

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 07/2022 (S.B.)**

Jumma Kasam Pyarewale,
Aged about 42 years, Occupation:-Service (Chief Officer),
R/o Lokvihar Orange City Park, Kamptee Road,
Nagpur, Tah. and District - Nagpur (M.S.)

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary
Urban Development Department,
Mantralaya, Mumbai- 32.
- 2) The Commissioner and Director,
Directorate of Municipal Administration,
Third Floor, GTS Building,
Sir Pochkhanwala Road,
Worli, Mumbai.
- 3) The Collector Nagpur,
Tah and District Nagpur.
- 4) Shri Vijay Deshmukh,
Aged about adult,
Occupation:Service,
O/o Commissioner, Nagpur Municipal Corporation,
Nagpur.
- 5) The Administrator of the Municipal Council,
Wadi, Dist. Nagpur.

Respondents

Shri S.P.Palshikar, Id. Advocate for the applicant.

Shri A.M.Khadatkar, Id. P.O. for the Respondent nos. 1 to 3.

Shri G.K.Bhusari, the Id. counsel for the Respondent no. 4.

Shri D.M.Kale, the Id. counsel for the Respondent no. 5.

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 08/2022 (S.B.)**

Rajendra Pandurang Chikalkhunde,
Aged about 38 years, Occupation:-Service,
R/o presently posted as Chief Officer,
Municipal Council,
Butibori, Dist. Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary
Urban Development Department,
Mantralaya, Mumbai- 32.
- 2) The Collector Nagpur,
Tah. and District Nagpur.
- 4) Shri Jumma Pyarewale,
C.O. Nagar Parishad, Wadi,
Dist. Nagpur.

Respondents

Shri N.R.Saboo, Id. Advocate for the applicant.

Shri A.M.Khadatkar, Id. P.O. for the Respondent nos. 1 & 2.

Shri S.N.Gaikwad, the Id. counsel for the Respondent no. 3.

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

JUDGMENT

Judgment is reserved on 10th March, 2022.

Judgment is pronounced on 16th March, 2022.

Heard Shri S.P.Palshikar, Id. counsel for the applicant and
Shri A.M.Khadatkar, Id. P.O. for Respondent Nos. 1 to 3, Shri G.K.Bhusari,
Id. counsel for respondent no. 4 and Shri D.M.Kale, Id. counsel for

respondent no. 5 in O.A. No. 07/2022, and Shri N.R.Saboo, Id. counsel for applicant, Shri A.M.Khadatkar, Id. P.O. for Respondent Nos. 1 & 2, Shri S.N.Gaikwad, Id. counsel for respondent no. 3 in O.A. No. 08/2022.

2. By common proposal transfers of both these applicants, along with 18 ors., were recommended and approval was sought from the Competent Authority – The Hon'ble Chief Minister, and it was accorded.

3. In these applications the applicants have impugned order of their transfer dated 03.01.2022. The applicant in O.A. No. 07/2022 is transferred from Wadi to Butibori whereas the applicant in O.A. No. 08/2022 is transferred from Butibori to Kanan Pimpri.

4. It is not in dispute that both the applicants had not completed tenure of three years on their pre-transfer posts and hence rigors of Section 4 (5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter "The Act" would be attracted).

5. According to the applicants the impugned orders are bad on account of non-compliance of Sub Sections 4 and 5 of Section 4 of the Act, and also because they are tainted by malafides.

6. The answering respondents have resisted the applications by contending that provisions of the Act have been scrupulously followed, the transfers were made for administrative reasons and in compliance of directives of State Election Commission and there were no malafides at all.

7. Copy of entire record of transfers is at pages 53 to 71 in O.A. No. 07/2022.

8. Chronology revealed by the record of transfers is as follows. In the meeting of Civil Services Board held on 24.08.2021 proposal to transfer three officers was discussed and recommendation was accordingly made to the Government (Pg. No. 55). This proposal was placed before the Competent Authority and it was approved (Pg. No. 54). Then list of 20 officers was prepared as per Annexure-A (at pages 66 & 67) who were proposed to be transferred. This was in addition to the proposal discussed in the meeting of Civil Services Board dated 24.08.2021. The transfer proposal at pages 66 & 67 was approved by the Competent Authority and as per note prepared on 30.12.2021 (at pages 56 & 57) the proposal was placed before the Government for granting approval. Paras 3 to 7 of this note state –

3- rFkfi] 'kkl ukus l nj uLrhøj foøj.ki =&v l ekfo"V d: u ukxjh l ok eMGkP; k f'kQkj'khe/; s l ekfo"V ul yY; k vU; 19 vf/kdk&; k; k cnY; k@i frfu; Prh 'kkl u Lrjko: u iLrkfor d: u R; kl l e{k i kf/kdj.kkph ekU; rk i klr >kyh vkgs

4- egkjk"V" 'kkl dh; de p k&; k; k cnY; kps fofu; eu vkf.k 'kkl dh; drD; s i kj i M r k u k g s k k&; k foy e k l i f r c d k v f / k f u ; e] 2005 e / k h y r j r m h u d k j c n Y ; k d k B h u k x j h l o k e M G k P ; k f ' k Q k j ' k h v k o ' ; d v k g r - r l p] e / ; k o / k h c n Y ; k d j k o ; k P ; k v l r h y r j] f o ' k s ' k d k j . k s L o ; l i " V i . k s u e m d : u R ; k l ' k k l u k p h e l { k e i k f / k d j . k k p h e a t g j h v k o ' ; d v k g s r l p] l f o u ; u e m d j . ; k r ; r s d h] e k - e g k j k " V " i z k k l d h ; U ; k ; k f / k d j . k r l p e k - m P p U ; k ; k y ; ; f k s n k [k y d k g h i d j . k k r e k - U ; k ; k y ; k u h u k x j h l o k e M G k P ; k f ' k Q k j ' k h] f o f ' k " V d k j . k u e m u l Y ; k P ; k d k j . k k e G s ; k i w h p ; k c n y h i d j . k k r L F k f x r h f n y h v k g r -

5- mi j k D r o L r l f L k r t P ; k i k ' o h k e h o j i z k k u l f p o ¼ u f o & 2 ½ ; k u h [k k y h y i e k . k s f u n z k f n y &

¼ 1 ½ l { k e i k f / k d j . k k P ; k e k U ; r s u d k j f o o j . k i = & v e / k h y v - d z 1 ; f k s u e m J h v k " V h d j ; k p s c r ; k i w h p u k x j h l o k e M G k p s v f h k i k ; ? k r y s

vi Y; kus o v-dz19 ; fky Jh [kkul kGs ; kps i frfu; Qrhph I af/kr
foHkkxkph uk&gjd r i klr vi Y; kusl af/krapsvkns k fuxfer djkos

¼½ r l p] fooj.ki =&v e/khy moTjr ; ki whz ukxjh I ok eMGkl ekj
Bd.; kr u vky; k vf/kdk&; kpk i Lrko ukxjh I ok eMGkP; k f'kQkj 'khl g
'kkl ukl Qj I knj djkok-

6- mi jkDr funs kP; k vuqkxkusfooj.ki = & v e/khy moTjr 18 vf/kdk&; kpk
i Lrko ukxjh I ok eMGkl ekj fopkj kFz I knj dsk vi rk] ukxjh I ok eMGkus iw
7&13 @v-fo- ud kj f'kQkj 'kh d; k vkgs-

7- ukxjh I ok eMGkpk iw 7&13@v-fo- ojhy i Lrko 'kkl ukdMs I fou;
i qzopkj kFz vkns kFz I knj dj.; kr ; r vkgs

Minutes of meeting of Civil Services Board held on 30.12.2021 show that barring two names rest of the names were not recommended for transfer including those of both the applicants (at pages 58 to 61). On 03.01.2022 it was recorded at pg. no. 62:-

"i whi "Bkojhy eku; r; k vuqkxkusl knj-

2- fooj.ki = & v e/khy moTjr 18 vf/kdk&; kkk i Lrko ukxjh I ok eMGkl ekj
fopkj kFz I knj dsk vi rk] ukxjh I ok eMGkpk iw 7-13 @v-fo- ojhy i Lrko
'kkl ukdMs I fou; i qzopkj kFz vkns kFz I knj dj.; kr vkyk gkark] rFkfi] I nj
i Lrko i Hkkar 'kkl ukusfooj.ki =&v i ek.kseku; vi sfuns k fnysvkgs-

3- I nj eku; r; k vuqkxkusfuxfer djko; kP; k vkns kph i k: i siw @i-fo- oj
eku; r; ro I knj-

eku; r; rj iw @i-fo- ojhy vkns k fuxfer dj.; kr ; by-

The sanction of the Government issued by the Hon'ble Chief Minister referred to on page no. 62 is to be found on page no. 54 below the Note :-

"I k-i-zfoHkx 'kkl u fu.kz 27 tyS 2021 e/; sfofgr e; kzk o iæk.k ; ke/; s f'kFkhyrd g iLrkfor cnyh iLrko foj.k i=&v ; kl ekU; rk inku djkoh fg fourh"

The record of transfers also contains at pages 68 to 71 letter dated 22.12.2021 issued by the State Election Commission, Maharashtra. It states -

"fo"K; &LFkkfud LojKT; I LFkkR; k fuoM.kpK drD; n{k o fu% {k vf/kdkjh@ deþkjH ; kR; k) kjsgrkG.; kckcr rI p ifrcdKKRed o brj mi k; ; kst uk dj.; kckcr---

It further states -

3- vKxkeh fuoM.kpK; k vuqkxkus fuoM.kpK eDr fu% {ki krhi .ks o i kjn'kdi .ks i kj i KM.; kdfjrk rI p fuoM.knd ifdz k drD; n{k o fu% {ki krh vf/kdkjh@deþkjH ; kR; k) kjs grkG.; kdfjrk vkf.k R; kl kBh ifrcdKKRed o brj mi k; ; kst uk dj.; kdfjrk jKT; fuoM.knd vk; kxkP; k fn- 31 tyS 2018 P; k vkns kkrhy rjrphud kj [kkyhyi æk.ksdk; ðkgh djkoh&

1- vKxkeh fuoM.kpK fopkkr ?krk] mijKDr l oxkzh T; k vf/kdkjh@deþkjH ; kau fnukad 31 epl 2022 lk; r R; k ftY; kr rhu o"kkþk dkkyko/kh i wkZgr vkgs R; kpk rRdkG vk<kok ?ks; kr ; kok-

2- vk; kxkP; k fnukad 31 tyS 2018 P; k vkns kkrhy fud"kkud kj ts vf/kdkjh Loxg ftYgke/; sfu; Drhl vkgr] v'kk vf/kdk&; kpk ri 'khy ?kmu ; kK; rh mi k; ; kst uk djkoh-

Okjhyi æk.ksmi k; ; kst uk djrkuk ekB; k i æk.kkojhy fuoM.kpKd kBh fuoM.knd fu.kz vf/kdkjh@l gk; d fuoM.knd fu.kz vf/kdkjh] o fuoM.knd ifdz rhy l ekfo"V brj vf/kdkjh@ikfyI vf/kdkjh@deþkjH] bR; knh mi yC/k gksks vko'; d vl Y; kus egRokph dskrhgh i nsfjDr jkg.kkj ukghr ; kckcr l æi/kr foHkxkus [kk=h djkoh] v'kh vki .kkl fourh vkgs

Ekk-jKT; fuoM.knd vk; Dr ; kR; k vkns kkuq kj]

This was the background of the impugned transfers.

Section 4 of the Act reads as under :-

“4. 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."

5. It was argued by both the counsel that the impugned orders are unsustainable for want of compliance of Section 4 (5) of the Act. This proposition is stoutly refuted by the respondents. In support of their aforesaid contention the applicants have relied on the following rulings -

(i) Shriprakash Maruti Waghmare Vs. State of Maharashtra & Ors., 2010 (2) Mh.L.J., 58

In this case it is held -

"In the matter of transfer under section 4(5) of the Act of 2005, in the matter of midterm transfer of exceptional cases recording of reasons is a mandate."

(ii) S.B.Bhagwat Vs. State of Maharashtra & Ors., 2012 (3) Mh.L.J., 197

In this case it is held:-

"The matter of transfers has been brought within a regulatory framework laid down in the statute enacted by the State legislature. Section 4(5) permits as an exceptional situation, a transfer to be carried out, notwithstanding anything contained in Section 3 or in Section 4. The exceptional power must be exercised strictly in accordance with Sub-section (5) of Section 4"

"Merely calling a case a special case does not constitute a sufficient reason. The rationale why the legislature has required that reasons be recorded in writing for transferring an employee even before completing his tenure is to bring objectivity and transparency to the process of transfers."

(iii) Pradeepkumar S/o Kothiram Deshbhratar vs. State of Maharashtra & Ors., 2011 (5) Mh.L.J., 158

In this case it is held -

"Reasons to be recorded for permitting such transfers must be spelt out and must be found to be in the interest of administration. Those reasons cannot be only the wish or whim of any particular individual and such transfers cannot be ordered as special case to please the particular individual for mere asking."

(iv) Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance & Development Corporation, Mumbai and Ors., 2013 (3) Mh.L.J., 463

In this case it is held -

“The mid-term or pre-mature special transfer has to be strictly according to law, by a reasoned order in writing and after the due and prior approval from the competent transferring authority concerned for effecting such special transfer under the Act. The exercise of exceptional statutory power has to be transparent, reasonable and rational to serve objectives of the Act, as far as possible, in public interest. Mandatory requirements of the provision under Section 4(5) of the Act cannot be ignored or by-passed.”

(v) Kiran A. Dhote Vs. State of Maharashtra & ors. Judgment dated 16.07.2010 passed by this Tribunal in O.A. No. 341/2010.

In this case it is held -

“6. In the scheme of Section 4 (5) of the Act, the power, authority and jurisdiction to effect transfer of a Government servant vests with the competent transferring authority and not with the immediate superior transferring authority. It is as such clear that the immediate superior transferring authority has no power to effect the transfer. The transfer has to be made by the competent authority backed by the reasons recorded in writing, if it is to fall u/s 4 (5) of the Act. In the present case, through the competent authority/ Minister Incharge of Home Affairs did not effect the transfer of the applicant and as no reasons are recorded in support of the transfer by the competent authority, he could not have been transferred before completion of his

normal tenure at Amravati, that too by the immediately superior transferring authority. It was not competent for the superior transferring authority viz. the Chief Minister to have directed the transfer of the present applicant from Amravati to Pune. Thus, in my view, the impugned order of transfer is illegal being in contravention of the applicant's legal right contained in Section 4 (1) of the Act."

6. So far as the instant applications are concerned, it is not in dispute that as per Section 6 of the Act which refers to the transferring authority, the competent transferring authority mentioned in column 2 of the table is 'Chief Minister'.

7. The respondents, on the other hand have relied on the Judgment of the **Hon'ble High Court Bombay (Division Bench) Judgment delivered on dated 07.12.2016 in W.P. No. 9499 of 2016 & Ors.**

In this case it is held -

"9. The provisions under Article 324 of the constitution refers to superintendence, direction and control of elections to be vested in an Election Commission. Such corresponding powers are conferred on the State Election Commission of the State of Maharashtra. We find that for holding free and fair elections, State Election Commission had issued these directions. During the course of hearing, we are informed that many Revenue Officers are posted in the native districts. This aspect needs to be reconsidered by the State Government for effective and fair administration of the State of Maharashtra.

10. *It is likely that in some cases, some inconvenience could be caused to the employees who had been transferred due to holding of elections in a particular district or local area, but keeping in view the larger public interest, if the State Election Commission had taken a decision, the State Government would implement the same keeping in view constitutional intent and spirit and for holding free and fair elections. It is informed that in the State of Maharashtra, election process relating to elections of Corporations, Councils, Panchayats, Zilla Parishad, Village Panchayat is already set in motion.*

11. *The State Government and the State Election Commission are free to contemplate on the issue of transfer of officers keeping in view various aspects for consideration and frame a proper policy for future with sole objective of holding free and fair election."*

While citing this ruling Id. P.O. invited attention of the Tribunal to letter dated 22.12.2021 issued by State Election Commission which is at pages 68 to 71 in O.A. No. 07/2022.

8. The respondents have also relied on the Judgment dated 29.01.2018 passed by the Bombay Bench of this Tribunal. In this case it was held that :-

"9. For matters of absolute executive decision and in absence of violation of provisions of law, rather than a venture, the applicant has fallen into an imprudent adventure of claiming a posting without even showing that the action on the part of the executive is vitiated due to illegality.

10. *Alleging prejudicial conduct and bias against executive is an easier discourtesy when done without an iota of evidence at hand. Alleging malice even in an indirect manner in which applicant has done is gross discourtesy."*

9. One more ruling placed on record in O.A. No. 08/2022 is **"Sanjeev Bhagwanrao Kokil Vs. State of Maharashtra & Ors., 2013 (2) Mh. L. J., 107"**

In this case it is held -

"9. The next requirement is of recording of reasons by the concerned Authority. The tenor of the proposal and the manner in which it has been couched, itself manifests the reasons which necessitated transfer (of petitioner from M.R.A. Marg Police Station to some other post, albeit within Mumbai). The fact that the highest authority has merely made endorsement of "proposal approved" on the proposal, does not mean that there is non-compliance of the requirement of recording reasons in writing. If the superior authorities and in particular, the Chief Minister, having made the endorsement "proposal approved", it presupposes that he agreed with every aspect mentioned in the proposal. If he were to disagree with any of the fact or reason stated in the proposal, he would have certainly made noting in that behalf. Even if he wanted to add further fact or reason in addition to the ones mentioned in the proposal, he would have made a noting in that behalf. Suffice it to observe that the fact that the Chief Minister, who is the final authority, having merely made endorsement "proposal approved", in no way, results in non-compliance of the requirement of recording reasons in writing as predicated

in [section 4\(5\)](#) or for that matter [section 4\(4\)](#) proviso (ii) of the Act.

10. The last requirement under these provisions, is that, the transfer order may be passed only with the prior approval of the next higher authority or with prior permission of the immediately preceding Competent Transferring Authority (CTA) mentioned in the table of [section 6](#), as the case may be. In the present case, it is indisputable that the prior approval of the concerned Authority has been obtained before issuing the transfer order against the petitioner. A priori, it would necessarily follow that there is no infraction either of [section 4\(4\)](#) proviso (ii) or [section 4\(5\)](#) of the Act, in any manner."

In this ruling it is further held -

"12. Accordingly, we find no merits in the argument that the transfer order issued against the petitioner is bereft of any reason. Moreover, the reason recorded as "for administrative reason" qualifies the criterion specified under [Section 4\(4\)](#) proviso (ii) and 4(5) of the Act."

By relying on the aforequoted observations it can be concluded that while passing the impugned order Sub Sections 4 and 5 of Section 4 of the Act were complied with. There is no material on record to conclude that the impugned orders were malafide and the same were passed to accommodate the successors of the applicants on the place of their choice. On the contrary, the record reveals that the proposal and recommendation of transfers in question was made on account of the directives received from the State Election Commission. For all these reasons no interference with the impugned orders is called for. Hence, the order:-

ORDER

1. O.A. Nos. 07/2022 and 08/2022 are dismissed.
2. No order as to costs.

(Shri M.A.Lovekar)
Member (J)

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 16/03/2022.
and pronounced on

Uploaded on : 17/03/2022.