

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 347 OF 2017

DIST. : JALGAON

Sanjay S/o Sitaram Gaikwad,
Age. 49 years, Occu. : Service as
Sub Divisional Officer, Amalner,
Tq. Amalner, Dist. Jalgaon.

-- APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Principal Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai - 32.
2. The Divisional Commissioner
(Administration),
Nasik Division, Nasik Road,
Dist. Nasik.
3. The Collector, Jalgaon,
Dist. Jalgaon.

-- RESPONDENTS

APPEARANCE :- Shri V.B. Wagh, learned Advocate for the
applicant.

: Shri I.S. Thorat, learned Presenting Officer
for the respondents.

CORAM : Hon'ble Shri B.P. Patil, Member (J)

DATE : 21.3.2018

O R D E R

1. By filing the present Original Application the applicant has
challenged his transfer order dtd. 7.6.2017 issued by the res. no.

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1 transferring him to the post of Deputy Collector / Special Land Acquisition Officer (Medium Irrigation Project), Dhule, Dist. Dhule from the post of Sub Divisional Officer, Amalner, Dist. Jalgaon.

2. The applicant was initially selected by the Maharashtra Public Service Commission as per G.R. dtd. 29.7.1996 and appointed and posted in the office of Divisional Commissioner, Aurangabad as a Probationary Tahsildar. He joined his posting on 14.8.1996. He completed his probation period satisfactorily and thereafter he was given regular posting as a Tahsildar at Bhokar, Dist. Nanded. He worked there from 31.3.1998 to 31.8.2000. Thereafter he was transferred as a Tahsildar at Kandhar, Dist. Nanded and he worked there from 31.8.2000 to 12.12.2003. By the order dated 12.12.2003 the applicant was promoted in the cadre of Deputy Collectors and was posted as a Presenting Officer (Irrigation) in the office of the Divisional Commissioner (Enquiry), Aurangabad and he worked there from 3.9.2004 to 30.4.2006. Thereafter he was transferred as a Sub Divisional Officer, Kinwat, Dist. Nanded where he worked during the period from 30.4.2006 to 31.3.2009. Thereafter, the applicant was transferred and posted in the office of Sub Divisional Officer, Jalna and he worked there from 23.3.2009 to 7.6.2012. Thereafter he was transferred

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as a Residential Deputy Collector, Osmanabad and he worked there from 8.6.2012 to 14.8.2014. He was then transferred to the post of Sub Divisional Officer, Beed and he worked there from 15.8.2014 to 2.4.2015. Again he was transferred as a Deputy Collector (E.G.S.), Jalna and he worked there from 15.5.2015 to 6.10.2015. Thereafter he was posted as a Sub Divisional Officer, Amalner, Dist. Jalgaon vide order dtd. 3.10.2015. Accordingly, the applicant joined his duty on the post of Sub Divisional Officer, Amalner, Dist. Jalgaon on 13.10.2015 and since then he is working there. He has not completed his normal tenure of posting at Amalner, Dist. Jalgaon. He was not due for transfer, but the respondents issued the transfer order dtd. 7.6.2017 and transferred the applicant from the post of Sub Divisional Officer, Amalner, Dist. Jalgaon to the post of Deputy Collector / Special Land Acquisition Officer, Medium Irrigation Project, Dhule in place of Shri Bharde.

3. It is contention of the applicant that the impugned order is in contravention to the provisions of sec. 3 (1) and sec. 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005). It is his contention that his name

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was not recommended for transfer by the Civil Services Board as he was not due for transfer. In spite of that the res. no. 1 made his transfer. It is his contention that he was discharging his work as Sub Divisional Officer, Amalner and his work was appreciated by the res. nos. 2 & 3 and accordingly appreciation letters have been issued to him.

4. It is contention of the applicant that his elder son has appeared for 12th examination and he has passed therein and admission process for his further education is going on, while his younger son is studying in 9th standard at Mangrud, Tq. Amalner, Dist. Jalgaon. Because of the impugned transfer order inconvenience is caused to his family members. It is his contention that the impugned order is midterm and mid tenure transfer order and against the provisions of the Transfer Act, 2005 and, therefore, it is liable to be quashed and set aside. It is his contention that by the impugned transfer order other Officers were accommodated as per their choice and it was not necessary to transfer the applicant at Dhule when Shri Bharde is accommodated at the same station for the reasons best known to the respondents. It is his contention that the impugned order is illegal and in violation of the provisions of the Transfer Act, 2005

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and therefore he prayed to quash and set aside the same by allowing the present O.A.

5. The res. nos. 1 & 2 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the facts regarding initial appointment of the applicant as Tahsildar, thereafter his promotion and service rendered by him at different places. They have not disputed the fact that the applicant is serving at Amalner, Dist. Jalgaon since 13.10.2015. They have also not disputed that the applicant has not completed normal tenure on the posting at Amalner. They have admitted the fact that the applicant has been transferred by the impugned transfer order from Amalner to Dhule. They have denied that the impugned order is contrary to the provisions of the Transfer Act, 2005. It is their contention that the res. no. 1 received letter of Hon'ble Minister, E.G.S. & Tourism Department mentioning that the applicant's mother was suffering from cancer and frequently he has to visit Dhule for her medical treatment and therefore Hon'ble Minister of E.G.S. & Tourism Department made a request for transfer of the applicant at Dhule on the post of Deputy Collector (Administration). It is their contention that proposal of transfer of 22 Deputy Collectors have been placed before the Civil

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Services Board on 31.8.2017. The applicant was not due for transfer, but res. no. 1 proposed his transfer on the ground of his mother's illness and therefore he was transferred to Dhule. The applicant has not received his choice posting at Dhule and therefore he has filed this false O.A. The applicant is interested in the post of Deputy Collector (Administration) at Dhule, but he was transferred as a Deputy Collector (E.G.S.) at Dhule. They have denied that any inconvenience is caused to the applicant. It is their contention that the applicant approached Hon'ble Minister and made a request for transfer and on the request of Hon'ble Minister the applicant has been transferred by the impugned order. It is their contention that the transfer of Shri Bharde, Deputy Collector has been made on another post at Dhule on his request as his wife is also working as a District Rehabilitation Officer at Dhule. It is their contention that there is no illegality in the impugned transfer order and therefore they prayed to reject the O.A.

6. The applicant filed affidavit in rejoinder and contended that he never made any request to the respondent authorities to make his transfer at Dhule on the ground of illness of his mother. He has also denied that his mother is suffering from cancer. He has

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denied that he has approached the Minister for his transfer to Dhule on his personal grounds. It is his contention that he is residing at Amalner along with his family members and his sons are taking education at Amalner and therefore there is no reason to make a request for his transfer to Dhule as the same will affect the career of his children. It is his contention that the Civil Services Board has not recommended his transfer, in spite of that his transfer was made. Therefore, he prayed to allow the O.A.

7. I have heard Shri V.B. Wagh, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondents. I have gone through the various documents filed on record by both the sides.

8. Admittedly the applicant is working as a Sub Divisional Officer, Amalner, Dist. Jalgaon since 31.10.2015. He has not completed his normal tenure of posting at Amalner. He is not due for transfer. There is no dispute about the fact that when proposal of 22 Deputy Collectors have been placed before the Civil Services Board, the Civil Services Board in its meeting dtd. 31.12.2017 considered the said proposal and decided not to recommend transfer of the applicant as he had not completed his normal tenure of posting. Admittedly, the impugned order is

midterm and mid tenure transfer order.

9. The learned Advocate for the applicant has submitted that the transfer of the applicant is made on the ground that the applicant made a request to the Hon'ble Minister, E.G.S. & Tourism and on the basis of his request Hon'ble Minister of E.G.S. & Tourism requested to transfer the applicant at Dhule on account of illness of his mother. He has submitted that the applicant never approached any Minister for his transfer and made such request. He has submitted that mother of the applicant is not suffering from any decease and therefore no question of making any request by the applicant for his transfer to Dhule arises. He has submitted that elder son of the applicant has appeared for 12th examination and he has passed therein and now admission process for his further education is going on, while his younger son is studying in 9th standard at Mangrud, Tq. Amalner, Dist. Jalgaon. He is residing at Amalner along with his family members and therefore no question to make any request for making his transfer arises. He has submitted that the Civil Services Board has not recommended the transfer of the applicant, but the In-charge Minister has recommended / proposed the applicant by putting the remarks on the proposal. No reasons have been recorded in writing for transfer of the

applicant. He has further submitted that no exceptional circumstances and special reasons in writing have been recorded for proposing his transfer and while obtaining the approval of the Higher Transferring Authority. Therefore the impugned order of transfer is in contravention of the provisions of sec, 4 (ii) & 4 (5) of the Transfer Act, 2005. Therefore, he prayed to quash the impugned order.

10. The learned P.O. has submitted that proposal regarding transfer of the applicant has been made on the basis of recommendations made by the Hon'ble Minister of E.G.S. & Tourism and accordingly it was placed before the Civil Service Board. The Civil Services Board has not recommended his transfer but thereafter the concerned Minister In-charge made an endorsement and proposed the transfer of the applicant and thereafter the said proposal has been accepted by the Hon'ble Chief Minister and on approval of higher transferring authority i.e. Hon'ble Chief Minister, transfer of the applicant has been made. He has submitted that the applicant had requested for his transfer at Dhule on the post of Deputy Collector (Administration), but the respondents posted him as Special Land Acquisition Officer, Dhule. As the applicant has not received his choice posting at

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Dhule he has filed the false O.A. Therefore he prayed to reject the present O.A. He has submitted that the impugned order has been issued by following the provisions of sec. 4 (4) & 4 (5) of the Transfer Act, 2005 and there is no illegality in the impugned order of transfer.

11. On perusal of documents on record, it appears that, Hon'ble Minister of E.G.S. & Tourism by his letter dtd. 14.5.2017 addressed to the Hon'ble Chief Minister requested Hon'ble Chief Minister to make transfer of the applicant from Amalner to Dhule on the ground that his mother is suffering from cancer and the applicant has to visit Dhule on and often on account of treatment of his mother. On the basis of said recommendation, proposal has been prepared by the Department regarding transfer of 22 Deputy Collectors including the present applicant. The name of the applicant is at sr. no. 18 of the proposal. The Civil Services Board considered the proposal on 31.5.2017 and decided not to recommend transfer of the applicant as he was not due for transfer. Thereafter the said proposal along with recommendation of the Board has been placed before the Minister In-charge of Revenue Department. The Minister In-charge (Revenue) modified the recommendations of some of Officers including the applicant

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and recommended the transfer of the applicant on the post of Special Land Acquisition Officer, Medium Project, Dhule. The said proposal along with recommendations of the Civil Services Board & Hon'ble Minister has been placed before the Hon'ble Chief Minister and Hon'ble Chief Minister approved the same with modification suggested by the Hon'ble Minister of Revenue Department and accordingly the impugned transfer order has been issued by the res. no. 1. The documents placed on record by the res. no. 1 does not contain any request letter in writing submitted by the applicant requesting his transfer from Amravati to Dhule on account of illness of his mother. On the contrary, when it was directed to the respondents to produce the application, if any, filed by the applicant, requesting his transfer as mentioned in the proposal placed before the Civil Services Board, the respondents by its communication dtd. 7.3.2018 informed that, no such application filed by the applicant requesting transfer is available in its office record and only letter of Hon'ble Minister of E.G.S. & Tourism addressed to Hon'ble Chief Minister is available in the file. It thus shows that no such written request was made by the applicant for his transfer from Amalner to Dhule to the respondents. Therefore, it cannot be said that the impugned transfer order has been issued on the request

of the applicant.

12. The applicant has specifically stated that his mother is not suffering from any decease, therefore, his transfer on that ground is not legal one since he is not due for transfer. No exceptional circumstances or special reasons have been recorded in writing by the Hon'ble Minister In-charge of the concerned Department while recommending the transfer of the applicant by not considering the recommendations of the Civil Services Board. Not only this, but no special case to make the transfer of the applicant has been made out and no reasons have been recorded in writing while effecting transfer of the applicant. Hon'ble In-charge Minister of the concerned department simply made following endorsement on the proposal :-

“अ.क्रं. ५/१२/१७/१८ येथील नावासमोर दर्शविलेल्या बदल्यासह उर्वरीत प्रस्ताव मान्य करण्यात यावा.

*सहि/-
सी.बी.पाटील”*

13. Therefore, in my view, the respondents had not complied the mandatory provisions of sec. 4 (4) (ii) & 4 (5) of the Transfer Act, 2005 while making midterm, mid tenure transfer of the applicant.

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Therefore, the impugned order requires to be quashed and set aside as it is not in accordance with the provisions of sec. 4 (4) & 4 (5) of the Transfer Act, 2005.

14. In view of above discussion, the present O.A. deserves to be allowed. Resultantly, the present O.A. stands allowed and the impugned order dtd. 7.6.2017 issued by the res. no. 1 transferring the applicant to the post of Deputy Collector / Special Land Acquisition Officer (Medium Irrigation Project), Dhule, Dist. Dhule from the post of Sub Divisional Officer, Amalner, Dist. Jalgaon is hereby quashed and set aside. The respondents are directed to repost the applicant at his earlier posting i.e. at Amalner by issuing appropriate order immediately. There shall be no order as to costs.

PLACE : AURANGABAD
DATE : 21.3.2018

(B.P. PATIL)
MEMBER (J)