Department. Thus, the Government Order dated 03.07.2023 of Soil and Water Conservation Department was just partial modification of earlier Government Order dated 17.04.2023 of Soil and Water Conservation Department. The Respondent No.2 has been given only 'Temporary Extension' of 1 Year on the post of Sub-Divisional Water Conservation Officer, Sub-Division Surgana, District Nashik and that Applicant will be given transfer to any other suitable post under Soil and Water Conservation Department.

12. The roles of the 'Cadre Controlling Authority' of both Applicant and Respondent No.2 are of vital importance to lift the veil as to why Government Order dated 03.07.2023 came to be issued by Soil and Water Conservation Department. The Respondent No.2 belongs to the cadre of 'Deputy Engineer' of Water Resources Department and was posted as Sub-Divisional Water Conservation Officer, Surgana Sub-Division, District Nashik on 10.08.2020. As per 'Policy Decision' taken by Water Conservation Department GR dated 31.05.2017; the 'Deputy

Engineers' borne on establishment of Water Resources Department who had not given option for 'Permanent Absorption' on establishment of Soil and Water Conservation Department were required to be repatriated within period of 4 Years. The Respondent No. 2 had not given option for 'Permanent Absorption' on establishment of Soil & Water Conservation Department. Therefore, he should have invariably been repatriated to Water Resources Department by 31.05.2021. However, for reasons that remain in the realm of unknown, Respondent No.2 was not repatriated by 31.05.2021 but rather belatedly came to be relieved by Soil & Water Conservation Department Government Order dated 22.02.2022, but it also was never implemented. The Respondent No.2 was finally relieved by Government Order dated 17.04.2023 of Soil and Water Conservation Department when Applicant came to be given 'Temporary Promotion' in the cadre of Sub-Divisional Water Conservation Officer.

13. The Soil and Water Conservation Department and Water Resources Department have both displayed lackadaisical attitude in diligently implementing the major 'Policy Decision' which had been taken by GR Soil and Water Conservation Department dated 31.05.2017 as is evident from the case of Respondent No.2 who was casually allowed to continue working as Sub-Division Water Conservation Officer, Surgana, Sub Division, District Nashik even after being repatriated by Soil & Water Conservation Department Government Order of 22.02.2022. The order of repatriation of Respondent No.2 which had been issued on 22.02.2022 came to be implemented only after issue of Soil and Water Conservation Department Government Order dated 17.04.2023 by which 'Temporary Promotion' was given to Applicant. The Respondent No.2 on his part was required to forthwith report back to Water Resource Department; which is his 'Cadre Controlling Authority' so that they could have posted him as 'Deputy Engineer' on any regular post under Water Resources Department. However, it appears that Respondent No.2 intently did not join back in Water Resources Department. The exceptions made in respect of Respondent No.2 were thus outcomes of the benevolence

displayed in tandem by both Soil and Water Conservation Department and Water Resources Department.

14. The perusal of 'File Notings' show that 'CSB' in its meeting held on 25.04.2023 had mentioned all relevant facts about Applicant and Respondent No.2 but still recommended to shift Applicant from post of Sub-Divisional Water Conservation Officer, Sub Division Surgana, District Nashik on which he had joined upon 'Temporary Promotion' on 24.04.2023. The recommendation of 'CSB' of Soil and Water Conservation Department made in its meeting held on 25.04.2023 were accepted by 'Competent Transferring Authority' and next 'Superior Transferring Authority' as affirmed in 'Affidavit-in-Reply' dated 13.07.2023 of Soil and Water Conservation Department. Consequently, the Government Order dated 03.07.2023 of Soil and Water Conservation Department came to be issued by which Applicant was shifted out within 3 Months from being posted as Sub-Divisional Water Conservation Officer, Sub Division Surgana, District Nashik and Respondent No.2 brought in his place upon being given in an unexplained 'Temporary Extension' of 1 Year much after severance had occurred from earlier 'Deputation Period' which had ended on 24.04.2023.

15. The Soil and Water Conservation Department Government Order dated 03.07.2023 by which the Respondent No.2 was plucked out of nowhere after having been repatriated to Water Resources Department by Order dated 17.04.2023 and came to be deputed back again in Soil and Water Conservation Department on terms such as "आता उक्त संदर्भ क्र. १ च्या आदेशात अंशतः बदल करून श्री. राजेंद्र पांडुरंग धूम यांना उपविभागीय जलसंधारण अधिकारी, मृद व जलसंधारण उपविभाग, सुरगाणा, जि. नाशिक या पदावर एक वर्षाच्या कालावधीकरिता मुदतवाढ देण्याचा शासनाने निर्णय घेतला आहे." is without any reference whatsoever to provisions of 'The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' or 'Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules 1981'.

16. The Respondent No.2 had been relieved from post of Sub-Divisional Water Conservation Officer, Sub Division Surgana, District Nashik on 24.04.2023 and repatriated back to Water Resources Department. Thus, the Soil and Water Conservation Department had no jurisdiction whatsoever as 'Administrative Department' over Respondent No.2 so as to be able to even convene meeting of CSB which was held on 25.04.2023. Although the 'Minutes of Meeting' of CSB held on 25.04.2023 of the Soil and Water Conservation Department did truthfully recorded relevant facts about Applicant and Respondent No.2, its proceedings therefore become 'ab-initio void' in the eyes of law; and so also the act of granting approval by 'Competent Transferring Authority' and next Superior Transferring Authority to grant 'Temporary Extension' to Respondent No.2 on the post of Sub-Divisional Water Conservation Officer, Sub-Division Surgana, District Nashik.

17. The 'Competent Transferring Authority' and next 'Superior Transferring Authority' should not have accepted the recommendations made by 'CSB' in its meeting held on 25.04.2023 and desisted from granting 'Temporary Extension' of '1 Year' to Respondent No.2 using cleverly crafted words such as "आता उक्त संदर्भ क. 9 च्या आदेशात अंशतः बदल करून श्री. राजेंद्र पांडुरंग धूम यांना उपविभागीय जलसंधारण अधिकारी, मृद व जलसंधारण उपविभाग, सुरगाणा, जि. नाशिक या पदावर एक वर्षाच्या कालावधीकरिता मुदतवाढ देण्याचा शासनाने निर्णय घेतला आहे". The lament is 'Competent Transferring Authority' and 'Superior Transferring Authority' by shifting the Applicant from post of Sub-Divisional Water Conservation Officer, Sub-Division Surgana, District Nashik have brought to life following words of caution which were recorded about incidences of frequent transfers of Government Servants serving under State Government in landmark judgment of **Hon'ble Supreme Court of India in (2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**.

"We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. The necessity

of minimum tenure has been endorsed and implemented by the Union Government. In fact, we notice, almost 13 States have accepted the necessity of a minimum tenure for civil servants. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of the society.”

18. The Hon’ble Bombay High Court in **Seshrao Nagarao Umap Vs. State of Maharashtra, (1985)II LL J 73(Bom)** has summarized the law on the aspect of colourable exercise of powers to accommodate another Government Servant for undisclosed reasons by observing that :-

“It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilize the services of its employees. However this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colorable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair.”

19. The Hon’ble High Court of Bombay in **Writ Petition No.8987 of 2018 (Shri Balasaheb Vitthalrao Tidke Vs State of Maharashtra & Ors.)** had recorded with disdain about Political Interference in the process of transfers of Government Servants and observed that :-

“Now there is a clear assurance that all transfers will be effected strictly in accordance with the provisions of the said Act of 2005 and none of the transfers will now be influenced by the recommendations of the political leaders including the Hon’ble Ministers (Who are not a part of the process of transfers). We direct that the statements made in para-1 of the said Affidavit are brought to the notice of all the concerned who have to exercise powers of transfers under the said Act of 2005 so that there will not be any attempt to make any recommendations thereby influencing the process of transfers of the Government Servants”.

20. The Hon'ble Supreme Court of India judgment of "The Hon'ble Supreme Court in the case of **East Coast Railway & Another Vs. Mahadev Appa Rao & Ors. (2010) 7 SCC 678** which has emphasized the crucial importance of application of mind and recording of reasons by 'Public Authority'. The relevant extract of the judgment is as under :-

"There is no precise statutory or other definition of the term "arbitrary". Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making an order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable."

21. The Soil and Water Conservation Department Government Order dated 03.07.2023 to move out the Applicant who was working as Sub-Divisional Water Conservation Officer, Sub Division Surgana, District Nashik since joining on 'Temporary Promotion' on 24.04.2023 is classic example of the growing tendency of 'Competent Transferring Authorities' and 'Superior Transferring Authorities' to casually overstep the boundaries marked out by law and rules and often reiterated by several judgments of Hon'ble Supreme Court of India and Hon'ble Bombay High Court.

22. The tepid implementation of the major 'Policy Decision' taken by Soil Water Conservation Department GR dated 30.05.2017 also showcases acts of 'Cherry Picking' by those who are able to influence the process of transfers of Government Servants and bestow their benevolence as seen in case of 'Respondent No.2' who inspite of having been repatriated to Water Resources Department still harboured covert intentions to somehow continue to work in Soil and Water Conservation Department. The Soil and Water Conservation Department Government Order dated 03.07.2023 issued to abruptly shift the Applicant from post

of Sub-Divisional Water Conservation Officer, Soil and Water Conservation, Sub-Division Surgana, District Nashik in order to anyhow accommodate Respondent No.2 stands extremely vulnerable without any support whatsoever from the provisions of either 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' or 'Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981' thus unquestionably deserves to be quashed and set aside. Hence, the following order :-

ORDER

- (i) The Original Application is Allowed.
- (ii) The Soil and Water Conservation Department Government Order dated 03.07.2023 is quashed and set aside with directions that Soil and Water Conservation Department should within 'One Week' post back Applicant on his earlier post of Sub Divisional Water Conservation Officer, Sub-Division Surgana, District Nashik.
- (iii) No Order as to Costs.

Sd/-
(DEBASHISH CHAKRABARTY)
Member-A

Mumbai

Date : 15.02.2024

Dictation taken by :

S.K. Wamanse.

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