

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 633/2023****WITH C.A.NO.595/2023(S.B.)**

Shri Vijay S/o Dattatraya Tekale,  
Aged about 55 years, Occ.: Service  
R/o.Lahane Layout, Samarth Nagar,  
Buldhana, Tq. &Dist. :Buldhana.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of Forest & Revenue,  
Mantralaya, Mumbai.
- 2) The Divisional Commissioner,  
Amravati Division, Amravati.
- 3) The Collector, Buldhana,  
Tq. & Dist. Buldhana.
- 4) M.S. Joshi, aged Major,  
Occ.: Service, R/o C/o Revenue Circle,  
Amdapur, Tah. Chikhali, Dist.Buldhana.
- 5) Pritesh s/o Suresh Sancheti,  
Age- 40 years, Occu.: Agriculturist,  
R/o Main Bazar Line,  
Near Session Court- Buldhana.

**Respondents**

Shri G.G.Bade, Ld. Counsel for the applicant.  
Shri S.A.Sainis, Ld. P.O. for the respondents 1 to 3.  
Shri R.V.Shiralkar, Id. counsel for the respondent no.4.  
None for the respondent no.5.

---

**Coram:-Hon'ble Shri M.A.Lovekar, Member (J).**

**Dated: - 13<sup>th</sup> December, 2023.**

---

**JUDGMENT**

**Judgment is reserved on 29<sup>th</sup> November, 2023.**

**Judgment is pronounced on 13<sup>th</sup> December, 2023.**

Heard Shri G.G.Bade, learned counsel for the applicant, Shri S.A.Sainis, learned P.O. for the respondents 1 to 3 and Shri R.V.Shiralkar, Id. counsel for the respondent no.4. None for the respondent no.5.

2. Case of the applicant is as follows. By order dated 27.07.2018 (Annexure A-2) the applicant was posted at Buldhana as Circle Officer. One Sonu Raut made a complaint against the applicant which led to initiation of departmental enquiry against him which is still pending. However, subsequently, Sonu Raut, by letter dated 24.09.2022 (Annexure A-3) withdrew the complaint against the applicant. Based on this complaint, though it was subsequently withdrawn, respondent no.3, by letter dated 16.12.2022, sought permission from respondent no.2 to transfer the applicant out of the Revenue Circle. It was declined by

respondent no.2 by communication dated 02.03.2023 (Annexure A-4).

This communication *inter alia* stated -

त्यानुसार मा. विभागीय आयुक्त यांनी उक्त प्रकरणी चर्चेत नस्तीमध्ये खालीलप्रमाणे निर्देश दिलेले आहे.

"प्रस्तापित अहवालाचे अवलोकन केले असता, मंडळ अधिकारी यांची विभागीय चौकशीची प्रक्रिया सुरु करण्यात आलेली आहे. शिस्तभंग चौकशीच्या निर्णयानंतर आवश्यक कार्यवाही करण्यात येणार आहे. त्यासाठी बदली करण्याची आवश्यकता दिसून येत नाही. नियमित बदल्यांच्या वेळी जिल्हाधिकारी यांनी गुणवत्तेनुसार निर्णय घ्यावा."

The applicant had served at Buldhana on this post for less than 6 years and was thus not due for transfer. Therefore, in the lists dated 23.05.2023 and 15.06.2023 (Annexure A-5) of employees who were due for transfer during the ensuing annual general transfers, name of the applicant did not feature. Yet, by the impugned order dated 21.06.2023 (Annexure A-1) the applicant was transferred from Buldhana to Motala. By order of the same date (Annexure A-1-a) respondent no.4 was transferred from Amdapur, Taluka Chikhali to Buldhana on the post previously held by the applicant. The impugned order was contrary to guidelines contained in G.R. dated 09.04.2018 (Annexure A-6). The impugned order was malafide since it was passed to accommodate respondent no.4. Hence, this O.A..

3. Stand of respondent no.3 is as follows. The impugned order was passed for administrative reasons. Various complaints were received against the applicant (Annexure R-3-1). A committee formed for the purpose conducted enquiry, found substance in the allegations against the applicant and accordingly submitted report dated 17.09.2022 (Annexure R-3-2). On 19.06.2023 Nagari Seva Mandal, after a detailed discussion and consideration of entire material against the applicant in the light of provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter "Transfer Act" for short) took the decision to transfer the applicant as detailed in Minutes at P.263.

4. Grievance of respondent no.4 is that he was relieved on 27.06.2023, one more joined on the post at Amdapur and because of interim order passed by this Tribunal, he, respondent no.4, is kept in a hanging position.

5. It is a matter of record that by order dated 13.10.2023 order dated 21.06.2023 transferring respondent no.4 from Amdapur, Taluka Chikhali to Buldhana was modified by respondent no.3, respondent no.4 was transferred from Buldhana to Revenue Circle Motala, and by order dated 30.10.2023 (Annexure A-10) order dated 13.10.2023 was cancelled. This cancellation was based on

representation dated 13.10.2023 made by respondent no.4. In this representation respondent no.4 invited attention of respondent no.3 to the fact that instant O.A. was pending before the Tribunal and in the O.A. interim order passed in respect of impugned transfer of the applicant was subsisting.

6. The applicant does not dispute that some complaints were made against him and departmental enquiry is pending against him. It is his submission that pendency of the same could not have automatically led to passing of the impugned order since he was not due for transfer, and he could not have been transferred without following provisions of other Sub-Section 4 or Sub-Section 5 of Section 4 of the Transfer Act.

7. Contesting respondents, on the other hand, have contended that there were serious allegations against the applicant, departmental enquiry was pending against him and to ensure smooth progress of enquiry it had become necessary to transfer him.

8. Learned P.O., while supporting the impugned order of transfer of the applicant, relied on contents of enquiry report dated 19.09.2022 (at PP.328 to 331). These details pertain to mutation entries taken by the applicant, subsequent cancellation thereof and having again restored these entries on his own.

9. It is the contention of respondent no.3 that the impugned order was passed under Section 6 of the Transfer Act. The impugned order specifically refers to Section 6 of the Transfer Act. This Section only prescribes who shall be the competent authority to pass order of transfer. It does not lay down the procedure for effecting transfer of a person who is not due for transfer. Minutes of meeting dated 19.06.2023 on the basis of which the impugned order was passed simply state that transfer of the applicant was recommended on administrative ground. The impugned order states the something. Thus, neither in Minutes nor in the impugned order there is any reference to the transfer having been necessitated by complaints/departmental enquiry.

10. It is not in dispute that the applicant was not due for transfer and hence his name did not feature in the lists of employees who were due for transfer. Relevant part of the Minutes reads as under-

सदर बैठकीत जिल्हयात एकाच पदावर दिनांक 31 मे, 2023 पर्यंत सतत 6 वर्षांची सेवा पूर्ण झालेली आहे अशा 20 व प्रशासकिय कारणास्तव बदलीबाबत 01 असे एकूण 21 मंडळ अधिकारी संवर्गातील कर्मचाऱ्याचे संबंधित तहसिलदार/प्रभारी अधिकारी यांचेकडून प्राप्त झालेले प्रस्ताव तसेच उपजिल्हाधिकारी भूसंपादन (इवद) जिल्हाधिकारी कार्यालय बुलढाणा यांचेकडून श्री एस. डी. जोशी मंडळ अधिकारी इ.वद. भूसंपादन विभाग जि. का. बुलढाणा यांची भूसंपादन विभाग इ.वद. येथे

बदलीस मुदत वाढ मिळणेबाबत प्रस्ताव सादर केला आहे असे एकूण 21 प्रस्ताव नागरी सेवा मंडळासमोर ठेवण्यात येवून 18 व प्रशासकिय कारणास्तव 01 (श्री व्हि.डी. टेकाळे मं.अ.), असे 19 मंडळ अधिकारी यांचे बदलीबाबतच्या प्रस्तावाची शासन निर्णय क्र. एसआरव्ही-2017/प्र.क्र.415/कार्यासन-12, दिनांक 9 एप्रिल, 2018 मधील तरतुदीनुसार समुपदेशनाव्दारे प्रशासकिय बदली करण्यासव 02 प्रस्तावांना दिनांक 31 जूलै 2023 रोजी सेवानिवृत्त होण्यास पात्र असल्याने/प्रशासकिय कारणास्तव मुदतवाढ देणेबाबत समितीची शिफारस करून विहित नमुन्यात माहिती प्राधिकारी यांचेकडे सादर करण्याबाबत समितीने निर्णय घेतला.

11. Sub-Sections(4) and (5) of Section 4 of the Transfer Act provide for transfer under exceptional circumstances or for special reasons or in special cases. These provisions read as under-

***(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.**

12. The applicant has relied on the Judgment of this Bench dated 25.03.2022 in O.A.No.20/2022 wherein it is observed –

10. As per the G.R. dated 11/2/2015, the Transferring Authority cannot transfer the employee only on the basis of complaints. While transferring the said employee, specific reasons are to be recorded. Sub para-8 of the G.R. reads as under –

८. एखाद्या प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचार्याच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधीत अधिकारी/कर्मचार्याची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधीत अधिकारी/कर्मचार्यांच्या तक्रारी संबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारी मधील गांभीर्य विचारात घेऊन, संबंधीत अधिकारी/कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे याबाबत बदली प्राधिकार्याने ठोस निर्णय घ्यावा. संबंधीत अधिकारी/कर्मचार्याच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधीत अधिकारी/कर्मचार्याला त्याच पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याबाबत बदली प्राधिकार्याने निर्णय घ्यावा. मात्र संबंधीत अधिकारी/कर्मचार्याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिकार्याचे मत झाल्यास त्याबाबतची कारणामिमासा नमूद करून बदली प्राधिकारी संबंधीत अधिकारी/कर्मचार्याची बदली त्याच्या लगतच्या



वरिष्ठ प्राधिकाऱ्याकडे प्रस्तावित करु शकतो. लगतच्या वरिष्ठ प्राधिकाऱ्याकडे असा प्रस्ताव प्राप्त झाल्यास बदली प्राधिकाऱ्याने नमूद केलेली कारणे योग्य आहेत किवा कसे याची छाननी करुन स्वतःचे मत स्पष्ट करुन बदली प्राधिकाऱ्याच्या प्रस्तावाला मान्यता द्यावी किंवा बदली प्राधिकाऱ्याचा प्रस्ताव फेटाळून लावण्यात यावा. ज्या प्रकरणात बदली प्राधिकाऱ्याच्या प्रस्तावानुसार गैरवर्तणुकीच्या अनुषंगाने शासकीय अधिकारी/कर्मचारी यांची बदली करण्यात येते अशा प्रकरणात संबंधीत अधिकारी/कर्मचारी यांची बदली केल्यानंतर त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी.

13. Applicant has further relied on **Ramakant Baburao Kendre Vs. the State of Maharashtra & Another 2012 (1) Mh.L.J.] 951.** In this case the Hon'ble Bombay High Court has held –

*As already held by us in the aforesaid matters (Writ Petition No. 5198/2011 and Writ Petition No. 5835/2011) that the Government servant cannot normally be transferred prior to completion of his ordinary tenure. It has been further held that such transfers are required to be made only once in a year i.e. in the month of April or May. It is further held that if such a transfer is required to be made in another part of year except in April or May, it has to be done only on account of the eventuality as stipulated in sub-section (4) of section 4 of the Maharashtra Transfer Act. We have further held that the clause (i) to proviso of sub-section (4), which provides for transfer at any time of the year on the ground of eventualities mentioned therein, will have to be read in a manner that the transfer on the grounds mentioned in clause (i) of proviso to sub-section (4) would be permissible at any time of the year and not necessarily in April or May when a Government servant has completed his tenure of posting. If it is not read in that manner, the*

*very purpose of the protection, which is granted in sub-section (1) of section 4 would become redundant and nugatory. We have further held that when this is being done, the reasons and the circumstances will have to be recorded in writing and the same cannot be done without prior approval of the higher Authority. It has been further held that by taking recourse to sub-section (5), a Government servant can be transferred even prior to completion of his tenure and even at any time of the year and not necessarily in the month of April or May, in special cases. However, while doing so, the competent Authority will be required to record the reasons in writing and would also be required to obtain prior approval of the immediately superior Transferring Authority.*

14. In **Nagorao Shivaji Chavan Vs. Dr. Sunil Purushottam Bhamre and Others (Judgment of the Hon'ble Bombay High Court dated 05.09.2018 in Writ Petition No.1554/2018)** it is held-

*7. A bare glance of Section 4 (4) & (5) of the Transfer Act, 2005 makes it clear that unless special reasons are recorded or unless exceptional circumstances are made out and unless after recording the reasons, prior approval of next Higher Authority is obtained, the Government servant cannot be transferred before completion of his tenure of post. In the case at hand, respondent No.1 was transferred to Jalgaon before completion of his tenure of three years. Though the learned Counsel for the petitioner submits that there were complaints against respondent No.1, it cannot be ignored that mere receipts of some complaints against respondent No.1, exceptional circumstances or special reasons for transfer cannot be made out, as mandated under sub-sections 4 and 5 of Section 4 of the Transfer Act, 2005. Thus, obviously the transfer of respondent No.1 was the absolute breach of mandates imposed under Section 4 (4) & (5) of*

*the Transfer Act, 2005.\ Thus, the impugned order passed by the Tribunal is just, proper and needs no interference.*

15. Respondent no.4, on the other hand, has relied on **V.B.Gadekar Vs. Maharashtra Housing and Area Development Authority and another 2007 SCC OnLine Bom 756**. In this case it is held-

*6. No doubt, Chapter II relates to tenures of posting and transfer of officers and powers vested in the authority. Sub-section (1) of section 3 describes that Group A, B and C Officers would normally have tenure of three years. Sub-section (1) of section 4 says that no government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3 of the Act. Transfers would ordinarily be made in April or May. Proviso (II) to sub-section (4) of section 4 contemplates that the transfer may be made at any time where the competent authority is satisfied that 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. The transfer could be made in exception to the Rules. According to the petitioner, these provisions are mandatory and leave no option with the authority to exercise any discretion. In other words, once an Officer is posted at a place, he has to continue at that place for a period of three years whatever be the cause. The exceptional circumstances or reasons is an extraordinary feature and it is for the respondents to establish compliance to this provision. It is a settled principle of law that transfer is an essential incidence of service. These provisions are regulatory and not prohibitory in their application. Provisions of section 4 of the Act clearly contemplates vesting of discretion in the authority to make an exception to the normal tenure of three years of posting. Every provision should be construed so as to achieve the object of the Act*

***and certainly the larger public interest. Government is the biggest employer and to regulate conditions of service, such provisions are made either by virtue of guidelines or by Rules. Once a discretion is vested in the authority, it has to be exercised uniformly and fairly. There is nothing on record before us which could indicate that the discretion has been exercised for mala fide reasons or is arbitrary.***

16. The Judgments in the case of Ramakant and Nagorao (Supra) reiterate the need to record reasons. This is what the G.R. dated 11.02.2015 referred to above also stresses.

17. In the instant case no reasons were recorded in support of the impugned order as mandated by Sub-Section (4) / Sub-Section (5) of Section 4 of the Transfer Act, 2005. Hence, the impugned order of transfer of the applicant cannot be sustained. It is accordingly quashed and set aside. The O.A. is allowed in these terms and C.A. is disposed of with order as to costs.

(M.A.Lovekar)  
Member (J)

Dated – 13/12/2023  
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Member (J).  
Judgment signed on : 13/12/2023.  
and pronounced on : 14/12/2023.