

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.919 & 956 OF 2019

DISTRICT : MUMBAI

ORIGINAL APPLICATION NO.919 OF 2019

Shri Dilip Bhaurao Bawiskar.)
Age : 57 Yrs, Occu.: Service as Inspector)
of Motor Vehicles posted in the Office of)
R.T.O, Mumbai (W), and R.o. Suman)
Heights, Sahadeo Nagar, Opp. Horizon)
School, Gangapur Road, Nashik.)...**Applicant**

Versus

1. The Transport Commissioner (M.S),)
Mumbai having office at)
Administrative Building, 4th Floor,)
Government Colony, Bandra (E),)
Mumbai – 400 051.)
2. The State of Maharashtra.)
Through Principal Secretary)
(Transport), Home Department,)
Mantralaya, Mumbai – 400 032.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.956 OF 2019

- 1) Shri Ravindra M. Bandarkar.)
- 2) Shri Parikshit S. Patil.)
- 3) Shri Shirish S. Pawar.)
- 4) Shri Abhas K. Desai.)
- 5) Shri Sandip S. Patil.)

All are Adult, working as Inspector)
of Motor Vehicles in the office of)
Regional Transport Officer, Mumbai)
(Central), having office at Tardeo)
Mumbai – 34. All are R/o. Mumbai,)
except the Petitioner No.5 who has)
been working in the office of Deputy)
Regional Transport Officer,)
Ratnagiri.)...**Applicants**

Versus

1. The Transport Commissioner (M.S),)
Mumbai & Anr.)...**Respondents**

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

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

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

DATE : 01.01.2020

JUDGMENT

1. The Applicants who were working as Inspector, Motor Vehicles have challenged the impugned orders dated 29th July, 2019 whereby their services were diverted from Dhule to Mumbai 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 follows :-

All the Applicants in these two O.As were serving as Inspector of Motor Vehicles at Dhule. The Applicant No.3 – Suresh S. Pawar in O.A. 956/2019 had only completed more than three years tenure on the date of impugned order dated 29th July, 2019. Whereas, remaining Applicants had not completed normal tenure of three years till the date of

impugned order. However, by order dated 29th July, 2019, the Respondent No.1 – Transport Commissioner, Mumbai had diverted their service from Dhule to Mumbai. The Applicants have challenged order dated 29th July, 2019 contending that under the disguise of temporary diverting service, they are in effect transferred from Dhule to Mumbai and the same are in blatant violation 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).

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned orders dated 29th July, 2019 mainly on the following grounds :-

- (a) The Respondent No.1 is not competent to pass such order.
- (b) The impugned orders styled as diverting services is in effect mid-term transfer orders, and therefore, the same is unsustainable in absence of compliance of Section 4(5) of 'Transfer Act 2005'.
- (c) There is no approval to the impugned orders dated 29.07.2019 by Civil Services Board (CSB), and therefore, the same being in contravention of directions of Hon'ble Supreme Court in ***Writ Petition (Civil) No.82/2011 (T.S.R. Subramanian & Ors. Vs. Union of India & Ors.) dated 31st October, 2013*** is unsustainable in law.

4. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer tried to support the impugned order dated 29th July, 2019 contending that in view of report of Anti-Corruption Bureau (ACB) against the then R.T.O. Shri Tadvi, the Commissioner of Transport diverted the services of the Applicants from Dhule to Mumbai to cleanse the Department so that there should not be scope of corruption in the Department. She further sought to contend that the Commissioner of Transport had already

forwarded report to the Government on 31st July, 2019 to regularize the order dated 29.07.2019 passed by him and the matter is in process with the Government. She further sought to contend that the salaries of the Applicants are being paid from Dhule Office, and therefore, the impugned order dated 29.07.2019 being of temporary nature has no trapping of transfer. With these submissions, she made feeble attempt to justify the impugned order.

5. At the very outset, it is necessary to consider the background which seems to have prompted Commissioner of Transport to pass the impugned order dated 29.07.2019. In this behalf, it would be apposite to refer letter dated 29.07.2019 (Page Nos.21 to 22 of P.B.) sent by Shri Bhamare, Police Inspector, Anti-Corruption Bureau, Nashik to Respondent No.1. The perusal of letter reveals that one Shri Gajendra T. Patil, Inspector of Motor Vehicles serving at Dhule had lodged complaint with ACB against the then R.T.O. Shri Tadvi alleging that Shri Tadvi is demanding a hefty amount for appointing Inspector of Motor Vehicle at various Check Posts. Shri Tadvi allegedly demanded Rs.4,50,000/- to complainant Shri Gajanan T. Patil for giving him posting at Check Post. In view of said complaint, a Crime No.62/2019 was registered against Shri Tadvi under Section 9 of Prevention of Corruption Act, 1988. On this background, the ACB, Nashik requested Commissioner of Transport to suspend Shri Tadvi. Later, he was suspended by order dated 31.07.2019.

6. Thus, it seems that in view of serious allegations of rampant corruption against Shri Tadvi, the Commissioner of Transport thought to shift the Applicants, who were working at different Check Posts in Dhule District to cleanse the Department and by order dated 29.07.2019, their services were diverted at Mumbai, so that there should not be further scope for corruption in Dhule Region. Be that as it may, the crux of the matter is whether the impugned order is sustainable in law and the answer is in negative.

7. No doubt, where there are allegations of corruption against the Government servant, then he can be transferred immediately from the point of administrative exigency and probity in public administration. However, the Respondents for that purpose require to follow due process of law, which is not followed in the present case.

8. Indisputably, the appointing authority and transferring authority of the Applicants is Government. This being the position, it was for the Government to issue transfer orders. Whereas, in the present case, under the guise of diverting the services temporarily, the Applicants were transferred from Dhule to Mumbai by Commissioner of Transport. Indeed, the Commissioner of Transport was aware that he cannot divert the services of the Applicants in such a manner, and therefore, he had already made report on 31.07.2019 to the Government requesting to transfer the Applicants from Dhule to other places. However, no further follow-up action is taken by the Government. Resultantly, the situation turn outs that there is no approval to the order dated 19.07.2019 by the Government.

9. One can understand, if the services of the Applicants were diverted to some other place for temporarily for short period. However, in the present case, it is not so. By order dated 19.07.2019, the services of the Applicants were diverted and though the period of more than six months is over, no further step is taken to legalize the same as requested by the Commissioner of Transport to Government vide his report dated 31.07.2019. This being the position, there is no escape from the conclusion that the order dated 31.07.2019 is passed only to circumvent the provisions of 'Transfer Act 2005'.

10. As stated above, the Government is the only competent authority to transfer the Applicants and there being no order of transfer from the Government, the order dated 29.07.2019 passed by Commissioner of

Transport, he being not competent authority, the order is not sustainable in law.

11. The order dated 29.07.2019 have all trapping and effect of transfer within the meaning of 'Transfer Act 2005', and therefore, it being mid-term transfer, there has to be compliance of Section 4(5) of 'Transfer Act 2005', which is as follows :-

“4(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.”

12. Admittedly, in the present case, there is no such approval from competent transferring authority as contemplated in Section 4(5) of 'Transfer Act 2005'. Admittedly, there is no approval of CSB while diverting the services of the Applicants from Dhule to Mumbai.

13. In view of aforesaid discussion, there is no escape from the conclusion that the impugned order dated 29.07.2019 is in blatant violation of provisions of 'Transfer Act 2005' as well as directions given by the Hon'ble Supreme Court in **T.S.R. Subramanian's** case. The impugned orders are, therefore, deserve to be quashed.

14. The totality of aforesaid discussion leads me to conclude that the impugned order dated 19.07.2019 is totally unsustainable in law and O.A. deserves to be allowed. Hence, the following order.

ORDER

- (A) Both the Original Applications are allowed.
- (B) The impugned orders dated 19.07.2019 are hereby quashed and set aside.

- (C) The Respondents are directed to reinstate the Applicants on the post they were transferred from within two weeks from today.
- (D) After reinstatement of the Applicants, if the Respondents feel it necessary to transfer the Applicants, then they are at liberty to do so in accordance to law.
- (E) No order as to costs.

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

Mumbai
Date : 01.01.2020
Dictation taken by :
S.K. Wamanse.