

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.815/2015.

Santosh Popatrao Kanse,
Aged about 38 years,
R/o Tehsildar Quarters, Mehkar Road,
Sindkhedraja, Distt. Buldana.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary,
Revenue Department,
Mantralaya, Mumbai-32.

2. The Divisional Commissioner,
Amravati Division, Amravati.

3. The Collector,
Buldhana.

4. Shri Raju Suradkar,
O/o Tehsildar Office,
Sindkhedraja, Distt. Buldana.

Respondents.

Shri D.M. Kakani, Ld. Advocate for the applicant.
Shri M.I. Khan, Ld. P.O. for the respondents 1 to 3.
Shri S.N. Gaikwad, Adv. for respondent No.4.

Coram:- B. Majumdar, Vice-Chairman

Dated:- 7th June, 2016.

Order

The applicant, a Tehsildar (Group-A) has filed this

O.A. as he is aggrieved with an order posting him at Dharni, District
Amravati.

2. The applicant was posted at Sindkhedraja, District Buldana on 18.5.2013. On 4.11.2015, the Government issued orders vide which the applicant was posted at Dharni and Shri Raju Suradkar (R.4) was posted at Sindkhedraja vice the applicant. On 6.11.2015, the Divisional Commissioner, Amravati Division, Amravati (R.2) issued an order of transfer of the applicant consequent to the above. The applicant has challenged these orders in the O.A. The applicant was relieved on 22.12.2015 and joined at Dharni on 11.1.2016.

3. The applicant's grievance is that the impugned order of transfer is a mid-term one and it states no reasons for this purpose, as is required under section 4 (4) and (5) of the Transfer Act. He has school going children and is also looking after his aged parents and he could not attend to them if he was shifted from Sindkhedraja. He had made representations for posting him to Pune, but these were not considered.

4. The Principal Secretary, Revenue (R.1) and the Collector, Buldhana (R.3) in their reply submit that the impugned order of transferring the applicant to Dharni and his replacement by respondent No.4 are issued in consonance with the provisions of Section 4 (4) and (5) of the Transfer Act after obtaining approval of the higher competent authorities. They further submit that as per the

Recruitment Rules of Tehsildars, the post is not transferrable at the State level and hence the applicant's request for transfer to Pune cannot be considered.

5. No reply has been filed on behalf of respondent No.4, even after the learned counsel for the respondent sought time in this regard on a number of occasions.

6. Shri D.M. Kakani, the learned counsel for the applicant, after reiterating the submissions of the applicant, relied on the order of the Principal Bench of this Tribunal at Mumbai in O.A. Nos. 954 and 957 of 2005, in which it was held that a transfer where Civil Service Board did not recommend it and no reasons for a mid term transfer are put on record is to be held as illegal.

7. Shri S.N. Gaikwad, the learned counsel for respondent No.4 submitted that the order of transferring the respondent No.4 to Sindkhedraja is a separate order and the applicant is not at liberty to challenge the same in the present O.A.

8. Shri M.I. Khan, the learned P.O. reiterated the submission of the respondent Nos. 1 to 3. In support, he produced a photo copy of the extracts from the relevant original file in Mantralaya in which the impugned order of transfer was dealt with.

9. I find that it is not disputed that the order dated 4.11.2015 transferring the applicant to Dharni is a mid-term one, as the applicant had not completed his normal tenure of three years. It is also a mid-session transfer. Hence it attracts the provision of Section 4 (4) & (5) of the Transfer Act. These provisions require that for a mid-session / mid-term transfer, prior approval of the next higher competent authority is necessary and special reasons / circumstances requiring the transfer should be brought on record.

10. In order to examine whether these provisions were followed, I have gone through the relevant Mantralaya file produced by the learned P.O. From the file, I find the following sequence of events:

- (a) On 21.8.2015, the Civil Services Board recommended the transfers of four Tehsildar level officers from the Amravati Division. Neither the applicant nor respondent No.4 is in this list.
- (b) The proceedings of the meeting were submitted to the Hon'ble Minister (Revenue).
- (c) The Hon'ble Minister (Revenue) submitted a list of 22 officers to the Hon'ble Chief Minister. This included the applicant (for transfer to Dharni) and respondent No.4 (for transfer to Sindkhedraja vice the applicant).
- (d) The list was approved by the Hon'ble Chief Minister.

11. It is relevant to note here that in the above proposal, the Hon'ble Minister (Revenue) had noted as follows:

“तहसीलदार संवर्गातील अधिका-यांच्या बदल्या संदर्भातील लोकप्रतिनिधीकडून प्राप्त झालेल्या शिफारसपत्रावर काही ठिकाणी मा. मुख्यमंत्री महोदयांनी शेर दिले आहेत तसेच काही ठिकाणी एकाच पदावर एकापेक्षा जास्त अधिका-यांच्या पदस्थापनेवरील लोकप्रतिनिधींच्या शिफारशी प्राप्त झालेल्या आहेत. अशा सर्व शिफारशींची यादी खालीलप्रमाणे आहे. यापैकी कोणत्या अधिका-यांची कोणत्या ठिकाणी नियुक्ती करावी याबाबत आदेश देण्याची मा. मुख्यमंत्री महोदयांना विनंती आहे”.

12. In respect of respondent No.4, it is stated that it is as per the recommendation of Dr. Shashikant Khedekar, Hon'ble MLA, Buldhana. This list was sent to the Divisional Commissioner, Amravati (R.2). On 11.8.2015, he submitted a detailed report on the above proposals of transfer. In respect to the case of respondent No.4, he conveyed his remarks as follows:

“शासन परिपत्रक सा. प्र. विभाग दि. ११.२.२०१५ अन्वये तीन वर्ष सेवा कालावधी पूर्ण झाला नाही त्यामुळे बदलीस पात्र ठरत नाही. श्री. शशीकांत खेडेकर वि.स.स. सिंदखेडराजा यांनी श्री. सुरडकर यांची मागणी केली आहे. परंतु श्री. खनसे यांची सदर पदावर ३ वर्ष सेवा झालेली नाही”.

13. On examination of the above records, I find that the name of the applicant as well as respondent No.4 was not approved by the Civil Services Board. The Hon'ble Chief Minister had approved the transfers of these officers on the basis of recommendations of the Hon'ble Minister (Revenue), who made this in turn on the basis of recommendation of the Hon'ble MLA Dr. Khedekar. It is thus clear that no specific reasons requiring the applicant to be transferred from Sindkhedraja to Dharni before completion of his regular tenure have been brought on record. It is a settled law that mere recommendation

by a political functionary cannot *per se* form a basis for compliance with the provisions of Section 4 (4) & (5) of the Transfers Act. The respondents have clearly failed to bring on record any specific /substantive reasons or circumstances for transferring the applicant.

14. I view of the above, I hold that the impugned orders dated 4.11.2015 and 6.11.2015 are not sustainable as these are in violation of Section 4 (4) & (5) of the Transfers Act. Hence, the O.A. stands allowed in terms of the following order:

- (a) The orders dated 4.11.2015 and 6.11.2015 are quashed and set aside.
- (b) The respondents will post the applicant to his original post at Sindkhedraja forthwith. They are however at liberty to transfer him after following the provisions of the Transfer Act.
- (c) The respondents will grant suitable posting to respondent No.4 consequent to (b) above.
- (d) The respondents will act accordingly within six weeks of receipt of this order.
- (e) There shall be no order as to cost.

Office to return the photo copy of file No.150/2015 of Mantralaya to the learned P.O.

sd/-

(B.Majumdar)
Vice-Chairman