

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.945 OF 2023

DISTRICT : PUNE

Sub.:- Transfer

Shri Rajeev Kamalakar Bhosale.)
Age : 54 Yrs, Working as Assistant)
Commissioner, Social Welfare and Residing)
at Raut Baug, Dhankawadi,)
Pune – 411 043.)...**Applicant**

Versus

The State of Maharashtra.)
Through the Secretary,)
Social Justice & Special Assistance)
Department, Mantralaya, Mumbai – 32.)...**Respondent**

Smt. Punam Mahajan, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondent.

CORAM : Debashish Chakrabarty, Member-A

DATE : 02.04.2024

JUDGMENT

1. The Applicant who is from cadre of ‘Assistant Commissioner, Social Welfare’ has invoked provisions of ‘Section 19’ of the ‘Administrative Tribunals Act 1985’ to challenge ‘Transfer Order’ dated 14.07.2023 of ‘Social Justice and Special Assistance Department’ by which he has been

transferred from post of 'Assistant Director' in OBC and Bahujan Welfare Directorate, Pune' to post of 'Assistant Commissioner, Social Welfare, Gondia'.

2. The learned Advocate for Applicant stated that Applicant was working on post of 'Assistant Director' in OBC and Bahujan Welfare Directorate, Pune' since 27.11.2018 till he came to be transferred to post 'Assistant Commissioner, Social Welfare, Gondia' by 'Transfer Order' dated 14.07.2023 of 'Social Justice and Special Assistance Department', although he had requested to be transferred to any 'Vacant Post' preferably in Pune or Osmanabad or Satara District.

3. The learned Advocate for Applicant further stated that Applicant before being transferred to post of 'Assistant Commissioner, Social Welfare, Gondia' had submitted representation to 'Secretary, Social Justice and Special Assistance Department' on 17.05.2023 requesting to be transferred to nearby places on grounds that he was suffering from serious 'Medical Conditions' like (i) Asthama, (ii) Diabetes, (iii) Blood Pressure & (iv) Pancreatic Ailments and to also take care of his 'Old Parents'.

4. The learned Advocate for Applicant thereupon mentioned that children of Applicant were studying in 'Engineering College' and '12th Standard'. Thus, Applicant had sought to be transferred to nearly

places in Osmanabad or Satara Districts or preferably to any of the 'Vacant Posts' in Pune District.

5. The learned Advocate for Applicant contended that there was discrimination against Applicant and cited instances of (i) Smt. Chhaya Ghanekar who had been given 'Extension of Tenure' of 'One Year' on grounds that child was studying in '10th Standard' and (ii) Smt. Anita Rathod who had been given 'Extension of Tenure' of 'One Year' on 'Medical Grounds'.

6. The learned PO relied on the 'Affidavit-in-Reply' dated 11.08.2023 filed on behalf of 'Secretary, Social Justice and Special Assistance Department' to state that transfer of Applicant to post of 'Assistant Commissioner, Social Welfare, Gondia' was based on recommendation of 'CSB' which held its meeting on 08.05.2023.

7. The learned PO further stated that request of Applicant for transfer to nearby places on 'Medical Grounds' and citing 'Childrens Education' and 'Old Parents' was only to create sympathy; because Applicant was well aware about complaints against him regarding 'Official Conduct' and lack of 'Good Performance' while serving as 'Assistant Director' in OBC and Behujan Welfare Directorate, Pune'.

8. The learned PO then stated that 'Commissioner, Social Welfare, Pune' by letter dated 20.10.2022 had proposed transfer of Applicant from

post of 'Assistant Director' in OBC and Bahujan Welfare Directorate, Pune' on the grounds that Applicant was not obeying directions of 'Superior Officers' and not discharging duties and responsibilities effectively so as to achieve credible levels of 'Overall Performance' expected from senior level officer from cadre of 'Assistant Commissioner; Social Welfare'. The proposal to transfer was based on the facts that Applicant habitually remained absent from office without any prior permission; did not promptly attend to important matters in 'Courts of Law', failed to attend 'Official Meetings'. The 'Director, OBC Welfare & Bahujan, Pune' as 'Head of Office' had also proposed transfer of Applicant by letter dated 18.07.2022.

9. The learned PO further stated that transfer of Applicant to post of 'Assistant Commissioner, Social Welfare, Gondia' was approved by 'Competent Transferring Authority' based on recommendation made by 'CSB' in its meeting held on 08.05.2023 and it was as per provisions of Section 4(4)(ii) and Section 4(5) of the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

10. The Applicant evidently was indifferent about performance of his duties and responsibilities while holding senior level post of 'Assistant Director' in 'OBC' and Bahujan Welfare Directorate, Pune'. The Applicant having displayed compulsive habit of (i) 'Unauthorized Absence' (ii) 'Irresponsible Behaviour' was issued string of (a) 'Show Cause Notices'

dated 05.02.2019, 06.12.2019, 23.01.2020, 22.12.2020, 25.03.2021, 16.08.2021 and 21.06.2021 and (b) 'Memos' dated 07.12.2020, 25.02.2021, 07.04.2021 by both 'Director, OBC and Bahujan Welfare, Pune' and 'Joint Director of OBC and Bahujan Welfare, Pune' who were his immediate 'Superior Officers'.

11. The Applicant had even been imposed 'Minor Penalty' for stoppage of 'One Increment with Cumulative Effect' by Social Justice and Special Assistance Department Order dated 04.05.2022 pertaining to delinquency observed in earlier period of service as 'District Social Welfare Officer' in Z.P, Solapur'. The 'Departmental Enquiry' was ordered on 15.02.2007 against the Applicant based on 'Articles of Charges' which were rather similar viz. (i) 'Unauthorized Absence' and (ii) 'Irresponsible Behaviour'.

12. The Applicant over the years neither has shown any improvement in his 'Official Conduct' nor has made any concerted efforts to raise the levels of his 'Overall Performance'. In fact, number of 'Show Cause Notices' and 'Memos' served to Applicant clearly demonstrates his 'Cavalier Attitude' in discharge of 'Office Work' while serving on post of 'Assistant Director' in 'OBC' and Bahujan Welfare Directorate, Pune'.

13. The provisions of 'Chapter II' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' which is captioned as "Tenure of Posting and

Transfer and Transferring Authority” provides assurance against frequent transfers to sincere and dutiful ‘Government Servants’ whose ‘Official Conduct’ meets the standards prescribed under ‘MCS (Conduct) Rules 1979’. The provisions of ‘Chapter III’ of ‘Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005’ which is captioned as ‘Prevention of Delay in Discharge of Official Duties’ on the other hand is to hold delinquent ‘Government Servants’ accountable under ‘MCS (Discipline and Appeal) Rules 1979’. The provisions relating to accountability of ‘Government Servants’ in ‘Section 10’ under ‘Chapter III’ as follows :-

“10. (1) Every Government servant shall be bound to discharge his official duties and the official work assigned or pertaining to him most diligently and as expeditiously as feasible.”

10. (2) Any willful or intentional delay or negligence in the discharge of official duties or in carrying out the official work assigned or pertaining to such Government servant shall amount to dereliction of official duties and shall make such Government servant liable for appropriate disciplinary action under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 or any other relevant disciplinary rules applicable to such employee.

10. (3) The concerned competent authority on noticing or being brought to its notice any such dereliction of duties on the part of any Government servant, after satisfying itself about such dereliction on the part of such Government servant shall, take appropriate disciplinary action against such defaulting Government servant under the relevant disciplinary rules including taking entry relating to such dereliction of duty in the Annual Confidential Report of such Government servant.”

14. The Applicant had completed his ‘Normal Tenure’ of 3 Years on the post of ‘Assistant Director’ in ‘OBC’ and Bahujan Welfare Directorate, Pune’ as per provisions of ‘Section 3(1)(a)’ of ‘Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of

Official Duties Act, 2005'. The Applicant was thus transferred to post of 'Assistant Commissioner, Social Welfare, Gondia' based on recommendation of 'CSB' and approval given by 'Competent Transferring Authority' and next 'Superior Transferring Authority' under provisions of 'Section 4(4)(ii)' and 'Section 4(5)' read with 'Section 6' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'. Thus, the transfer of Applicant from post of 'Assistant Director' in OBC and Bahujan Welfare Directorate, Pune' to 'Assistant Commissioner, Social Welfare, Gondia' does not suffer from any vice of (a) 'Arbitrary Exercise' of Statutory Powers, (b) 'Unlawful Exercise' of Statutory Powers & (c) 'Colorable Exercise' of Statutory Powers.

15. The **Hon'ble Supreme Court of India in B Varadha Rao v State of Karnataka, 1986 (3) SLR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287** has observed that transfer is an ordinary incident of service and therefore does not result in any alteration of any condition of service to disadvantage of Government Servants. The **Hon'ble Supreme Court of India in K. Sivankutty Nair v. Managing Director, Syndicate Bank, 1984 (2) SLR 13 (Kant); Chief General Manager (Telecom) v. Rajendra Ch. Bhattacharjee, (1995) 2 SCC 532 : SC 813 : (1995) 2 SLR 1** also observed that an employee cannot, as a matter of right, seek transfer to a place of his choice.

16. The **Hon'ble Supreme Court of India in B Varadha Rao v State of Karnataka, 1986 (3) SLR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287** has observed that continued posting at one station or in one department not conducive to good administration as such continued posting creates vested interest. The **Hon'ble Supreme Court of India in**

UOI v NP Thomas, AIR 1993 SC 1605 : (1993) Supp (1) SCC 704 has further observed that since posts in public employment are generally transferable post, it follows that an employee has no vested right to remain at the post of his posting. Also, ***Hon'ble Supreme Court of India in UOI v S.L. Abbas, AIR 1993 SC 2444 : (1993) 4 SCC 357*** has observed that who is to be transferred where, is a matter for the appropriate authority to decide.

17. The Applicant had worked under direct supervision of 'Director' in OBC and Bahujan Welfare Directorate, Pune'. The 'Overall Performance' of Applicant was reviewed by 'Commissioner, Social Welfare, Pune' and 'Secretary, Social Justice and Special Assistance Department'. Therefore, the lassitude which was observed by them about Applicant should have met with quick reprimand by way of initiation of 'Disciplinary Proceedings' under 'MCS (Discipline and Appeal) Rules 1979' as per provisions in 'Chapter-III' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' rather than allowing 'Applicant' to continue serving on post of 'Assistant Director' in 'OBC' and Bahujan Welfare Directorate, Pune' and proudly wear the 'Show Cause Notices' and 'Memos' as 'Badges of Honour'. Instead of giving Applicant an opportunity to seek reconsideration of his transfer to post of 'Assistant Commissioner, Social Welfare, Gondia' on compassionate grounds of 'Medical Conditions' besides 'Childrens Education' and 'Old Parents', the Applicant was required to be held accountable for failure to discharge his official duties and the official work assigned or pertaining to him under provisions of 'Section 10' of 'Chapter-III' of 'Maharashtra Government Servants

Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' having been posted as 'Assistant Commissioner, Social Welfare, Gondia' on 14.07.2023.

18. The 'Transfer Order' dated 14.07.2023 of 'Social Justice and Special Assistance Department' by which Applicant was posted as 'Assistant Commissioner, Social Welfare, Gondia' thus merits no interference and should be forthwith enforced by 'Principal Secretary; Social Justice and Special Assistance Department'. Hence, the following order.

ORDER

- (I) The Original Application is Dismissed.
- (II) No Order as to Cost.

Sd/-

(DEBASHISH CHAKRABARTY)
Member-A

Mumbai
Date : 02.04.2024
Dictation taken by :
S.K. Wamanse.

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