

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 384 /2016

Dhananjay Dattaraya Jawalikar,
Aged about 55 years, Occ. Service,
R/o Chief Officers Quarter, Achalpur,
District Amravati.

Applicant.

Versus

- 1) State of Maharashtra,
through the Secretary, Department of Town Development,
Hutatma Rajguru Chowk, Madam Cama Road,
Mantralaya, Mumai-32.
- 2) Collector, Amravati
Camp Road, Amravati.
- 3) Pradip Jagtap,
Deputy Commissioner,
Jalgaon.

Respondents

Shri R.V.Shiralkar, Advocate for the applicant.

Shri Dinesh Khaire, Id. Special counsel for respondent no.1.

Shri M.I. Khan, Id. P.O. for respondent no.2.

Shri S.S. & S.W.Ghate, Advocates for respondent no.3

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGEMENT

(Delivered on this 17th day of April,2017)

Heard Shri R.V.Shiralkar, Id. Counsel for the applicant,
Shri Dinesh Khaire, Id. Special counsel for State, Shri M.I. Khan, Id.

P.O. for respondent no.2 and Shri Ganesh Iyer, Id. Counsel holding for Shri S.S. Ghate, Id. Counsel for respondent no.3.

2. The applicant is Administrative Officer and at the time of impugned order of his transfer he was working as Chief Officer, Municipal Council, Achalpur. Vide impugned order dated 15/06/2016 he has been transferred as District Administrative Officer, Chandrapur and in his place respondent no.3 has been transferred from the post of Deputy Commissioner, Municipal Council, Jalgaon. The applicant submits that the order of transfer is mid-term and mid-tenure. He was promoted as a Chief Officer, Class-I selected Grade vide order dated 13/05/2014 and was posted as Deputy Commissioner, Municipal Council, Latur. Thereafter applicant was transferred from the post of Deputy Director, Municipal Council, Latur to the Chief Officer, Municipal Council, Achalpur vide order dated 02/08/2014. He joined his post at Achalpur on 10/09/2014. Thus he has just completed 1 year and 9 months only at Achalpur and vide impugned order has been transferred at Chandrapur. The applicant has prayed that the impugned order of his transfer be quashed and set aside and the respondent no.1 be directed to decide his representations dated 16/6/2016 and 23/6/2016 and he be posted near his native place Latur and further that he shall not be insisted to join at Chandrapur.

2. During pendency of the O.A. the applicant received communication dated 22/6/2016 whereby he was threatened for departmental action for not joining at the place of transfer. The applicant claims that the said communication dated 22/6/2016 be quashed and set aside.

3. The respondent no.1 filed reply-affidavit and justified the transfer stating that it is purely for the administrative exigency and in public interest. The respondents admitted that the transfer of the applicant is a mid-term and mid-tenure. The applicant denied the allegations of misconduct and negligent behaviour by filing rejoinder-affidavit.

4. On the admitted facts on record it is now clear that the respondents are admitting the facts that as the impugned order of transfer is a mid-term as well as mid tenure and therefore it is necessary to see as to whether the said order is in the administrative exigencies and for the administrative convenience as stated by the respondents / state.

5. The Special counsel for respondent no.1 has invited my attention to various citations such as **(2001) 2 SCC 386 Om Kumar & Ors. Vs. Union of India, (2004) 4 SCC 245 Union of India & Ors. Vs. Janardhan Debanath & Ano., (2011) 12 SCC,137 Registrar**

General High Court of Madras Vs. R. Perachi & Ors., (1991) Supp (2) SCC 659 Shilpi Bose (Mrs.) & Ors. Vs. State of Bihar & Ors.,(2013) (2) Mh.L.J., 107 Sankeev Bhagwanrao Kokil Vs. State of Maharashtra & Ors., (2016) (1) Mh.L.J.,45 Santosh Nandalal Dalal Vs. State of Maharashtra & Ors.

6. I have carefully gone through these citations. It is true that no Government servant or employee of the public undertaking has any legal right to be posted even at any one particular place or place of his choice and the transfer is an incident of service. However the Government is expected to issue the transfer orders in view of the provisions of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short 'Transfer Act,2005').

7. The learned counsel for the applicant has placed reliance on the Judgment reported in **[2011 (5) Mh.L.J.,158] Pradeepkumar S/o Kothiram Deshbhratar Vs. State of Maharashtra & Ors.** in which it has been held that the reasons must be recorded for premature transfer and the transfer cannot be only the wish or whim of any particular individual.

8. Since the respondents have admitted the fact that the transfer of the applicant was for administrative convenience, it is

necessary to see as to whether the said administrative convenience has been made out.

9. As per Section 4 (4) and 4 (5) of the Transfer Act,2005 there are specific provisions that the transfer can be effected at any time provided the circumstances prevail. Section 4 (4) and 4 (5) of the Transfer Act,2005 reads as under :-

“Tenure of transfer :-

(1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.

(2) The competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year.

(3) Transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalised by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be:

Provided that, any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.

(4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May :

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely :-

(i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;

(ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority;

(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 the immediately superior) Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post.”

10. In view of the aforesaid provisions, it will be necessary to see as to whether the impugned order of transfer is in the interest of administrative convenience or it falls within the ambit of aforesaid legal provision.

11. The respondent no.1 in its affidavit-in-reply has stated that the applicant was habit to remained absent from duties that too without permission from competent authority. He has avoided the duties casts upon him. The office colleagues and the citizens of Achalpur City have made complaints against the applicant in respect of non performance of his duties. It is further stated that the applicant was not performing his duties properly and therefore the District Collector vide communication dated 24/7/2015 directed the Sub-Divisional Officer (SDO), Achalpur to inquire into the matter, and particularly in respect of absenteeism and leave without sanction taken by the applicant. Accordingly, the SDO, Achalpur submitted his

report and found that the applicant used to remain absent and therefore the development of the City work was hampered.

12. The respondent no.1 has further stated that in the reply-affidavit that the office of the Chief Officer of Municipal Council is purely a public office where the Chief Officer has to attend the grievances of the citizens and he has to be utmost alert and equally persuasive while following up the complaints of the citizens. The stipulated works are to be completed within dead lines limit. It is also the duties of Chief Officer to ensure that the funds allotted to the Council are properly utilised.

13. It is further stated in the reply-affidavit that the Government of Maharashtra has decided to implement Atal Mission for Rejuvenation and Urban Transformation (AMRUT) with certain objectives but the applicant never attended the important review meetings and therefore it was necessary to appoint another competent Chief Officer in place of applicant. It is further stated that the approval of the Hon'ble Chief Minister has been taken for transfer of the applicant.

14. The respondent no.1 has placed on record the letter correspondence from which it seems that the applicant was in habit to remain absent without obtaining permission and many times he used

to remain absent for eight days or more and therefore the administrative work of the Municipal Council was hampered. Though the applicant has filed rejoinder and denied this fact, there seems to be documentary evidence in this regard. It is not that the applicant has been transferred as the punishment, but it is because the administrative work was being hampered due to his unauthorised absence.

15. The respondents have placed on record the minutes of the meeting in which the applicant's transfer was recommended. Perusal of the said minutes show that the main charge against the applicant was that he used to remain absent without intimation and he was negligent in performing duties as a public servant. The competent authority therefore recommended his transfer on administrative grounds since the administrative work has been hampered because of his absence. The recommendations of the competent authority along with the various documents were brought to the notice of this competent authority as well as the Hon'ble Chief Minister and the Hon'ble Chief Minister has accepted the recommendations of the State Civil Board for applicant's transfer on administrative ground. There is no reason to take doubt about the intention of the competent authority to transfer the applicant in the administrative exigencies and in order to give better administration at Achalpur. The Tribunal is not

expected to go into the details of the administrative exigencies. There is nothing on record to show that the respondent / authority has any illwill against the applicant or had shown favouritism in transferring respondent no.3 in place of applicant. The provisions of Section 4 (4) & 4 (5) of the Transfers Act,2005 have been very much applied by the respondent no.1 in transferring the applicant and therefore I do not find any merits in the claim of the applicant.

16. The applicant has claimed that since he did not join the place of his transfer i.e. Chandrapur, the respondent no.1 has served a notice dated 22/06/2016 on him. I absolutely find no reason to quash that order for the simple reason that the applicant's transfer was not cancelled and being an Administrative Officer of Class-I Grade, he was expected to join the place of transfer immediately. If he has not done so, it must be said that the he has taken that step at his own risk. The Competent Authority is always at liberty to take departmental action against the applicant for not joining the post at Chandrapur.

17. The learned counsel for the applicant has invited my attention to the representations filed by him on 16/06/2016 and 23/06/2016. So far as the representation dated 23/06/2016 is concerned, I have already stated that the respondent / authority is at liberty to take action against the applicant for not joining his place of posting and therefore no direction can be given for deciding such

representation which was filed during the pendency of the O.A. So far as the representation dated 16/06/2016 (A-6,P-25) is concerned, it is to be noted that the applicant has prayed for transfer in his native district on the grounds that he has completed 55 years of age and only three years service remained and also on his personal reasons. The respondent no.1 may take decision on that representation as per the rules and regulations on its own merit without being influenced by any of the observations made in this order. Hence, the following order :-

ORDER

- (i) The O.A. stands dismissed with no order as to costs.
- (ii) The respondent no.1 shall however take decision on the representation filed by applicant (A-6,P-25) dated 16/6/2016 on its own merit without being influenced by any observations in this order. The decision on the representation be taken within two months and shall be communicated to the applicant. No order as to costs.

(J.D. Kulkarni)
Vice-Chairman (J).