

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.103 OF 2020

DISTRICT : PUNE

Shri Nilesh G. Deshmukh.)
Age : 46 Yrs, Occu. : Govt. Service as)
Chief Officer, Class-II with last posting at)
Mangalvedha Municipal Council,)
District : Solapur and residing at Flat No.)
602, Building No.A/2, Regency Cosmos)
Hsg.Soc., Baner Road, Pune.)...**Applicant**

Versus

The State of Maharashtra.)
Through Principal Secretary,)
Urban Development Department,)
Mantralaya, Mumbai – 400 032.)...**Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondent.

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

DATE : 25.05.2021

JUDGMENT

1. In this belated O.A, the challenge is to the transfer order dated 04.12.2018 to the extent of seeking declaration only that the transfer order is vitiated for want of recommendation of Civil Services Board

(CSB) invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. At the very outset, it needs to be stated that the Applicant is seeking only declaration to the effect that transfer order dated 04.12.2018 is bad in law because of failure of Respondent to place the matter before CSB and the Applicant is not seeking reinstatement on the post he was transferred from on account of subsequent development namely promotion which had taken place after transfer order dated 04.12.2018. The Applicant was serving in the cadre of Chief Officer of Municipal Council (Group 'B') at Mangalvedha Municipal Council, District Solapur.

3. Following are the undisputed facts giving rise to the filing of the O.A.

(i) The Applicant was posted as Chief Officer, Mangalvedha, District Solapur in view of his transfer order dated 31.05.2017 and was not due for transfer since having not completed normal tenure of three years.

(ii) While Applicant was serving as Chief Officer, Municipal Council, Mangalvedha, District Solapur by order dated 04.12.2018, he was transferred from Mangalvedha to Kinvat, District Nanded on serious complaints about his functioning and performance at Mangalvedha.

(iii) The transfer order dated 04.12.2018 was thus mid-term and mid-tenure.

(iv) The Applicant though transferred by order dated 04.12.2018 to Kinvat, he did not join at Kinvat for a long time, and therefore, Respondent by order dated 16.12.2019 suspended him invoking

Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 in contemplation of D.E, but no D.E. was initiated.

(v) The Applicant has challenged suspension order dated 16.12.2019 by filing O.A.No.100/2020 inter-alia contending that no DE was initiated within 90 days from the date of suspension, and therefore, sought reinstatement in service.

(vi) This Tribunal decided O.A.100/2020 by order dated 03.02.2020 directing the Respondent to take review of suspension of the Applicant.

(vii) Accordingly, Respondent took review of suspension of the Applicant and reinstated him in service by order dated 04.06.2020 and posted him as Assistant Commissioner, Pune Municipal Corporation (Group 'B' post).

(viii) The Applicant accordingly joined as Assistant Commissioner, Pune Municipal Corporation on 06.06.2020.

(ix) Later by order dated 29.12.2020, the Applicant was promoted in Group 'A' cadre and posted as Assistant Commissioner, Pimpri-Chinchwad Municipal Corporation and accordingly, Applicant joined the promotional post.

(x) In the meantime, since Applicant did not join at Kinvat in terms of transfer order dated 04.12.2018, his absence period from 17.02.2019 to 04.06.2020 (474 days) was treated as 'break in service'.

(xi) However, later, Respondent by order dated 24.12.2020 condoned the break in service and treated absence period of 474 days as 'Extra-Ordinary Leave'.

4. It is on the above background, this O.A. came to be filed belatedly on 30.01.2020 challenging transfer order dated 04.12.2018 seeking

declaration only to the extent that transfer order dated 04.12.2018 is bad in law for failure to place the matter before CSB as mandated by Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**.

5. The Respondent resisted the O.A. by filing Affidavit-in-reply *inter-alia* contending that in view of subsequent transfer of the Applicant as Assistant Commissioner, Pune Municipal Corporation and thereafter promotion in the cadre of Group 'A' and posting as Assistant Commissioner, Pimpri-Chinchwad Municipal Corporation and joining of the Applicant on promoted post, the O.A. has become infructuous and liable to be dismissed.

6. Shri A.V. Bandiwadekar, learned Advocate for the Applicant had, however, requested the Tribunal to decide the O.A. on merit, since he is seeking only declaration that transfer order dated 04.12.2018 is bad in law in absence of recommendations of CSB.

7. Shri Bandiwadekar, learned Advocate for the Applicant vehemently urged that since admittedly matter was not place before CSB as mandated by Hon'ble Supreme Court in T.S.R. Subramanian's case (cited supra), the transfer order dated 04.12.2018 is *ex-facie* bad in law and seek declaration only to this extent. He fairly concedes that in the meantime, the Applicant was promoted in Group 'A' and posted as Assistant Commissioner, Pimpri-Chinchwad Municipal Corporation and had joined the promotional post. As regard maintainability of O.A, he countered that even if now Applicant cannot be reinstated as Chief Officer, Mangalvedha in view of subsequent developments, still his client is entitled to declaration that transfer order dated 04.12.2018 is bad in law on account of absence of recommendations of CSB. He also canvassed that since transfer order dated 04.12.2018 was bad in law, the Applicant was not required to join at Kinvat, and therefore, subsequent action taken by the Respondent regarding suspension and

treating absence period of 474 days as 'leave without pay' are illegal, and therefore, seeks declaration to the extent that transfer order dated 04.12.2018 is bad in law.

8. Admittedly, till date, the Applicant has not filed O.A. challenging the order of treating absence on duty for 474 days as 'Extra-Ordinary Leave'.

9. Per contra, the learned CPO canvassed that in view of subsequent developments viz. transfer as Assistant Commissioner, Pimpri-Chinchwad Municipal Corporation and subsequent promotion in Group 'A' and posting as Assistant Commissioner, Pimpri-Chinchwad Municipal Corporation, the O.A. itself has become infructuous since even if transfer order dated 04.12.2018 is held illegal, now Applicant cannot be reposted. As regard absence of recommendation of CSB, she fairly concedes that the matter was not placed before CSB. However, she has pointed out that the transfer of the Applicant from Mangalvedha to Kinvat was necessitated on account of serious complaints, and therefore, with the approval of highest competent authority viz. Hon'ble Chief Minister, the Applicant was transferred invoking 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). She has tendered the copies of file noting which reveals that Hon'ble Minister has accorded approval to mid-term and mid-tenure transfer order dated 04.12.2018 from Mangalvedha, District Solapur to Kanvat, District Nanded.

10. Shri Bandiwadekar, learned Advocate for the Applicant sought to place reliance on the decision rendered by the Tribunal in **O.A.No.614/2017 (Shri Pramod Sawakhande Vs. State of Maharashtra) decided on 27.03.2018** wherein transfer order was held vitiated in absence of approval of CSB being in utter violation of express dicta of Hon'ble Supreme Court ordered in **T.S.R. Subramanian's** case.

11. True, as per mandate of Hon'ble Supreme Court in **T.S.R. Subramanian's** case, the issue of transfer was required to be placed before the CSB for vetting. This being the position, the transfer order issued in defiance of mandate in **T.S.R. Subramanian's** case is liable to be quashed. However, the facts and circumstances of the present matter are very peculiar since after passing of impugned transfer order dated 04.12.2018, the Applicant was subjected to another transfer order as well as promotion whereby he was promoted and posted in Group 'A' as Assistant Commissioner, Municipal Corporation Pimpri-Chinchwad and admittedly joined there. Had there being no such subsequent development, the impugned transfer order would have been quashed because of non-observance of mandatory requirement of placing the matter for vetting before CSB. But in view of subsequent development of transfer and promotion, the Applicant cannot be reinstated at Mangalvedha rendering O.A. infructuous and redundant.

12. Obviously, this belated O.A. seems to have been filed and persuaded to the extent of declaration only to lay foundation for challenging the order passed by Government whereby absence period of 474 days was treated as 'Extra-Ordinary Leave'. According to learned Advocate for the Applicant since transfer order dated 04.12.2018 itself was vitiated for absence of recommendation of CSB, the Applicant was not bound to join at Kinvat, and therefore, the order of treating absence period as 'Extra-Ordinary Leave' is unsustainable in law. I find myself unable to accept this line of submission. Once Applicant was transferred by order dated 04.12.2018 who was bound and under obligation to follow the transfer order and to join without prejudice to his right to challenge the transfer order. However, he choose not to join and remained absent for 474 days. Admittedly, he did not challenge the transfer order dated 04.12.2018 within a reasonable time and there was no stay to the transfer order dated 04.12.2018. However, he defied the transfer order for which he was suspended, but later reinstated in service. Be that as it may, no cause action survives to challenge the

transfer order dated 04.12.2018 and no relief can be granted to suit his purpose by permutations and combinations.

13. For the aforesaid reasons, I have no hesitation to conclude that the O.A. has become infructuous and redundant and deserve to be disposed of. Accordingly, O.A. is disposed of with no order as to costs.

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

Mumbai

Date : 25.05.2021

Dictation taken by :

S.K. Wamanse.

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