

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 952 OF 2017

DIST. : LATUR

Vilas Ganpatrao Shirolkar,
Age.52 years, Occu. : Service,
(as Dist. Superintendent of Land
Records, Latur),
R/o C/o Mr. Kadam Dinkarrao,
New Bhagirathi Housing Society,
Agroya Nagar, Old MIDC Road,
Latur.

-- APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Principal Secretary,
(Revenue), Revenue & Forest Department,
M.S. Mantralaya, Mumbai – 32.
2. The Consolidation Commissioner
& Director, Land Records,
M.S., Pune.
3. The Deputy Director,
Land Records, Aurangabad.

-- RESPONDENTS

APPEARANCE :- Shri Avinash S. Deshmukh, learned
Advocate for the applicant.
: Smt. Priya R. Bharaswadkar, learned
Presenting Officer for the respondents.

CORAM : J.D. Kulkarni, Vice Chairman (J)

DATE : 23rd February, 2018

ORDER

1. Heard Shri Avinash S. Deshmukh, learned Advocate for the applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the respondents.

2. The applicant, who is a District Superintendent of Land Records, has challenged his transfer order dtd. 19.12.2017 issued by the res. no. 1 (Annex. A.3 page 17), whereby he has been transferred from the post of District Superintendent of Land Records, Latur under the control of the Deputy Director, Land Records, Aurangabad to the same post under the control of Deputy Director of Land Records, Nagpur. The impugned order has been passed under sec. 4 (4) & 4 (5) 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). The learned Advocate for the applicant submits that section under which the impugned order has been passed itself clearly shows that the said order is midterm and mid tenure.

3. From the admitted facts on record, it seems that the applicant has been posted at Latur and was discharging his duties there since 9.6.2015 and he was not due for transfer since he has not completed his normal tenure of 3 years at Latur. However, vide the impugned order dtd. 19.12.2017, the applicant has been

transferred to Nagpur and, therefore, the said order is midterm and mid tenure. It is issued against the basic principles of natural justice, equity, good conscience and the same is most illegal, arbitrary, high-handed, irrational, illogical. The impugned order is also issued without application of mind and in colourable exercise of powers and hence the same is liable to be quashed and set aside. The learned Advocate for the applicant submits that there were no exceptional circumstances or special reasons for applicant's transfer and such reasons are also not recorded in the impugned transfer order. The applicant has, therefore, requested that the impugned transfer order be quashed and set aside and he may be allowed to discharge his duty at Latur.

4. The respondents tried to justify the order of transfer. According to the respondents, the transfer order of the applicant is illegal and proper and it has been issued after following the due procedure as mentioned in sec. 4 (4) (ii) and 4 (5) of the Transfer Act, 2005.

5. The learned P.O. invited my attention to the minutes of the meeting, wherein the applicant's case has been considered for the transfer. The said minutes are placed on record along with affidavit in reply and it is stated that there were serious complaints against the applicant and his transfer was

recommended by the local M.L.A. and the Civil Services Board and the Committee comprising of Revenue Minister, Hon'ble Chief Minister and Others have approved the impugned transfer of the applicant. In short the respondents are trying to justify the impugned transfer order.

6. The learned Advocate for the applicant submits that no reasons are mentioned in the transfer order. The learned Advocate for the applicant has placed reliance on the judgment delivered by the Hon'ble High Court in the case of **Pradeepkumar s/o Kothiram Deshbhratar Vs. State of Maharashtra & Ors. [2011 (5) Mh. L.J. 158]**. He particularly relied on para 21 of the said judgment, which reads as under :-

“21. Perusal of note, as approved by Hon'ble Minister at page 165, again does not show any specific application of mind in so far as the transfer inter se of the petitioner and respondent no.5 is concerned. The specific cases which can be said to be looked into by the Hon'ble Minister are already mentioned by us above. Whether this fact which we have noticed is looked into by Hon'ble Minister or not is not very clear. Section 4 (5) permit competent authority in special cases to transfer the petitioner after recording reasons in writing and that too with prior approval of Hon'ble Minister. Thus, Section 4(5) of the 2005 Act contemplates such premature transfers only in exceptional cases. The

facts above show that request made by the President of Zilla Parishad and recommendation of Hon'ble Minister has been the only reason for treating the proposal as special case. This is not contemplated by Section 4(5) of 2005 Act and 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. On the contrary, records show that respondent nos.2 and 3 have not recorded any special reasons at all. These respondents are not satisfied with relevance of reasons placed before Hon'ble Minister. Hence, they have developed a new story in an attempt to justify that transfer before this Court. We, therefore, do not find compliance of provisions of Section 4(5) r/w Sec. 6 of 2005 Act in the present matter."

7. From the provisions of sec. 4 (4) & 4 (5) of the Transfer Act, 2005 it is clear that the transfer of the Government servants shall ordinarily be made only once in a year in the month of April or May or there is proviso to sec. 4 (4) and sec. 4 (5) will make it clear that under which circumstances in special cases transfer can be effected without completion of tenure. For the purpose of convenience sub sec. (4) & (5) of sec. 4 of the Transfer Act, 2005 are reproduced as under :-

“4. Tenure of transfer.

(1 to 3) -- -- -- --

(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.”

8. The learned Advocate for the applicant submits that there is nothing on record to show that the case of the applicant falls within the ambit of sub sec. 4 and 5 of Sec. 4 of the Transfer Act, 2005.

9. In order to see as to whether special reasons are recorded or there was administrative exigency to transfer the applicant, I have

perused the minutes of the meeting placed on record by the respondents. The recommendation of the Committee is at pages 37 to 40 (both inclusive). Perusal of the said recommendation of Civil Services Board shows that the Committee observed that prima-facie allegations cannot be proved and Committee recommended that the applicant shall be transferred in the month of May, 2018 i.e. at the time of annual general transfer of the year 2018. Following reference in the said minutes will make it clear that the Committee did not recommend the transfer of the applicant and said observations are as under :-

“-----विषयांकित कामी संदर्भिय पत्रासोबत प्राप्त पत्र मा. आमदार अतुल सावे औरंगाबाद यांनी केलेल्या तक्रारी अर्जात कोणत्याही नागरीकांचे नाव, प्रकरणाचे नाव, अथवा संदर्भ नमूद केलेला नाही किंवा पत्रासोबत कोणतेही कागदपत्र प्राप्त झालेले नाही किंवा श्री. शिरोळकर यांचे विरुद्ध कोणत्याही नागरिकाने पुराव्यानिशी या कार्यालयाकडे तक्रार दाखल केलेली नाही. त्यामुळे तक्रार स्पष्ट अशी नसल्याने चौकशी करता आलेली नाही. त्यामुळे उपरोक्त यापुर्वीच्या तक्रारी विचारात घेवून तत्कालीन उपसंचालक भूमि अभिलेख औरंगाबाद यांनी पत्र क्रमांक आस्था:२/त. अ.७/२०१६ दि. १६.६.२०१६ अन्वये प्रशासकीय कारणास्तव श्री. शिरोळकर यांची अन्यत्र बदल करावी असे प्रस्तावीत केले आहे. त्यानुषंगाने आपले स्तरावरून पसंतीनुरूप उचीत कार्यवाही होणेस विनंती आहे.

६. जमाबंदी आयुक्त, पुणे यांनी सादर केलेल्या वरील अहवालाच्या अनुषंगाने नमूर करण्यात येते की, त्यांनी श्री. शिरोळकर यांची सध्याच्या पदावरून बदली करण्यासंदर्भात कोणतीही ठोस शिफारस शासनास सादर केलेली नाही. तसेच विद्यमान उपसंचालक भूमि अभिलेख, औरंगाबाद प्रदेश, औरंगाबाद यांनी त्यांच्या

दि. २०.११.२०१७ रोजीच्या अहवालामध्ये तत्कालीन उपसंचालक भूमि अभिलेख, औरंगाबाद प्रदेश, औरंगाबाद यांनी त्यांच्या दि. १६.०६.२०१६ रोजी जमाबंदी आयुक्त, पुणे यांना सादर केलेल्या चौकशी अहवालाचा अल्लेख केला आहे. त्यासंदर्भात नमूद करण्यात येते की, सदर अहवाल सुमारे दिड वर्षापूर्वीचा असून त्या अहवालावर उचित कार्यवाही करून त्याआधारे श्री. शिरोळकर यांची बदली करावी किंवा नाही ? याबाबत सुध्दा जमाबंदी आयुक्त, पुणे यांनी शासनास कोणताही प्रस्ताव सादर केलेला नाही. त्याचप्रमाणे, श्री. शिरोळकर हे सध्याच्या पदावर दिनांक ९.६.२०१५ पासून कार्यरत असून ते सध्या बदलीस पात्र नाहीत. श्री. शिरोळकर माहे मे, २०१८ मधील नियतकालिक बदलीवेळी पात्र आहेत.

७. तरी, श्री. शिरोळकर यांची जिल्हा अधिक्षक भूमि अभिलेख, लातूर यांच्यासंदर्भात मा. आ. श्री. सावे यांनी शासनास सादर केलेल्या तक्रारीच्या अनुषंगाने जमाबंदी आयुक्त, पुणे यांनी कोणतीही ठोस शिफारस शासनास सादर केली नसल्याची बाब विचारात घेऊन त्यांची माहे मे, २०१८ मधील नियतकालिक बदल्यावेळी, बदली करणे योग्य राहिल. त्याअनुषंगाने श्री. शिरोळकर यांची सध्याच्या पदावरून बदली करण्यात यावी किंवा कसे याबाबतचा प्रस्ताव भूमि अभिलेख विभागातील अधिका-यांच्या पदस्थापना, बदली याबाबत सक्षम प्राधिका-यास शिफारशी करण्यासाठी शासना निर्णय क्रं. आस्था-१०१४/प्र.क्र. ६६/ई-६ दि. १०.१०.२०१६ अन्वये स्थापन करण्यात आलेल्या नागरी सेवा मंडळ (१) समोर चक्राकार पध्दतीने सादर करण्यात येत आहे.”

10. The aforesaid minutes have been sent to the Minister (Revenue) and he stated as under :-

“विधीमंडळ मा. सदस्याचे तक्रारीनुसार श्री. शिरोळकर यांची जिल्हा अधिक्षक भूमि अभि. संलग्न उ.स.भू.अ. नागपूर या अकार्यकारी पदावर करण्यात यावी.”

11. The recommendations of the Hon'ble Revenue Minister has been accepted by the Hon'ble Chief Minister. Thus, it is clear that

even the Civil Services Board recommended the transfer of the applicant in the month of May, 2018 i.e. at the time of annual general transfer, the Minister (Revenue) seems to have influenced by the recommendations made by the local M.L.A.

12. The learned P.O. has invited my attention to number of complaints filed against the applicant. However, those complaints are not substantiated and on the contrary it seems that the Civil Services Board found that there was no substance in the said complaints against the applicant and, therefore, recommended that the applicant be transferred at the time of annual general transfers of 2018.

13. The learned P.O. has placed reliance on the judgment delivered on 18.9.2007 by the Hon'ble Supreme Court in the case of **Mohd. Masood Ahmad Vs. State of U.P. & Ors. in Appeal (Civil) No. 4360/2007.** In para 8 of the said judgment, Hon'ble Supreme Court has observed as under :-

“8. Learned counsel for the appellant submitted that the impugned transfer order of the appellant from Muzaffarnagar to Mawana, District Meerut was made at the instance of an MLA. On the other hand, it has been stated in the counter affidavit filed on behalf of respondent Nos. 1 & 2 that the appellant has been transferred due to complaints against him. In our

opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State government is certainly within its jurisdiction to transfer such an employee. There can be no hard and fast rule that every transfer at the instance of an M.P. or MLA would be vitiated. It all depends on the facts & circumstances of an individual case. In the present case, we see no infirmity in the impugned transfer order.”

14. The aforesaid observations of the Hon’ble Supreme Court, thus clearly shows that there can be no hard and fast rule that every transfer at the instance of an M.P. or M.L.A. would be vitiated. It all depends on the facts & circumstances of an individual case. In the present case the allegations made by the M.L.A. are not having substance as found by the Civil Services Board and the applicant seems to have been transferred only on the basis of complaints filed by the local M.L.A. Shri Atul Save, Aurangabad (East). It is pertinent to note that, M.L.A. Shri Save is not of Latur where the applicant is serving.

15. The learned Advocate for the applicant has placed reliance on the Circular dtd. 11.2.2015 issued by the Government of

Maharashtra and particularly para 8 of the said Circular gives guidelines as to what guideline shall be followed while transferring the employees under the Transfer Act, 2005. The copy of the said Circular is at pages 125 to 130 (both pages inclusive) and the relevant para 8 thereof is as under :-

“८. एखाद्या प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचा-याच्या विराधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधीत अधिकारी/कर्मचा-याची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधीत अधिकारी/कर्मचा-यांच्या तक्रारीसंबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारीमधील गांभीर्य विचारात घेऊन, संबंधीत अधिकारी/कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे याबाबत बदली प्राधिका-याने ठोस निर्णय घ्यावा. संबंधीत अधिकारी/कर्मचा-याच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधीत अधिकारी/कर्मचा-याला त्याच पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याबाबत बदली प्राधिका-याने निर्णय घ्यावा. मात्र संबंधीत अधिकारी/कर्मचा-याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिका-याचे मत झाल्यास त्याबाबतची कारणामिमांसा नमूद करून बदली प्राधिका-या संबंधीत अधिकारी/कर्मचा-याची बदली त्याच्या लगतच्या वरिष्ठ प्राधिका-याकडे प्रस्तावित करू शकतो. लगतच्या वरिष्ठ प्राधिका-याकडे असा प्रस्ताव प्राप्त झाल्यास बदली प्राधिका-याने नमुद केलेली कारणे योग्य आहेत किंवा कसे याची छाननी करून स्वःताचे मत स्पष्ट करून बदली प्राधिका-याच्या प्रस्तावाला मान्यता द्यावी किंवा बदली प्राधिका-याचा प्रस्ताव फेटाळून लावण्यात यावा. ज्या प्रकरणात बदली प्राधिका-याच्या प्रस्तावानुसार गैरवर्तणुकीच्या अनुषंगाने शासकीय अधिकारी/कर्मचारी यांची बदली करण्यात येते अशा प्रकरणात संबंधीत अधिकारी/कर्मचारी यांची बदली केल्यानंतर त्याच्या विरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी.”

16. The aforesaid guidelines clearly show that even if there are complaints against the employee, the said employee shall not be transferred merely on the basis of complaints and there must be some investigation as to whether there is prima-facie evidence or not in the said complaints.

17. In the present matter, there is no substance in the allegations as found by the Civil Services Board. In such circumstances the impugned transfer of the applicant is against the provisions of the Transfer Act, 2005 and the same needs to be quashed and set aside.

18. The learned P.O. submits that the applicant, though transferred on 19.12.2017, has not yet joined at his transferred place in spite the fact that no interim stay was granted. On this basis only the transfer cannot be held legal. If the respondent authorities desired they would have taken action against the applicant for not joining at transferred place as per the rules. It is stated that the applicant is due for transfer in the month of May, 2018 and, therefore, it would not proper to disturb him till he becomes due for transfer. The respondents are at liberty to consider the applicant for transfer in the month of May, 2018. Hence, I pass following order :-

ORDER

- (i) The O.A. is allowed with no order as to costs.
- (ii) The impugned order dated 19.12.2017 (Annex. A-3 page 17) issued by the res. no. 1 in respect of transfer of the applicant is quashed and set aside.
- (iii) The respondents are directed to allow the applicant to discharge his duties on the post of Dist. Superintendent of Land Records, Latur till May, 2018 i.e. till annual general transfers of 2018.

VICE CHAIRMAN (J)

ARJ-O.A. NO. 952-2017 JDK (TRANSFER)