

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 458/2020 (S.B.)

Dilip Shyamraoji Mude,
Aged about 53 years, Occ. Service,
R/o Surrana Layout, Nalwadi, Wardha,
Dist. Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
- 2) District Collector, Wardha,
Collector Office, Civil Lines, Wardha.

Respondents.

Shri J.R. Kidilay, Advocate for the applicant.
Shri A.M. Khadatkar, P.O. for the respondents.

WITH
ORIGINAL APPLICATION No. 459/2020 (S.B.)

Devidas Yadaorao Hemane,
Aged about 52 years, Occ. Service,
R/o Patwari Colony, Sant Dnyeshwar Ward,
Hinganghat, Dist. Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
- 2) District Collector, Wardha,
Collector Office, Civil Lines, Wardha.

Respondents.

Shri J.R. Kidilay, Advocate for the applicant.
Shri A.P. Potnis, P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 460/2020 (S.B.)

Dharmendra Ramdas Gaikwad,
Aged about 50 years, Occ. Service,
R/o Adarsh Nagar, Sant Tukdoji Ward, Hinganghat,
Dist. Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
- 2) District Collector, Wardha,
Collector Office, Civil Lines, Wardha.

Respondents.

**Shri J.R. Kidilay, Advocate for the applicant.
Shri V.A. Kulkarni, P.O. for the respondents.**

WITH**ORIGINAL APPLICATION No. 499/2020 (S.B.)**

Ashok Shivram Uikey,
Aged about 57 years, Occ. Service,
R/o Flat No.103, Archid Apartment,
Narsala, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
- 2) District Collector, Wardha,
Collector Office, Civil Lines, Wardha.

Respondents.

**Shri J.R. Kidilay, Advocate for the applicant.
Shri P.N.Warjurkar, P.O. for the respondents.**

WITH

ORIGINAL APPLICATION No. 500/2020 (S.B.)

Gajanan Ukhardaji Mhasaye,
Aged about 55 years, Occ. Service,
R/o New Yashwant Nagar, Hinganghat,
Dist. Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
- 2) District Collector, Wardha,
Collector Office, Civil Lines, Wardha.

Respondents.

**Shri J.R. Kidilay, Advocate for the applicant.
Shri H.K. Pande, P.O. for the respondents.**

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Dated :- 26th November, 2020

COMMON JUDGMENT

Heard Shri J.R. Kidilay, learned counsel for the applicants and Shri A.M. Khadatkar, learned P.O. and other learned P.Os. for the respondents.

2. All the O.As. are involving the same questions of law and facts and therefore they are heard and decided together by the common order –

3. It is undisputed that all the applicants were serving as Circle Officers and the applicants in O.A.Nos. 458,459 & 499 of 2020

were not due for transfer. The applicants are challenging the impugned order of transfers dated 31/7/2020. The first submission of the applicants is that as the applicants in O.A.Nos. 458,459 & 499 of 2020 were not due for transfer, therefore, it was incumbent on the respondent no.2 to follow the procedure laid down under Section 4 (4) & (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfers Act,2005"). It is submitted that the respondent no.2 did not forward the proposal of transfers of these applicants to his higher authority and did not seek approval for their transfers before completion of the normal tenure, therefore, the transfer orders are contrary to law.

4. All the applicants are contending that as per the G.R. dated 7/7/2020 permission was given by the Government to the Transferring Authorities to transfer only 15% of the Government servants who were due for transfer and in the G.R. there was a direction to follow the provisions under the Transfers Act,2005. It is contention of all the applicants that in cadre of Circle officer total strength was 35, the respondent no.2 initially transferred six Circle Officers on their own requests and therefore the 15% Circle Officers were already transferred. The respondent no.2 had no authority to transfer the present applicants by issuing separate order as it was not

permitted by the G.R. Dt/ 7-7-2020. It is submitted that in order to fill the posts which become vacant due to earlier transfers of six Circle Officers, the respondent no.2 transferred the present applicants though three of the applicants were not due for transfer. It is submitted that this violation of the section 4 and G.R. dated 7/7/2020 goes to the root of the matter.

5. The second contention of the applicants is that the respondent no.2 did not give opportunity to the applicants to submit their options for the postings after transfers. The applicants were kept in dark and all of a sudden they received the transfer orders. It is submitted that the procedure laid down in the G.R. dated 9/4/2018 was not followed by the respondent no.2 and options were not called from the applicants. It is contended by the learned counsel for the applicants that the language of the G.R. dated 9/4/2018 is mandatory and the respondent no.2 shall bound to call the options and follow the conciliation process before transferring the applicants. The learned counsel for the applicants submitted that the respondent no.2 transferred six Circle Officers on their own requests and exhausted the quota to transfer the Government servants in the cadre of Circle Officers and secondly the respondent no.2 did not follow the G.R. dated 9/4/2018, therefore, the impugned transfer orders are contrary to law. The learned counsel for the applicants has placed reliance on

the Judgment delivered by the Hon'ble Apex Court in case of **T.S.R.Subramanian & Ors vs Union Of India & Ors.**, Writ Petition No.82 of 2011, decided on 31/10/2013.

6. The respondent no.2 has filed the reply and justified the transfers. According to the respondent no.2 there was a threat of Covid, therefore, in the month of May general transfer orders could not be issued, but as there were difficulties before the administrative head, consequently, the G.R. dated 7/7/2020 was issued by the Government. It is submitted that the special power was conferred on the respondent no.2 to issue the transfer orders and accordingly the respondent no.2 has exercised the power, therefore, the applicants cannot question their transfers before this Bench. According to the respondent no.2, the transfer orders were issued after complying the provisions of the Transfers Act,2005, there is no violation of the statutory provisions. In addition, it is contended that there were instances of flood, illegal mining, theft of sand etc. and for this purpose the respondent no.2 was compelled to transfer the applicants. According to the respondent no.2, in the interest of public and society at large, the transfer orders were issued by him and therefore there is no substance in all the O.As.

7. After perusing the records, it seems that the applicants in O.A.Nos. 458,459 & 499 of 2020 were not due for transfer, they are

transferred before completion of their normal tenure. The Section 4 (4) & (5) of the Transfers Act,2005 are 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 subsection (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.”

The language used under Section 4 (4) & (5) of the Transfers Act, 2005 is imperative and therefore the Transferring Authority is bound to record exceptional circumstances or special reasons before transferring a Government servant before completion of normal tenure and shall place that material before the next higher authority for the approval. The learned P.O. conceded that in O.A.Nos. 458,459 & 499 of 2020 the special procedure laid down under Section 4 (4) & (5) of the Transfers Act, 2005 was not followed. According to the learned P.O., as the G.R. dated 7/7/2020 is issued by the Government, therefore, it was not necessary to comply these requirements.

8. In the above background, the substantial question arises whether G.R. has a potential to suspend the operation of statute. The learned P.O. was unable to satisfy me on this point. The legal position is settled that there cannot be a G.R. taking away the rights conferred by the statute, therefore, I do not see any merit in the contention of the learned P.O. that in view of the G.R. dated 7/7/2020 it was not necessary to fulfil the requirements under Section 4 (4) & (5) of the Transfers Act,2005. Once it is accepted that the applicants in O.A.Nos. 458,459 & 499 of 2020 were not due for transfer and the

mandatory procedure laid down under Section 4 (4) & (5) of the Transfers Act,2005 was not followed, then it must be held that the transfer orders are illegal.

9. Though it is contended by the respondent no.2 that there were instances of illegal mining, flood, theft of sand and for this purpose he was compelled to transfer the applicants is concerned, I would like to point out that it is not contention of the respondent no.2 that any of the applicants was involved in activities such as illegal mining or theft of sand and therefore decision was taken to initiate disciplinary action against them. In absence of such material, the respondent no.2 cannot take a shelter of a general statement that there were activities like illegal mining, theft of sand etc. for transferring the applicants. The learned counsel for the applicants has invited my attention to the Government G.R. dated 11/2/2015. In this G.R. guidelines were issued by the Government what care should be taken when a Government servant is to be transferred before completion of the normal tenure.

10. The respondent no.2 candidly admitted in para-8 that “ the respondent no.2 in pursuance of G.R. dated 7/7/2020 transferred six employees out of 35 Circle Officers which is 15%”.

11. After reading this, it transpires that the respondent no.2 was empowered to transfer only six Circle Officers and six Circle Officers were already transferred by the respondent no.2 on their own requests. Thus the respondent no.2 exceeded his authority to transfer the Circle Officers more than six, therefore, in my opinion it was necessary for the respondent no.2 to seek permission of his higher authority for the transfers. It is pertinent to note that out of six Officers who were transferred on their own requests Shri S.K. Chandankhede had completed tenure of 1 year and 3 months, Shri G.B. Nakoriya had completed tenure of 1 year, 2 months and Shri M.B. Rathod had completed tenure of 2 years, 9 months. Thus they were not due for transfer and all those officers were transferred on their own requests. Secondly, the learned P.O. conceded that there is no compliance of the G.R. dated 9/4/2018, options were not called from the applicants, they were kept in dark, there was no conciliation process.

12. The learned counsel for the applicants rightly submitted that as per the direction issued in case of **T.S.R.Subramanian & Ors vs Union Of India & Ors.**, the Civil Services Boards were established in every district and object behind it to curtail the exercise of power while transferring the Government servants as per the whim. The direction issued by the Hon'ble Apex Court was mandatory in nature, it

was not empty formality and consequently the G.R. dated 9/4/2018 was issued by the Government and procedure was laid down for conciliation of the Government servants. The respondent no.2 is contending that being a special case, it was not necessary for him to follow the process as laid down in the G.R. dated 9/4/2018. In this regard, I would like to point out that the entire proceeding appears to be suspicious. The Minutes of the Meeting of the Civil Services Board shows that it is signed by only two persons, one Collector, Wardha, ex-officio President of the Civil Services Board and Member of the Civil Services Board who was Sub-Divisional Officer. The Minutes are not signed by the Resident District Collector (RDC). If entire facts are considered, then it must be accepted that the respondent no.2 did not follow the imperative directions issued by the Hon'ble Apex Court and the direction issued in the Government G.R. dated 9/4/2018. Under these circumstances, malice can be inferred, therefore, I am compelled to say that there was no administrative exigency for transferring the applicants. On the contrary it can be said that for creating vacancies to adjust the other six Circle Officers who were transferred on their requests (some of whom were not due for transfer), the present applicants are transferred and as there was no reason to transfer the applicants in violation of Section 4 (4) & (5) of the Transfers Act,2005 and in violation of the G.R. dated 7/7/2020,

the result is that the impugned transfer orders are illegal and it is not possible to justify such transfers. In the result, I pass the following order -

ORDER

(i) All the O.As. stand allowed. The impugned transfer orders are set aside and the respondent no.2 is directed to post each applicant on the post held by him before issuing the transfer orders dated 31/7/2020, within two weeks. No order as to costs.

Dated :- 26/11/2020.

(Anand Karanjkar)
Member (J).

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

Name of Steno : D.N. Kadam

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

Judgment signed on : 26/11/2020.
and pronounced on

Uploaded on : 27/11/2020.