

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.187 OF 2019

DISTRICT:-LATUR

Sunil s/o. Vithalrao Yadav,
Age : 53 years, Occ. Service
(as Dy. Collector [General], Latur),
R/o: Govt. Quarter,
Sub-Divisional Office, Latur,
District Latur.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Addl. Chief Secretary,
(Revenue, Registration & Stamp),
Revenue and Forest Department,
M.S., Madam Cama Road,
Hutatma Rajguru Chowk,
Mantralaya, Mumbai – 32.
2. The Divisional Commissioner,
Aurangabad, Near Delhi Gate,
Collector Office Campus,
Fazilpura, Aurangabad.
3. The Collector,
Latur, Barshi Road,
Latur MIDC, Latur.

.... RESPONDENTS

APPEARANCE :ShriA.S.Deshmukh, Advocate for the
Applicant.

:Smt. Priya Bharaswadkar,
Presenting Officer for the respondents.

CORAM : JUSTICE A.H.JOSHI, CHAIRMAN

Reserved on : 07-03-2019

Pronounced on : 08-03-2019

ORDER:

1. Heard Shri A.S.Deshmukh learned Advocate for the applicant and Smt. Priya Bharaswadkar learned Presenting Officer for the respondents. Perused the record.
2. Applicant has approached this Tribunal challenging the transfer order dated 20-02-2019.
3. Applicant's last posting and transfer as evidenced from the impugned order is as follows:

“

अ.क्र.	अधिका-यांचेनाव व पदनाम	बदलीनंतरचेपदस्थापनेचे पद व ठिकाण
१	२	३
१
२	श्रीसुनिल यादव उपजिल्हाधिकारी(सामान्य) लातूर	उपविभागीय अधिकारी, भोकरदन, जि. जालना (श्री गवळी यांच्याबदलीनेरिक्तहोणा-या पदावर)
३

”

(Quoted from paper book page 20 of O.A.)

4. The ground on which the transfer is challenged by the applicant is contained in ground nos.III, IV and V as under;

“III. It needs consideration at the hands of this Hon'ble Tribunal that the action of Resp. No.1 of transferring the applicant out of the post of Dy. Collector (General), Latur, hardly within a period of 1 year and 8 months of his tenure on the said post is patently bad & unsustainable being in contravention of the provisions of Ss.3 (1), 4(4) and 4(5) of the Transfers Act inasmuch as apparently no

‘exceptional circumstances’ or ‘special reasons’ have been recorded nor any ‘special case’ has been made out by the Resp. No.1 by recording reasons in writing therefor and hence the impugned order dtd. 20/02/2019 is rendered bad & untenable.

IV. It needs consideration at the hands of this Hon’ble Tribunal that the impugned order of transfer of the applicant is most illegal & unsustainable as having been issued by Resp. No.1 in violation of the provisions of Ss.4(4) and 4(5) of the Transfers Act of 2005.

V. The impugned order of transfer dtd. 20/02/2019 has been issued by the Resp. No.1 not due to any ‘exceptional circumstances’ or ‘special reasons’ or due to any ‘special case’ which has been made out in writing, but it has clearly been issued on the wrong premise that the applicant fits-in the criteria prescribed by the ECI vide its letters dtd. 16/01/2019, 07/02/2019 and 09/02/2019.”

(Quoted from paper book page 9-10 of O.A.)

5. The question as to whether the exceptional circumstances are in existence and are on record is to be adjudged from the record.
6. The learned P.O., therefore, was directed to produce two documents:-
 - (i) Proposal submitted by the office of Divisional Commissioner, Aurangabad proposing transfer, and
 - (ii) Minutes of Civil Services Board and office note which has led to transfer along with approval.
7. Learned P.O. has produced the said record.

8. This Tribunal has perused copy of proposal dated 01-02-2019 sent by the Divisional Commissioner, Aurangabad to the Government proposing transfer of Sub Divisional Officer and Deputy Collectors taking into consideration ensuing elections and directions of the Election Commission.

9. One entry in the said proposal is relevant, which is entry no.1, which reads as follows:

“

अ. क्र.	अधिका-याचे नांव	कार्यरत पद व जिल्हा	बदली प्रस्तावित करण्याचे कारण	प्रस्तावित बदलीचे पद
9.	श्रीभाऊसाहेब जाधव	उपविभागीय अधिकारी पेटण-फलंब्री जि. औरंगाबाद	स्वजिल्ह्यात कार्यरत असून सद्य पद हे निवडणूकीशी संबंधित असल्याने	उपविभागीय अधिकारी भोकरदन जि. (श्री यांचे प्रस्तावित बदलीने रिक्त पदावर)

”

10. The proposal dated 01-02-2019 referred to in foregoing paragraph consists of in all 37 names. Applicant's name does not find place obviously because applicant has been working on his present post only since 27-06-2017 and his transfer was not due for the reason of tenure nor was proposed on any other administrative ground or complaint etc.

11. From the minutes of the Civil Services Board, it transpires that name of Shri Bhausaheb Jadhav, which was

proposed for transfer at Bhokardan by the Divisional Commissioner, Aurangabad does not find place. On the other hand, applicant's name is included at Sr. No.2. Relevant text of minutes of the meeting of the Civil Services Board read as follows:

“

अ. क्र.	अधिका-या चेनांव पदनाम	स्वि जल् हा	१० वर्षांचासेवातपशील	वि. वौ./ फौ. खट ला	बदलीचेकारण / विभागाचेअभिप्राय	नागरीसेवामंडळाची शिफारस
१	२	३	४	५	६	७
१.	श्री. सुनिल यादवउपजिल्हाधिकारी (सामान्य) लातूर २७.०६.२०१७	बीड	उपविभागीय अधिकारी, उस्मानाबाद १३.१०.२००८ ते ७.६.२०११ उपविभागीय अधिकारी, सेलू जि. परभणी ९.६.२०११ ते १७.४.२०१७ जिल्हापुरवठाअधिकारी, लातूर १९.६.२०१४ ते ८.९.२०१६ निवासीउपजिल्हाधिकारी, उस्मानाबाद २०.१०.२०१६ ते २३.६.२०१७ उपजिल्हाधिकारी (सामान्य) जि. लातूर २७.६.२०१७ तेआजपर्यंत		निवडणूककाम काजाशीसंबंधित त्रिक्त पद भरणेआवश्यक असल्यानेश्री. यादव यांचीपदस्थापना करणेउचितराहील.	उपविभागीय अधिकारी, भोकरदनजि. जालनाया निवडणूककामकाजा शीसंबंधितअसलेल्या श्रीगवळी यांच्याप्रस्तावीतबदली नेरिक्तहोणा-या पदावरपदस्थापना देण्याचीशिफारसआहे

”

12. Reason recorded in column no.7 due to which applicant's transfer is proposed is that “the vacancy of the post of Sub Divisional Officer, Bhokardan relates to election work and it is necessary to fill in the said vacancy”.

13. In the background that posting of Shri Bhausaheb Jadhav was proposed for location at Bhokardan, however, the applicant is chosen.

14. Prerogative of selection of candidate for a post is to be accepted as a matter of privilege of the competent authority and ordinarily, hardly any debate would be available.

15. However, the right of executive of the choice aforesaid cannot be regarded or considered as absolute and unbridled power with no questionability. This power has as its appendage certain riders viz.; firstly, to prefer candidates from list of those who are due for transfer; secondly, if a candidate who is due for transfer cannot be chosen, take recourse to other candidates whose transfers are not proposed but could be found suitable; thirdly, if a candidate whose transfer is not due and is to be transferred, reasons have to be recorded which conform to the phrase "exceptional circumstances" or "special reasons".

16. If such reasons and circumstances referred to in foregoing paragraph are not recorded, transfer would get vitiated, notwithstanding the fact that the State has

absolute but quantified prerogative to choose a candidate for transfer.

17. In the present case and in the present situation, posting a candidate for an election related duty has to be considered as an additional absolute prerogative of the State and this Tribunal would willingly recognize said prerogative, however, the rider that such prerogative will carry a tag or rider with such prerogative, that it is not a unbridled power or an unquestionable authority. This power too has to be read in consonance with the riders laid down by the statutory law, namely, Section 4(4) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ("ROT Act" for short).

18. In the present set of facts, it is evident that the Divisional Commissioner, Aurangabad had proposed transfer of Shri Bhausahab Jadhav as a candidate posted as Sub Divisional Officer, Bhokardan. This Tribunal proceeds on foundation that it would be a matter of prerogative of the State to decline and override the proposal as received from the Divisional Commissioner, Aurangabad. However, this declinment and taking recourse to alternate

name is always depending upon choice of name by recording reasons supporting the choice.

19. Hence, it was obligatory for the State to have recorded special reasons and exceptional circumstances for taking recourse to applicant's name which the record does not disclose.

20. The reason which is found on record in column no.7 of the minutes of the meeting of Civil Services Board which is the only location where reasons are shown, is "to fill in the vacancy for election duty". However, viewing the said reasons on the background of recommendation of Shri Bhausahab Jadhav and failure to record special reasons for selecting the applicant for the said transfer in the background of availability of candidate, the mandatory requirement to record reason for such transfer is conspicuously absent.

21. Learned Advocate Shri Deshmukh has emphatically relied upon the judgment delivered by the Hon'ble Bombay High Court Bench at Aurangabad in case of **Purushottam Govindrao Bhagwat V/s. State of Maharashtra & Ors.** in Writ Petition No.5835/20111 decided on 15-09-2011 reported in [2012 (3) Bom.C.R.442] by placing specific

reliance on the eloquent finding and observation contained in paragraph 13 to urge that recording of special reasons and exceptional circumstances is mandatory, imperative and inexcusable. This Tribunal finds that said reliance has been done rightly and aptly.

22. Moreover, on facts, declining names of candidates for transfer which were available and choosing the applicant who was not due for transfer ipso-facto necessitates recording of special reasons ad exceptional circumstances.

23. In the result O.A. succeeds. O.A. is allowed.

24. Impugned order is quashed to the extent of transfer and posting of the applicant.

25. In the event the applicant is already relieved, he shall be restored to his original position and allowed to join forthwith.

26. In the facts and circumstances of the case parties are directed to bear their own costs.

(A.H.JOSHI)
CHAIRMAN

Place : Aurangabad

Date :08-03-2019.