

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NOS.451 & 453 OF 2020**

**DISTRICT : THANE**

\*\*\*\*\*

**ORIGINAL APPLICATION NO.451 OF 2020**

Dr. Avinash Ganpatrao Gote. )  
Age : 56 Yrs, Worked as Joint Chief )  
Officer in the office of belownamed )  
Respondent No.5 and residing at Flat )  
No.20A, Cosmos Horizon, Skyline, )  
Pokhran Road No.12, Thane – 20. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Additional Chief Secretary, )  
Housing Department, Mantralaya, )  
Mumbai – 400 032. )
2. The State of Maharashtra. )  
Through Additional Chief Secretary )  
[Revenue], Revenue & Forest Dept., )  
Mantralaya, Mumbai - 400 032. )
3. The State of Maharashtra. )  
Through Additional Chief Secretary, )  
Rural Development & Panchayati )  
Raj Department, Bandhkam Bhavan )  
25, Marzban Road, Fort, Mumbai-1. )
4. The Vice-President and Chief )  
Executive Officer, MHADA, )  
Bandra (E), Mumbai – 400 051. )

5. The Chief Officer. )  
 Mumbai Building Repair and )  
 Reconstruction Board, MHADA, )  
 Bandra [E], Mumbai – 51. )...**Respondents**

**WITH**

**ORIGINAL APPLICATION NO.453 OF 2020**

- Dr. Avinash Ganpatrao Gote. )  
 Age : 56 Yrs, Worked as Joint Chief )  
 Officer in the office of belownamed )  
 Respondent No.5 and residing at Flat )  
 No.20A, Cosmos Horizon, Skyline, )  
 Pokhran Road No.12, Thane – 20. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
 Through Additional Chief Secretary, )  
 Housing Department, Mantralaya, )  
 Mumbai – 400 032. )
2. The State of Maharashtra. )  
 Through Additional Chief Secretary )  
 [Revenue], Revenue & Forest Dept., )  
 Mantralaya, Mumbai - 400 032. )
3. The State of Maharashtra. )  
 Through Additional Chief Secretary, )  
 Rural Development & Panchayati )  
 Raj Department, Bandhkam Bhavan )  
 25, Marzban Road, Fort, Mumbai-1. )
4. The Vice-President and Chief )  
 Executive Officer, MHADA, )  
 Bandra (E), Mumbai – 400 051. )
5. The Chief Officer. )  
 Mumbai Building Repair and )  
 Reconstruction Board, MHADA, )  
 Bandra [E], Mumbai – 51. )
6. Shri Dipak Vasant Kshirsagar. )  
 Aged : Adult, Promotee Additional )

Collector and ordered to be posted on )  
deputation as Joint Chief Officer in the )  
Office of Respondent No.5. )...**Respondents**

**Mr. Arvind V. Bandiwadekar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents 1 to 3.**

**Mr. Prakash Lad a/w Priyanka Naik, Advocates for Respondent Nos.4 & 5.**

**Mrs. Punam Mahajan, Advocate for Respondent No.6 in O.A.453/2020.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 25.08.2021**

### **JUDGMENT**

1. Since both these Original Applications are arising from common issues, they are decided by common Judgment.
2. In O.A.No.451/2020, the Applicant has challenged the order dated 01.02.2020 issued by Respondent No.2 thereby cancelling the deputation of the Applicant on the post of Joint Chief Officer at Mumbai Building Repairs and Reconstruction Board, MHADA (Respondent No.5).
3. Whereas in O.A.No.453/2020, the Applicant has challenged the order dated 30.04.2020 whereby Respondent No.1 appointed private Respondent No.6 on deputation in his place after his cancellation of deputation.
4. Undisputed facts giving rise to these O.As to be borne in mind for determination of these proceedings are as under :-

(i) The Applicant is serving in the cadre of Additional Collector and was working as Additional Chief Executive Officer, Maharashtra Development Services Group-A.

(ii) By order dated 19.12.2017, the Respondent No.1 deputed the Applicant as Joint Chief Officer at Mumbai Building Repairs and Reconstruction Board, MHADA (Respondent No.5) for the period of one year.

(iii) By order dated 22.04.2019, the deputation period was extended for additional two years upto 18.12.2020.

(iv) However, before completion of deputation period of three years, the Respondent No.1 cancelled the deputation of the Applicant at MHADA and repatriated his services to his parent Department viz. Respondent No.3.

(v) By order dated 30.04.2020, the Respondent No.1 appointed private Respondent No.6 (in O.A.453/2020) in place of the Applicant at MHADA for the period of one year.

5. It is on the above background, initially, Applicant has challenged the order of cancellation of his deputation dated 01.02.2020 and later in view of appointment of Respondent No.6 in his place, he has filed O.A.No.453/2020 challenging the appointment of Respondent No.6 in his place and prayed for declaration that he is entitled for deputation upto 18.12.2020 i.e. the period of deputation granted to him by order dated 12.04.2019.

6. Shri Bandiwadekar, learned Advocate for the Applicant challenged the impugned orders on following grounds :-

(i) The cancellation of deputation of the Applicant is in breach of conditions mentioned in G.R. dated 17.12.2016 as well as Rule 40 of Maharashtra Civil Services (Joining Time, Foreign Service

and Payments during Suspension, Dismissal and Removal) Rules, 1981 read with Appendix No.II of the said Rules, which *inter-alia* provides standard terms and conditions of transfer of Government servant to foreign service (deputation) (hereinafter referred to as 'Joining Time Rules of 1981' for brevity).

(ii) The appointment of Respondent No.6 in place of Applicant is also in breach of certain conditions and procedure laid down in G.R. dated 07.12.2016 as well as Revenue Division Allotment for appointment by nomination and promotion to the post of Group 'A' and Group 'B' (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2015 (hereinafter referred to as 'Revenue Division Allotment Rules of 2015' for brevity).

(iii) The order of cancellation of deputation before stipulated period of deputation partakes the character of transfer and in absence of compliance of Section 4(5) of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity) it is bad in law.

7. Whereas, Shri A.J. Chougule, learned Presenting Officer for Respondent Nos.1 to 3 and Shri Prakash Lad, learned Advocate for Respondent Nos.4 and 5 vehemently urged that cancellation of deputation of the Applicant before expiration of stipulation period was extremely necessitated in view of serious illegalities allegedly committed by the Applicant in allotment of tenements which brought disrepute to the institution and it is squarely covered by Clause 5 of G.R. dated 17.12.2016. They have further pointed out that Shri Milind Mhaskar, the then Vice-President, MHADA after noticing serious illegalities committed by the Applicant had cancelled those illegal allotment attempted by the Applicant and submitted report dated 16.12.2019 to the Government for initiation of regular D.E. for dereliction in duties and

dishonesty against the Applicant. It is further pointed out that now the process of issuance of charge-sheet is underway and Applicant will be dealt with appropriately in departmental proceedings.

8. Whereas, Mrs. Punam Mahajan, learned Advocate for Respondent No.6 submits that in O.A, the Applicant has prayed for declaration of continuation of deputation till 18.12.2020, which is already over, and therefore, O.A. has become infructuous. Thus, according to her, since stipulated period of deputation given by the Government had already come to an end, now Applicant cannot be resent on deputation. As regard appointment of Respondent No.6 in place of Applicant, she contends that Respondent No.6 was appointed by order dated 30.04.2020 and after cancellation of deputation period of the Applicant by order dated 01.02.2020, and therefore, appointment of Respondent No.6 has no nexus with the cancellation of deputation period of the Applicant. She further submits that Applicant cannot challenge the appointment of Respondent No.6 as if public interest litigation, which is not permissible in service matters. As regard cancellation of deputation of the Applicant, she adopted the submission advanced by the learned P.O. as well as Shri Lad, learned Advocate for Respondent Nos.4 & 5 and tried to contend that in view of gross-illegalities committed by the Applicant, review of cancellation of deputation by this Tribunal in limited jurisdiction is not warranted since the order of cancellation of deputation has been passed to maintain probity and faith of public in public administration.

9. In view of submission advanced at the Bar, the issue posed for consideration is whether the impugned order of cancellation of deputation of the Applicant and appointment of Respondent No.6 in his place is malicious or in colourable exercise of power warranting interference by this Tribunal and the answer is in emphatic negative for the reasons to follow.

10. Admitted, the cancellation of deputation is founded on the allegation of fabrication and manipulation of record allegedly committed by the Applicant in the allotment of tenements. So it is necessary to find out whether *prima-facie* the allegations attributed to the Applicant were enough to cancel the period of deputation.

11. Shri Bandiwadekar, learned Advocate for the Applicant referred to Appendix II of Rule 40 of 'Joining Time Rules of 1981' which governs standard terms and conditions of transfer of Government servant to foreign service. As per Rule 40 of 'Joining Time Rules of 1981', the transfer of Government servant to foreign service should be made on the standard terms and conditions as mentioned in Appendix II and no departure from the prescribed terms and conditions shall be permissible.

12. Appendix II referred in Rule 40 sub-rule 4 of 'Joining Time Rules of 1981' is as under :-

APPENDIX II  
[See Rule 40]

**Standard terms and conditions of transfer of Government servants to foreign service.**

Note.- Whatever the word "Government servant" occurs in these terms, the name of the Government servant should be mentioned while applying these terms.

The following are the standard terms and conditions of transfer of Government servants to foreign service, including statutory Corporations, autonomous bodies. No departure from the prescribed terms and conditions shall be permissible.

(1) Period of Deputation.- The foreign service shall commence from the date the Government servant hands over charge of the post and will expire on the date he resumes charge of his post under Government. The Government servant shall be on deputation for a period of (Stated the period) years in the first instance provided that –

(i) Government/competent authority reserves the right to recall him any time before expiry of the period of deputation, if his

services are required by Government in the interest of public service;

(ii) If his services are not required by the foreign employer, it shall be open to the foreign employer to revert him to the parent department, provided 3 months' notice is given to Government/competent authority by the foreign employer before effecting such reversion; and

(iii) it is open to him to revert to the parent department after he gives a notice, of not less than three months, in writing to Government/competent authority of his intention to do so."

13. Whereas important Clause No.5 of G.R. dated 17.12.2016, which also governs terms and conditions for deputation and relied upon by both the parties are as under :-

“५. प्रतिनियुक्तीवर सेवा घेणा-या कार्यालयास काही विशिष्ट कारणास्तव विहित कालावधी संपण्यापूर्वी प्रतिनियुक्तीवर आलेल्या अधिका-यास त्याच्या मूळ प्रशासकीय विभागात कार्यालयाकडे परत पाठवणे आवश्यक असल्यास' त्या आस्थापनेवरील सक्षम प्राधिका-याने तसे समर्थनीय कारण स्पष्ट करून त्याला / तिला परत पाठविण्यासाठी यथास्थिती संबंधित प्रशासकीय विभागास / कार्यालयास तीन महिन्यांची पूर्वसूचना (नोटीस) देणे आवश्यक राहिल. तथापि, या संदर्भात विशिष्ट कारणे नमूद करून उदा. अनियमितता, अफरातफर, कर्तव्यच्युती, इत्यादी कारणे नमूद करून प्रतिनियुक्तीचा कालावधी तात्काळ संपुष्टात आणता येईल.”

(underline supplied)

14. Thus, conjoint reading and harmonious construction of Appendix II and Clause 5 of G.R. dated 17.12.2016 stipulates that 3 months' notice is required to be given for repatriation to the parent department. However, last sentence in Clause 5 of G.R. dated 17.12.2016 viz. “तथापि, या संदर्भात विशिष्ट कारणे नमूद करून उदा. अनियमितता, अफरातफर, कर्तव्यच्युती, इत्यादी कारणे नमूद करून प्रतिनियुक्तीचा कालावधी तात्काळ संपुष्टात आणता येईल.” carved out is exception to the Rule or requirement of 3 months' notice for cancellation of deputation and repatriation. The submission advanced by learned Advocate for the Applicant that even in the case of allegation of irregularities or misappropriation, etc. as mentioned in last sentence of Clause 5 of G.R. dated 17.12.2016, three months' notice is essential is misconceived and fallacious.

15. Suffice to say, last sentence of Clause No.5 of G.R. dated 17.12.2016 as produced above is in the nature of proviso which carved



out exception from the applicability of what if otherwise stated in Clause No.5. Needless to mention the normal function of proviso is to accept something out of enactment or to qualify something enacted therein, but for the proviso would be within the purview of enactment. In the words of Lord Macmillan “The proper function of the proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and it’s effect is confined to that case. This being the settled principle of interpretation of statute, the submission advanced by the learned Advocate for the Applicant that 3 months’ notice is required in all situation is only to be heard and rejected.

16. Now the question comes whether Respondents have make out *prima-facie* case to bring the matter within the purview of proviso. In other words, the Tribunal is required to see whether allegations attributed to the Applicant are *prima-facie* borne out from the record. At this juncture, the Tribunal is not expected to record the finding on the issue of veracity of misconduct attributed to the Applicant and all that, requirement is whether *prima-facie* material is borne out from the record to justify the cancellation of deputation. Where there are serious allegations of dereliction of duties, dis-honesty, it is for the executive to have *prima-facie* satisfaction about the alleged misconduct and if the requirement of strict proof of alleged misconduct before cancellation of deputation period is insisted upon, in that event, the very purpose of transferring of a Government servant by cancellation of deputation in public interest or in exigencies of administrative would get frustrated. The question as to whether a Government servant can be repatriated is a matter for the Government to consider depending upon the administrative necessities viz-a-viz seriousness of allegations made against the Government servant and the difficulties faced by the administration. Therefore, all that, at this stage, one need to see whether sufficient reasons are forthcoming justifying cancellation of deputation. Needless to mention, existence of reasons on record is a material of subjective satisfaction. Once the taste of existence is satisfied, the

subjectivity of satisfaction cannot be gone into by the Tribunal unless it is clear case of *malafide* exercise of power.

17. Now let us see the nature of allegations made against the Applicant for cancellation of deputation. The Applicant being Joint Chief Officer of MHADA was entrusted with the work of allotment of tenements in accordance to law and rules. The requisite conditions and policy for allotment of tenements from redeveloped buildings are governed by resolution dated 03.03.2011 (Page No.201 of Paper Book). It *inter-alia* provides for publication of list of eligible persons on website and inviting objections thereon before final allotment. In the present case, the Committee had approved list of 95 eligible persons for allotment of tenements, which is at Page No.212 of P.B. The list was sent to Information and Technology Department with letter dated 29.11.2019 for publication on website. But on the same day, the Applicant had forwarded one another list by adding 6 more persons in the list, as seen from Page Nos.239 and 240 of P.B. It appears that the said illegality was widely reported in Newspaper and the cognizance of the same was taken by Vice-President of MHADA. Therefore, the Office of MHADA prepared detailed note dated 12.12.2019 and placed before Vice-President for necessary orders regarding addition and publication made by the Applicant.

18. Here, Note dated 12.12.2019 which is in vernacular and the endorsement made by Vice-President is crucial, which is as follows :-

“उपरोक्त संदर्भीय विषयाच्या अनुषंगाने बृहतसूचीवरून पात्र करण्यात आलेल्या परंतु अद्याप गाळ्याचे वितरण न करण्यात आलेल्या एकूण ९५ अर्जदारांच्या यादीसोबत इतर ०६ अतिरिक्त अर्जदारांची यादी समाविष्ट केल्याबाबत या कार्यालयाचा सदर प्रकाराबाबत एकत्रित घटनाक्रम पृष्ठ N-१९ वर नमूद केला आहे.

तसेच याबाबत श्री. बेळणेकर/मिळकत व्यवस्थापक -१, श्रीम. श्रद्धा कुट्टप्पन/मिळकत व्यवस्थापक-३, गटलिपिक श्री. संतोष भोसले, श्री. अनंत बावकर, श्रीम. कविता गुरव, श्री. महेश देशपांडे यांनी स्वतंत्र निवेदन दिले आहे. वरील सर्व वस्तुस्थितीदर्शक घटना व निवेदने लक्षात घेता या सर्व वितरणाच्या प्रकारात खालीलप्रमाणे अनियमितता झाल्याचे दिसून येते.

१. मा. सहमुख्य अधिकारी/दुवपु श्री. डॉ. अविनाश गोटे यांनी मा. उपाध्यक्ष/प्रा यांनी मंजूरी दिलेल्या ९५ अर्जदारांच्या यादीमध्ये नवीन ०६ नावे अंतर्भूत करण्यासाठी मूळ टिप्पणीमध्ये (पृष्ठ क्र N-१५), C- २५७ (ज्या पृष्ठावर अतिरिक्त ०६ अर्जदारांच्या यादीचा उल्लेख आहे.) “and less distributed are than tenable area – ५ cases” असा स्वहस्ताक्षरात उल्लेख

केला आहे. जो मूल टिप्पणीत नाही. (मूल टिप्पणीची छायांकित प्रत पृ.क.C-२८९). सदर बाब ही आक्षेपार्ह व संशयास्पद आहे असे दिसून येते.

२. मा. उपाध्यक्ष/प्रा यांनी मान्यता दिलेल्या ९५ अर्जदारांच्या यादीमधील एकूण १२ पात्र अर्जदारांना देकारपत्र देण्यात आले. सदर देकारपत्रे ही सदर यादी संकेतस्थळावर प्रसिद्ध करण्यात आल्यानंतर देणे आवश्यक होते. परंतु सदर यादी दि.२९.११.२०१९ रोजी प्रसिद्ध करण्यात आली. परंतु त्यापूर्वीच उपरोक्त १२ पैकी १० अर्जदारांना देकारपत्रे देण्यात आली. सदर देकारपत्रे मा. सहमुख्य अधिकारी/दुवपु यांच्या स्वाक्षरीने निर्गमित करण्यात आल्याचे दिसून येते. यामध्येही अनियमितता झाल्याचे दिसून येते.

३. मा. सहमुख्य अधिकारी/दुवपु यांच्या निर्देशाने सदर ०६ अर्जदारांची यादी मूल ९५ अर्जदारांच्या यादीमध्ये जोडण्यात आली. (ज्यावर मा. सहमुख्य अधिकारी/दुवपु श्री. अविनाश गोटे व मिळकत व्यवस्थापक श्रीमती. श्रद्धा कुड्डप्पन यांची स्वाक्षरी आहे.) त्या ०६ पैकी ०५ प्रकरणात त्यांना यापूर्वी प्रत्येकी एक गाळा वितरित करण्यात आला होता. परंतु तो कमी क्षेत्रफळाचा होता. (३०० चौ फु पेक्षा कमी) त्या उर्वरित क्षेत्रफळासाठी त्यांनी पुन्हा एकदा प्रत्येकी १ याप्रमाणे अतिरिक्त गाळ्यांची मागणी केली होती, परंतु सदर मागणी केलेली संचिका ही वरिष्ठ पातळीवर मान्य झाली नव्हती तसेच त्यांची मागणी नियमांना धरून नव्हती, त्यामुळे सदर अतिरिक्त ०५ अर्जदार हे पुन्हा नवीन गाळे वितरणासाठी पात्र नव्हते अनियमितता झाल्याचे दिसून येते.

तरी उपरोक्त सर्व बाबी, वस्तुस्थितीदर्शक निवेदने व त्यावरचे उपमुख्य अधिकारी/पुगा यांचे अभिप्राय पुढील निर्णयास्तव सविनय सादर.

सही  
उपमुख्य अधिकारी/पुगा”

“(1) The matter was discussed with Hon. V.P/A and accordingly the report is being submitted. Meanwhile the approval given by V.P/A for 95 tenements as well as the 6(six) additional tenements incorporated illegal by Jt.CC/RR Mr. Gote has been stayed. The said list is already uploaded on website for inviting objections and suggestions. All that it would be submitted for approval.

(2) The irregularities committed by Mr. Gote Jt/CC/RR have been summarised in the above Note ch.pg.N/36 and N/37.

(3) The acts committed by Jt. CC/RR Mr. Gore are illegal and thus amount to manipulation/cheating/dishonesty/ lack of integrity and misguiding the superiors. This act has brought disrepute to MHADA. This is a case of nexus and to break the nexus it is pertinent that Mr. Gote should be immediately without delay repatriated to his parent department i.e. Rural development department. Necessary disciplinary action to be initiated accordingly.

The RT Section of the report board needs to be revamped.

Submitted for orders pl.

Sd/-  
12/12/2019

19. Besides, Vice-President, MHADA having noticed alleged misconduct of the Applicant sent detailed report dated 16.12.2019 to the Government, which is at Page Nos.266 and 267 of P.B, which is in vernacular as under :-

“प्रति,  
मा. अतिरिक्त मुख्य सचिव,  
गृहनिर्माण विभाग,  
महाराष्ट्र शासन, मंत्रालय, मुंबई.

विषय - म्हाडा उपाध्यक्षांच्या आदेशात फेरफार करून बृहसूचित (master list) अनधिकृत नावे जोडल्याबाबत

संदर्भ :- आपले पत्र क्रमांक संकीर्ण-२०१९/प्रक्र १७०/ दुवपु-२, दि.१२.१२.२०१९

महोदय,

उपरोक्त विषयास अनुसरून आपणांस कळविण्यात येते की उपमुख्य अधिकारी/ पुगा कार्यालयाकडून मुंबई इमारत दुरुस्ती व पुनर्रचना मंडळाच्या अखत्यारीतील उपकर प्राप्त इमारती मधील ज्या भाडेकरू/रहिवासी यांना निष्कासन सूचना (व्हेकेशन) नोटीस देऊन इमारत खाली करण्यात आलेली आहे व त्यांच्या मूळ इमारतीचा अरुंद भूखंड, आरक्षण, रस्ता रुंदीकरण इत्यादी कारणांमुळे पुनर्विकास शक्य नाही. तसेच उपकरप्राप्त इमारती पुनर्रचित झालेल्या आहेत, परंतु कमी गाळे बांधले गेले आहेत अशा वंचित मूळ भाडेकरू/रहिवासी यांना यापूर्वी मंडळाद्वारे पुनर्रचित/पुनर्विकसित इमारतीमध्ये कायमस्वरूपी गाळा देण्यात आलेला नाही व त्यांचे वारसदार संक्रमण शिबिरात स्वतः अधिवास धारण करीत आहेत. अशा ख-याखु-या मूळ भाडेकरू/रहिवासी अथवा त्यांचे वारसदार यांचेकडून बृहतसूचीवरून गाळा वितरण करिता अर्ज मागविले जातात. अर्जाची तपासणी करून व अर्जदाराने सादर केलेल्या कागदपत्रांचे संबंधित कार्यकारी अभियंता यांचेकडून तपासणी केली जाते. अर्जदाराची बृहतसूची समितीसमोर सुनावणी घेऊन अर्जदाराने सादर केलेली कागदपत्रे व कार्यकारी अभियंता यांचा अहवाल विचारात घेऊन बृहतसूची समिती अर्जदाराची पात्र/अपात्रता निश्चित करते. मात्र गाळेधारकांची यादी बनवली जाते.

तरी, अशा ९५ पात्र अर्जदारांना ३०० चौ फू क्षेत्रफळाच्या सदनिका एकत्रितपणे वितरण करण्यासाठी उपमुख्य अधिकारी/पुगा/मुंडदु व पु मंडळ यांचे कार्यालयामार्फत दि. २०.११.२०१९ रोजी प्रस्ताव सादर करण्यात आला होता. सदर प्रस्तावास मा. उपाध्यक्ष/ प्रां. यांनी दि.२५.११.२०१९ रोजी मान्यता दिलेली होती. तरी सदर प्रकरणी अनियमितता आढळून आले बाबत दै. लोकसत्ता या वृत्तपत्रात बातमी सिद्ध प्रसिद्ध झाली आहे. तरी सदर प्रकरणाची अधिक चौकशी केली असता खालील प्रमाणे अनियमितता आढळून आली आहे.

१. सहमुख्य अधिकारी/दुवपु श्री. डॉ. अविनाश गोटे यांनी उपाध्यक्ष/प्रां यांनी मंजुरी दिलेल्या ९५ अर्जदारांच्या यादीमध्ये नवीन ०६ नावे अंतर्भूत करणे साठी मूळ टिप्पणी मध्ये (पृष्ठ क्र. N-15), C-257 (ज्या पृष्ठावर अतिरिक्त ०६ अर्जदारांच्या यादीचा उल्लेख आहे) “and less distributed area than tenable area – 5 cases” असा स्वहस्ताक्षरात उल्लेख केला आहे. जो मूळ टिप्पणीत नाही. सदर बाब ही आक्षेपार्ह व संशयास्पद आहे असे दिसून येते.

२. उपाध्यक्ष/प्रां. यांनी मान्यता दिलेल्या ९५ अर्जदारांच्या यादीमधील एकूण १२ पात्र अर्जदारांना देकारपत्रे देण्यात आले. सदर देकारपत्रे सदर यादी संकेतस्थळावर प्रसिद्ध करण्यात आल्यानंतर देणे आवश्यक होते. परंतु सदर यादी दि.२९. ११. २०१९ रोजी प्रसिद्ध करण्यात आली. परंतु त्यापूर्वीच उपरोक्त १२ पैकी १० अर्जदारांना देकारपत्र देण्यात आली. सदर देकारपत्रे सहमुख्य अधिकारी/ दुवपु यांच्या स्वाक्षरीने निर्गमित करण्यात आल्याचे दिसून येते. यामध्येही अनियमितता झाल्याचे दिसून येते.

३. सहमुख्य अधिकारी/दुवपु यांच्या निर्देशांकाने सदर ०६ अर्जदारांची यादी मूळ ९५ अर्जदारांच्या यादीमध्ये जोडण्यात आली. (ज्यावर सहमुख्य अधिकारी/दुवपु श्री. अविनाश गोटे व मिळकत व्यवस्थापक श्रीमती श्रद्धा कुट्टप्पण यांची स्वाक्षरी आहे.) या ०६पैकी ०५ प्रकरणात त्यांना यापूर्वी प्रत्येक १ गाळा वितरित करण्यात आला होता. परंतु तो कमी क्षेत्रफळाचा होता. (३०० चौ. फु.पेक्षा कमी) त्या उर्वरित क्षेत्रफळासाठी त्यांनी पुन्हा एकदा प्रत्येकी ०१ याप्रमाणे अतिरिक्त गाळयांची मागणी केली होती, परंतु सदर मागणी केलेली संचिका ही वरिष्ठ पातळीवर मान्य झाली नव्हती तसेच त्यांची मागणी नियमांना धरून नव्हती, त्यामुळे अतिरिक्त ०५ अर्जदार हे पुन्हा नवीन गाळे वितरणासाठी पात्र नव्हते ही अनियमितता झाल्याचे दिसून येते. अतिरिक्त आढळून आलेली सर्व ०६ प्रकरणे रद्द करण्यात आलेली आहेत. तसेच, उपरोक्त मुद्दा क्र. ०२ नुसार निर्गमित करण्यात आलेली सर्व १२देकार पत्रे रद्द करण्यात आलेली आहे.

तरी सदर प्रकरणी सहमुख्य अधिकारी श्री. अविनाश गोटे यांनी म्हाडाची हेतुपुरस्परपणे फसवणूक केल्याचे दिसून येते. त्यांचे हे वागणे प्रामाणिकपणा व सचोटीला धरून नाही. त्यामुळे झाडाची प्रतीना प्रतिमा मलिन

होत आहे. तरी याबाबत श्री. अविनाश गोटे यांची सेवा त्यांच्या मूळ विभागांमध्ये (ग्रामविकास विभाग) त्वरित वर्ग करणे आवश्यक आहे. तसेच त्यांच्यावर शिस्तभंगाची/प्रशासकीय कारवाई प्रस्तावित करण्यात यावी.

तरी सदर प्रकरणी वरीलप्रमाणे सद्यस्थिती अहवाल असून आपल्या संदर्भीय पत्राच्या अनुषंगाने सदर अहवाल शासनाने तयार करण्यात येत आहे.”

20. On receipt of report of Vice-President, the Government took certain steps for initiation of D.E. against the Applicant. True, there is an inordinate delay and laxity on the part of Government for service of charge-sheet upon the Applicant since admittedly, till date, there is no service of charge-sheet upon the Applicant. However, fact remains that there were exchange of correspondence between Government and MHADA for preparation of draft of charge-sheet. Shri Milind Mhaiskar, Principal Secretary, Housing Department, Mantralaya, incidentally, who happens to be Vice-President of MHADA when he submitted report to the Government has filed Affidavit (Page Nos.353 to 356 of P.B.) stating that on account of delay on the part of MHADA for preparation of charge-sheet, the process of initiation of D.E. is still underway. The Government has produced draft of charge-sheet dated 24.09.2020 wherein following charges appears to have been framed against the Applicant in proposed D.E.:-

**“जोडपत्र - १**

श्री. अविनाश ग. गोटे, सहमुख्य अधिकारी / मुंबई इमारत दुरुस्ती व पुनर्रचना मंडळ यांच्यावर देण्यात आलेले दोषारोप

=====

**बाब क्रमांक १:** श्री अविनाश ग. गोटे, सहमुख्य अधिकारी, मुंबई इमारत दुरुस्ती व पुनर्रचना मंडळाचे बदलीने दि. २१.१२.२०१७ पासून आले. प्राधिकरणाच्या आदेश क्र.१३९० दिनांक १२/४/२००६ अन्वये प्राधिकरणाने निश्चित केलेल्या कर्तव्य व जबाबदा-या लागू आहेत.

**बाब क्रमांक २:** श्री. अविनाश ग. गोटे सहमुख्य अधिकारी मुंबई इमारत दुरुस्ती व पुनर्रचना मंडळ यांच्या कार्यकाळात पारदर्शक पद्धतीने मास्टर तयार केलेल्या मास्टर लिस्ट मध्ये ९५ रहिवाशांची नावांचा मा. उपाध्यक्ष/प्रा यांची मंजूरी प्राप्त झाल्यानंतर त्यामध्ये अनधिकृतरीत्या आणखी ६ नावांचा समावेश केला. यावरून त्यांची कर्तव्य परायणता ठेवली नाही व कायद्याच्या नियमांच्या, विनियमांच्या आणि प्रस्थापित प्रथेच्या विरुद्ध त्यांनी केलेले कृत्य हे म.ना.से (वर्तपूक) नियम ३(१)(दोन) व (अठरा) चा भंग केला.

**बाब क्र. ३ :** श्री. अविनाश ग. गोटे, सहमुख्य अधिकारी, मुंबई इमारत दुरुस्ती व पुनर्रचना मंडळ हे इमारत दुरुस्ती व पुनर्रचना मंडळ यांच्या कार्यकाळात त्यांनी त्यांच्या अधिनस्त असणा-या अधिकारी / कर्मचारी यांच्यावर दबाव टाकून बृहत्सूचीमध्ये अनधिकृत ६ नावांचा समावेश करून यादी संकेतस्थळावरती प्रसिद्ध केली. त्यांनी त्यांच्या पदाचा दुरुपयोग करून कर्तव्यपरायणता राखली नसून त्यांनी म.ना.से (वर्तपूक) नियम ३ (१)(दोन) चा भंग केला.

**बाब क्रमांक ४ :** श्री अविनाश ग. गोटे, सहमुख्य अधिकारी यांनी संकेतस्थळावर यादी प्रसिद्ध करण्यापूर्वी त्यांनी त्यांच्या पदाचा उपयोग करून देकारपत्रे निर्गमित करून त्यांनी सचोटी व कर्तव्य परायणता ठेवली नसून त्यांनी म. ना.से वर्तणूक नियम ३ (१)(दोन) चा भंग केला.

**बाब क्रमांक ५ :** श्री अविनाश ग. गोटे, सहमुख्य अधिकारी यांनी त्यांच्या केलेल्या कृत्याची प्रसारमाध्यमातून आलेली बातमी आल्याने म्हाडाची प्रतिमा जनमाणसात मलिन झाली. त्यांनी म.ना.से. (वर्तणूक) नियम, १९७९ कलम ३(१)(एक)(दोन)(तीन) चे उल्लंघन केले आहे.

(अनिल डिग्गीकर)  
उपाध्यक्ष तथा मुख्य कार्यकारी अधिकारी  
प्राधिकारण”

21. Undoubtedly, there is laxity and complacency on the part of Government as well as MHADA in not initiating D.E. against the Applicant earnestly. It would not be out of place to mention here that the Tribunal has come across several instances exhibiting such complacency, laxity and delay in initiation of D.E. which gives leeway to a Government servant to question the same. There is absolutely no semblance of explanation in Affidavit filed by Principal Secretary why it took more than two years for not initiating D.E. against the Applicant. At one hand, the Government and MHADA contends that the Applicant has committed serious misconduct, but that seriousness is not shown in initiating D.E. which needs to be taken care of by the concerned.

22. Be that as it may, the fact remains that the process for initiation of D.E. against the Applicant is underway and as per commitment of Principal Secretary in Affidavit, the charge-sheet will be served within a month. As such, this is not a case where deputation is cancelled on unfounded reasons or without taking any steps to take the matter to the logical conclusion.

23. In so far as the stand taken by the Applicant in respect of allegations made against him is concerned, though he has filed Rejoinder, nothing specific is pleaded as to how the act of insertion of additional tenements was justified. He admits the cancellation of those additional tenements by the order of Vice-President. Apart, as stated above, it would be inappropriate to record any finding about the veracity of allegations made against the Applicant to the hilt since D.E. is already

underway. All that, one need to see whether there was *prima-facie* material against the Applicant for cancellation of deputation, which is clearly borne out from the record as discussed above. Suffice to say, the situation is squarely covered by the proviso of Clause 4 which empowers the Government to recall the order of deputation immediately in the matter of serious illegalities, dereliction in duties, etc. There is no such requirement of issuance of 3 months' notice, which is condition precedent or cancellation of deputation in general.

24. As stated above, it is after two months' gap from the date of cancellation of deputation, the Respondent No.6 has been appointed in place of Applicant. The Applicant is claiming reinstatement in place of Respondent No.6 challenging the cancellation of his deputation. However, once the order of cancellation of deputation is upheld, he has no locus to ask for reinstatement in place of Respondent No.6. Despite this position, the learned Advocate for the Applicant tried to contend that the appointment of Respondent No.6 on deputation is without publishing Advertisement and in contravention of 'Divisional Allotment Rules". True, as per "Divisional Allotment Rules", once Division is allotted, a Government servant is not entitled for transfer unless he completed 3 years' tenure in the said Division or minimum one year as per Rule 12(1) of "Divisional Allotment Rules". It is only in exceptional circumstances, where a Government servant or his family member suffers from heart surgery, kidney transplantation, brain tumor or mental disorder, there could be change of Revenue Division after one year. In the present case, the Applicant was allotted Revenue Division, Nagpur but before completion of his normal tenure in terms of "Divisional Allotment Rules", he is deputed in place of Applicant at MHADA, Mumbai. However, since challenge to the cancellation of deputation order fails and Applicant cannot be reinstated on deputation, the question of examining legality of deputation of Respondent No.6 cannot be entertained, as if it is public interest litigation. Even assuming that there are certain irregularities in appointment of Respondent No.6, that itself is hardly of any assistance to

the Applicant since he failed to demonstrate that his deputation is cancelled in colourable exercise of power, arbitrary or malicious.

25. The submission advanced by the learned Advocate for the Applicant that cancellation of deputation order assumes character of transfer order and requires compliance of Section 4(5) of 'Transfer Act 2005' is totally misconceived. Here is the case of cancellation of deputation which is squarely covered by proviso of Clause 5 of G.R. dated 07.12.2016. In any case, it is prerogative of the Government to cancel the period of deputation where serious misconduct is surfaced and there is no question of applicability of Section 4(5) of 'Transfer Act 2005'. There is difference between transfer and deputation and those are governed by different provisions.

26. Reliance is placed on the Judgment of Hon'ble High Court in **Writ Petition No.91/2019 (Sunil Koli Vs. State of Maharashtra) decided on 4<sup>th</sup> January, 2019** and in **2015 (2) Mh.L.J. 679 (State of Maharashtra Vs. Dr. Padmashree Bainade)**. The learned Advocate for the Applicant referred Para No.10 of the Judgment in Writ Petition No.91 of 2019, which is as under :-

**"10.** If we accept the contention of Mr. Sakhare that the said Act would not be applicable, if a person is sent on deputation, then it will be giving tool in the hands of the Government to misuse the provisions of the Maharashtra Civil Services Rules, so as to go away from the rigors of the Transfer Act. We find that such a contention is to be heard only to be rejected."

27. Reliance is also placed on Para No.23 of the Judgment in **Padmashree Bainade's** case, which is as under :-

**"23.** *The transfer is a part of service contract and/or the service jurisprudence. "Transfer is an incidence of service" - "Reason to be recorded" - cannot read to mean, no reason should not be communicated at any circumstances, specially when it is obligatory on the part of the State to act fairly, transparently and reasonably. The decision needs to be actuated by consideration based on law and the record and certainly not an extraneous consideration. Unreasoned order is always vulnerable to challenge and stated to be mala fide. The State/Authority needs to*



*act bonafide. Therefore, cannot be restricted to meant for and/or with the private record/ department. It must be reflected before taking any action/order. Perversity or irrationality, bonafide, legality of reasons difficult to test, if not disclosed at the time of order/action itself. It is normally the unreasoned mid-term order or such orders are vulnerable to challenge. An executive order on undisclosed or unreasoned foundation of alleged misconduct and dereliction of duty is also vulnerable to challenge on the ground of malice in law. Such undisclosed burdened mid-term order of transfer affects the status of the employee, it violates the service conditions thus illegal, though it is administrative order. It has civil consequences. The principle of natural justice is applicable. The State Act and not any guidelines govern such State Government transfer order, such transfer order is arbitrary, irrational and violates Article 14 of the Constitution of India.”*

28. I have gone through both the decisions which are basically arising from the order of transfer passed under the provision of ‘Transfer Act 2005’ and not arising from order of cancellation of deputation. In **Sunil Koli’s** case, the transfer order was passed invoking Section 4(5) of ‘Transfer Act 2005’ which *inter-alia* mandates requirement of recording reasons and administrative exigency. However, no reasons were recorded even for name-sake and only with the formal approval of Hon’ble Chief Minister, the transfer order was issued. However, learned Advocate for private Respondent sought to support impugned transfer order contending that it is a case of deputation which were turned down by the Hon’ble High Court, as seen from Para No.10 of the Judgment reproduced above. In-so-far as **Padmashree Bainade’s** case is concerned, the transfer order was found punitive and it is in that context, the observations to that effect were made in Para No.23 of the Judgment reproduced above.

29. Suffice to say, both these decisions are arising from transfer order passed under the provisions of ‘Transfer Act 2005’ which were found in blatant violation of the provisions of the said Act, and therefore, quashed. Whereas, the present case is of deputation and it’s cancellation invoking Clause 5 of G.R. dated 07.12.2016 which does not require compliance of Section 4(5) of ‘Transfer Act 2005’. There is material difference between transfer within the meaning of ‘Transfer Act 2005’ and deputation within the meaning of “Joining Time Rules of 1981” read with G.R. dated

07.12.2016. As such, those operate in different sphere and governed by different provisions independently. I have, therefore, no hesitation to sum-up that there is no requirement of compliance of Section 4(5) of 'Transfer Act 2005' in the matter of deputation.

30. Apart, as rightly pointed out by learned Advocate for Respondent No.6 even in terms of deputation order, the total period was for three years and it has come to an end on 18.12.2020. In other words, the period of deputation being already expired, he cannot ask for re-deputation as of vested right. From this angle also, the O.A. challenging the order of cancellation of deputation has become infructuous by efflux of time. Even assuming for a moment that the challenge survives on merit also, it fails for the reasons discussed above.

31. The cumulative effect of aforesaid discussion leads me to sum-up that the challenge to the impugned orders viz. cancellation of deputation order and appointment of Respondent No.6 in his place holds no water and O.A. deserves to be dismissed. Hence, the following order.

### **ORDER**

Both the Original Applications are dismissed with no order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 25.08.2021  
Dictation taken by :  
S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2021\August, 2021\O.As.451 & 453.20.w.8.2021.Transfer.doc

Uploaded on