

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 890/2022(S.B.)

1. Parag Ranchandra Wankhede,
Aged about 46 years,
Presently posted as Chief Officer,
Municipal Council, Daryapur,
Dist. – Amravati.

Applicant.

Versus

1. The State of Maharashtra,
through its Secretary,
Urban Development Department,
Mumbai –32.
2. Shri Nandu Dhondu Paralkar,
Chief Officer, Nagar Panchayat Kalamb,
Dist. – Yavatmal.

Respondents

Shri N.R.Saboo, Ld. counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondent no.1.
Shri N.S.Warulkar, Ld. Counsel for the respondent no.2.

Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 14th December 2022.

JUDGMENT

Heard Shri N.R.Saboo, learned counsel for the applicant, Shri S.A.Sainis, learned P.O. for the respondent no.1 and Shri N.S.Warulkar, learned counsel for the respondent no.2.

2. The case of the applicant in short is as under-
The applicant was / is working on the post of Chief Officer, Municipal Council, Daryapur, District Amravati. He was transferred from Chandurbazar, Municipal Council to Municipal Council Daryapur as per transfer order dated 08.09.2021.
3. The applicant has not completed 1 year tenure. The respondent no.2 is politically influential person and on the recommendation of M.L.A. Shri Prakash Bharsakade the applicant is transferred from Daryapur to Municipal Council Lonar, Dist. Buldhana by the impugned order dated 05.09.2022.
4. It is the case of the applicant that respondents / authority have not followed the due procedure of **sub-section (4)and (5) of Section 4 of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005.** Therefore, he approached to this Tribunal to quash and set aside the impugned transferred order dated 05.09.2022.
5. The respondents have filed their respective replies. As per the submission of respondent no.1 there were complaints against the

applicant and therefore he is transferred after the recommendation by the Civil Services Board. There is no illegality in the impugned transfer order. Therefore, the O.A. is liable to be dismissed.

6. The respondent no.2 has filed reply and counter affidavit. The respondent no.2 has submitted that the applicant has already joined at Daryapur on 06.09.2022 before passing the status-quo order by this Tribunal. His transfer order is legal because there were many complaints against the applicant. Hence, the O.A. is liable to be dismissed.
7. Heard Shri N.R.Saboo, learned counsel for the applicant. He has pointed out the complaint made by M.L.A. Shri Prakash Bharsakade dated 28.07.2022 addressed to the Deputy Chief Minister of the State of Maharashtra. In the said letter, he has recommended the transfer of applicant and also recommended the posting of respondent no.2 at the place of applicant. The learned counsel for the applicant has pointed out copy of report of the Civil Services Board. As per his submission there is no any proposal made by the Transferring Authority for transfer of the applicant as required under Sections 4(4) and 4(5) of the Transfer Act, 2005. Therefore, impugned transfer order is illegal.

8. The learned counsel for the applicant has submitted that the applicant came to know about his transfer but he did not know about the posting, therefore, he immediately approached to this Tribunal on 06.09.2022. On 06.09.2022 this Tribunal has granted order of status-quo. Thereafter, the respondent no.1 issued the reliving order on 06.09.2022. Thereafter, the applicant has received the posting order. Thereafter, he has amended the O.A. At last, he has submitted that the transfer is malafied because of the complaint / proposal made by M.L.A. Shri Prakash Bharsakade. There is no any reason mentioned in the report of the Civil Services Board except the complaint of M.L.A. Shri Prakash Bharsakade. Hence, the impugned transfer order is liable to be quashed and set aside.
9. The learned counsel for the applicant has pointed out the Judgment of this Tribunal, Principal Bench at Mumbai in O.A.No.530/2020. He has pointed out the Judgment of the Hon'ble Bombay High Court in the case of **Ramakant Baburao Kendre Vs. The State of Maharashtra and another 2012(1) Mh.L.J.] 951.** The learned counsel for the applicant has pointed out the Judgment in the case of **Pradeepkumar Kothiram Deshbhratar Vs. the State of Maharashtra and Others** and the Judgment in

the case of **S.B.Bhagwat Vs. the State of Maharashtra and Others 2012(3) Mh.L.J.] 197**. At last, submitted that the impugned transfer order is malafied. It is not a transfer by the Government, it is only on the recommendation of M.L.A. Shri Prakash Bharsakade. At last, submitted that there was no any complaint against the applicant at the time of transfer. Hence, the impugned transfer order be quashed and set aside.

10. Heard Advocate Shri N.S.Warulkar, learned counsel for the respondent no.2. He has submitted that the respondent no.2 has complied the order of transfer. He has joined at Daryapur on 06.09.2022 and therefore, the respondent no.2 was not at fault. Now the children of the respondent no.2 are taking education at Daryapur. Impugned order cannot be cancelled, at the most can be considered after summer vacation.
11. The learned counsel for the respondent no.2 has submitted that there were various complaints against the applicant and therefore, the applicant is transferred. He has submitted that the respondent no.1 has proposed the inquiry against the applicant. He has pointed out the Judgment of the Hon'ble Madras High Court in the case of **G. Subramanian Vs. The Managing Director, Tamilnadu Civil Supplies Corporation** and another Judgment of Hon'ble

Bombay High Court in the case of *Shahnawaz Bukhari Vs. Haj Committee of India and Others* and the Judgment in the case of *Mohd. Masood Ahmad Vs. State of U.P. and Others*.

12. During the course of argument, the learned P.O. Shri V.A.Kulkarni has filed communication dated 13.12.2022. It is marked Exhibit-X for identification. As per this communication inquiry is proposed against the applicant.
13. So far as the contention of the applicant is concerned, his transfer is premature. He has not completed normal tenure at Daryapur. There is no dispute that the applicant was transferred from Chandurbazar to Daryapur, Municipal Council as per transfer order dated 08.09.2021. Within 1 year the applicant is transferred from Daryapur to Lonar, District Buldhana as per order dated 05.09.2022. Therefore, it is a premature transfer. Now the question arises as to whether the respondent no.1 has complied the provisions of the Sections 4(4) and 4(5) of the Transfer Act, 2005. It appears from the documents filed on record that M.L.A. Shri Prakash Bharsakade requested Deputy Chief Minister of Maharashtra by letter dated 28.07.2022 to transfer the applicant from Daryapur and post the respondent no.2 from Kalamb to Daryapur. This letter is filed on record. As per this

letter, the Government has issued the transfer order of applicant. It appears that the impugned transfer order is not issued by respondent no.1 but it is a malafied transfer order as per recommendation made by M.L.A. Shri Prakash Bharsakade, because the respondent no.2 is posted in place of applicant. As per the recommendation made by M.L.A. Shri Prakash Bharsakade why the respondent no.2 is chosen to transfer in place of applicant is a question to be answered by respondent no.1. It is clear that transfer is as per the recommendation / letter dated 28.07.2022 of M.L.A. Shri Prakash Bharsakade.

14. As per the submission of learned P.O. the Transferring Authority i.e. the Government has taken into consideration the report of the Civil Services Board. The report of the Civil Services Board is filed on record. As per the report of the Civil Services Board, there is nothing to show that there was any other reason to transfer applicant from Daryapur. It is mentioned in the report that applicant has not completed normal tenure for transfer, but he is transferred because of the complaint of M.L.A. Shri Prakash Bharsakade and the respondent no.2 is transferred as Chief Officer to Daryapur, Municipal Council. It appears that the Civil Services Board has recommended the transfer only on the basis of the

letter / complaint of M.L.A. Shri Prakash Bharsakade. There is nothing in the report of the Civil Services Board that there were any other complaints against the applicant.

15. During the course of arguments the learned P.O. has pointed out the communication dated 13.12.2022 stating that there are complaints of misconduct against the applicant and Departmental Inquiry is proposed. It is pertinent to note that at time of impugned transfer order and the recommendation of the Civil Services Board, nothing was placed before the Civil Services Board in respect of any other complaint against the applicant. Now it appears that it is politically influenced transfer of applicant. Respondent no.2 appears to be a favourite person of M.L.A. Shri Prakash Bharsakade. Therefore, M.L.A. Shri Prakash Bharsakade recommended the transfer of respondent no.2 in place of applicant. There are many Chief Officers in the Maharashtra, the respondent no.1 could have chosen any Officer to post in place of applicant no.1, but impugned transfer order is in the line of the complaint / letter of M.L.A. The impugned transfer order is same as like as per the letter dated 28.07.2022 written by M.L.A. In the letter, M.L.A. Shri Prakash Bharsakade has recommended the transfer of applicant from Daryapur and he has recommended the

posting of respondent no.2 from Kalamb to Daryapur and on the same day the transfer of applicant is made and the respondent no.2 is posted in place of the applicant. Therefore, it appears that it is a malafied transfer, it is made only because of the letter of M.L.A. Shri Prakash Bharsakade dated 28.07.2022. Nothing is on record to show that when the applicant was transferred, there was any complaint against him.

16. The Civil Services Board also not recorded any reason for transfer on the basis of complaints against the applicant. Only reason is mentioned in the report of the Civil Services Board that because of the complaint of M.L.A. Shri Prakash Bharsakade, the applicant is transferred and reason for posting of respondent no.2 is posted as per the recommendation of M.L.A. Shri Prakash Bharsakade.
17. The learned P.O. has submitted that now the departmental inquiry is proposed to be initiated. The respondent no.2 is at liberty to initiate the departmental inquiry.
18. The learned P.O. has pointed out the Judgment of the Hon'ble Supreme Court in the case of **Mohd. Masood Ahmad Vs. State of U.P. and Others.** The Hon'ble Supreme Court has held that the transfer on the complaint of M.L.A. is legal and therefore, cannot be set aside. In the present matter the cited decision is not

applicable because the provisions are given for transfer under the Transfer Act, 2005. In the cited decision there was no question of interpretation of the Provisions of Transfer Act, 2005. Therefore, the cited decision is not applicable. Moreover the fact in the present matter is different because the M.L.A. wanted respondent no.2 to be posted at Daryapur and therefore, he wrote a letter to the Deputy Chief Minister of Maharashtra for transfer of applicant and for posting of respondent no.2. It appears that M.L.A. Shri Prakash Bharsakade is interested for posting of respondent no.2. If he was not interested, then there was no question of recommendation of M.L.A. for posting of respondent no.2 in place of the applicant. Therefore, prima facie transfer order is malafied it was made because of the recommendation / letter of M.L.A. Shri Prakash Bharsakade.

19. The learned Advocate Shri N.S.Warulkar, for learned counsel for the respondent no.2 has pointed out the Judgment in the cases of **Shahnawaz Bukhari Vs. Haj Committee of India and Others** and **G. Subramanian Vs. The Managing Director, Tamilnadu Civil Supplies Corporation**. In the cited Judgments the facts are different. In the present matter it appears that the provisions of Sections 4(4) and 4(5) of the Transfer Act, 2005 are not complied

by the Government. The Transfer Act is enacted by the Government of Maharashtra for the specific purpose.

20. The intention of the Act is to be taken into consideration. The Act was passed so as to prevent the harassment of the employees from malafied transfer. In the present matter it appears that the transfer of applicant is malafied because it is made as per the letter dated 28.07.2022. At the time of transfer nothing is mentioned in the transfer order or in the report of the Civil Services Board to show that there were any complaints against the applicant. Later on the respondents / authority found that there are complaints and now the departmental inquiry is proposed. It appears that the respondent no.1 wanted to act as per instructions of M.L.A. Shri Prakash Bharsakade because at the time of transfer itself respondent no.1 would have placed the complaints before the Civil Services Board for the transfer of the applicant, but no any complaint was placed before the Civil Services Board and now the respondent no.1 found that there are complaints and departmental inquiry is proposed.

21. Shri N.R.Saboo, learned counsel for the applicant has pointed out decision of this Tribunal, Principal Bench at Mumbai in O.A.No.530/2020. He has pointed out para nos. 15 and 16. Para

nos.15 and 16 are in respect of G.R. dated 11.02.2015. It is observed that the preliminary inquiry was required to be made to find out the substance. Transfer should not be made only on the basis of complaint. It is further provided that where the substance is found in the complaint a conscious decision is required to be taken by the Competent Authority whether to transfer such Government servant and to initiate departmental inquiry. The Government of Maharashtra itself has issued the G.R. dated 11.02.2015 and guidelines are given for transfer of the employees. If there was any complaint of M.L.A., then procedure is laid down in the G.R.11.02.2015 should have been followed, but no such any procedure was followed by respondent no.1. Hence, the impugned transfer order itself is in contravention of G.R. dated 11.02.2015.

22. The learned Advocate has pointed out the decision of Bombay High Court in the case of **Ramakant Baburao Kendre Vs. The State of Maharashtra and another 2012(1) Mh.L.J.] 951**. The Hon'ble Bombay High Court has held "transfer order posting the respondent no.2 on a post which was already occupied by the petitioner, if the petitioner was to be transferred from his post at Parbhani prior to completion of his tenure of three years, it could

have been done only for exceptional and special reasons which are required to be recorded in writing. Merely saying that transfer and second re-posting of respondent was necessary in public interest and on account of administrative convenience, not proper.” In the impugned transfer order it is only mentioned that transfer is made on the administrative ground, but nothing is in the report of the Civil Services Board or in the impugned transfer order to show that there is any special reason for transfer of the applicant from Daryapur. It is only mentioned in the report of the Civil Services Board that as per the complaint of M.L.A., the applicant is transferred. The Hon’ble High Court in the case of Pradipkumar Deshbhratar has held that reason must be recorded for premature transfer. In the present case the transfer of applicant is a premature, no any special reason is mentioned except the reason of compliant /recommendation of M.L.A.

23. From the perusal of the report of the Civil Services Board and the impugned transfer order, it appears that the transfer is made only on the basis of the letter dated 28.07.2022 by M.L.A.. Nothing is on the record to show that at the time of transfer there was any departmental inquiry. Nothing is on the record to show that there were any complaints which were sought to be investigated

by the Superior Authority of the respondent against the applicant. Prima facie it appears that the impugned transfer order dated 05.09.2022 is issued with malafied intention. It was issued on 05.09.2022 and in the same transfer order, it is mentioned that the applicant is relieved. It is pertinent to note that there is procedure to relieve the Government employee from one post to other, the C.T.C. is to be signed by the employee before reliving from the post. Expecting that the applicant had already signed on C.T.C.. The impugned transfer order is passed on 05.09.2022. As per the submission of the applicant, the applicant had not signed any C.T.C. Moreover the Relieving Authority is the Collector. The applicant was not relived by the Collector, Amravati. When the applicant came to know that he is transferred, but the posting was not given, he has immediately approached to this Tribunal on 06.09.2022. In the morning this Tribunal has passed order directing the respondents / authority to maintain status-quo. As per the submission of respondent no.1, the respondent no.2 has already joined on 06.09.2022. Now the question arises whether he joined at Daryapur before passing the status-quo order or after passing the order. Now the status-quo order is not to be considered because this Tribunal has already recorded its finding

that impugned transfer order is without any compliance of Sections 4(4) and 4(5) of the Transfer Act, 2005 and therefore, the impugned transfer order is liable to be quashed and set aside. Hence, the following order.

ORDER

- 1) The O.A. is allowed.
- 2) The impugned transfer order dated 05.09.2022 issued by respondent no.1 is hereby quashed and set aside.
- 3) No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 14/12/2022.

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 Vice Chairman.
Judgment signed on : 14/12/2022.
Uploaded on : 19/12/2022.