

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.286 OF 2020

(Aurangabad Bench through Video Conferencing)

DISTRICT : HINGOLI

Shri Sandeep Sakaram Walkunde,)
Age 25 years, occ.Service as Taluka Agriculture Officer,))
R/o C/o Office of Taluka Agriculture Officer,))
Sengaon, Tal. Sengaon, District Hingoli)..Applicant

Versus

1. The Secretary,)
Agriculture Department, Maharashtra State,)
Mantralaya, Mumbai 400 032)
2. The Commissioner,)
Agriculture Department, 2nd Floor,)
Central Building, Pune)
3. Shri Ravi S/o Baburao Harne,)
Age Major, District Agriculture Officer,)
Zilla Parishad, District Parhbani)..Respondents

Shri K.G. Salunke – Advocate for the Applicant

Shri M.S. Mahajan – Chief Presenting Officer (Aurangabad Bench) for
Respondents No.1 & 2

Shri A.S. Deshmukh – Advocate for Respondent No.3

CORAM : Shri A.P. Kurhekar, Member (J)

DATE : 25th March, 2021

J U D G M E N T

1. The applicant has challenged transfer order dated 10.8.2020 whereby he was transferred from the post of Taluka Agriculture Officer, Sengaon, District Hingoli to Technical Officer in the office of Divisional Joint Director, Aurangabad invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Factual matrix giving rise to the OA lies in narrow compass.

3. The applicant was appointed by order dated 18.2.2020 as a direct recruit on the post of Taluka Agriculture Officer (TAO) and he was posted at Sengaon, District Hingoli. As per one of the conditions (condition no.2) of the appointment order, applicant was to join Sengaon within one month from the date of order else he would lose seniority as well as his name will be deleted from the select list. However, applicant made representation on 26.2.2020 to the Government for change in posting citing personal difficulties and requested posting at Aurangabad. However, it was not responded by the Government and, therefore, applicant had joined at Sengaon on 14.3.2020 in terms of appointment order dated 18.2.2020. He had completed hardly five months at Sengaon, however, abruptly Government by order dated 10.8.2020 transferred the applicant from Sengaon to Aurangabad and by another order dated 10.8.2020 posted respondent no.3 in place of applicant at Sengaon, District Hingoli. In both the orders Government had invoked Section 4(4)(ii) and Section 4(5) of The 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 the sake of brevity) for transfer of the applicant as well as respondent no.3. Being aggrieved by the said orders, applicant has filed present OA inter alia contending that no case is made

out for mid-term or mid-tenure transfer as contemplated under Section 4(4)(ii) and Section 4(5) of the Transfer Act, 2005 and orders are liable to be quashed.

4. Respondent No.3 has filed MA No.214 of 2020 in above OA No.286 of 2020 for vacating interim relief granted by this Tribunal on 17.8.2020.

5. The respondents opposed OA and contended that it was request of the applicant to change posting from Sengaon to Aurangabad and therefore now he is estopped from challenging the impugned order.

6. Heard Shri K.G. Salunke, learned Advocate for the Applicant, Shri M.S. Mahajan, learned Chief Presenting Officer (Aurangabad Bench) for Respondents No.1 & 2 and Shri A.S. Deshmukh, learned Advocate for Respondent No.3.

7. In view of submissions advanced at Bar, small issue posed for consideration in OA is whether impugned order can be termed as transfer on request or it attracts rigor of Section 4(4)(ii) and Section 4(5) of the Transfer Act, 2005.

8. There is no denying that after getting posting order dated 18.2.2020 applicant made representation on 26.2.2020 for change of posting citing personal difficulties and requested to post him at Aurangabad. However, admittedly it was not responded to and therefore applicant had to join at Sengaon in terms of posting order dated 18.2.2020. Condition no.2 of the appointment order is material, which is as follows:

२) वरील सर्व उमेदवारोनी त्यांच्या नियुक्तीच्या पदावर नियुक्तीच्या आदेशाच्या दिनांकापासून १ महिन्याच्या आत रुजू व्हावयाचे आहे. या कालावधीत उमेदवारोनी नियुक्ती स्वीकारली नाही तर महाराष्ट्र लोकसेवा आयोगाने घेतलेल्या स्पर्धा परीक्षेतील गुणानुक्रमानुसार त्यांना ज्येष्ठता मिळणार नाही व त्यांचे नाव कोणतीही पूर्वसूचना न देता या

विभागाच्या/महाराष्ट्र लोकसेवा आयोगाच्या निवडसूचीतून कमी करण्यात येईल. काही अपरिहार्य कारणास्तव त्यांना रुजू होण्यास मुदतवाढ हवी असल्यास तसे सकारण लेखी कळवून मुदतवाढ घेणे आवश्यक आहे.

(Quoted from page 24 of paper book)

9. It is thus explicit that in terms of appointment order and specific stipulation in the order applicant was bound to join within one month else he would lose his seniority as well as his appointment was liable to be cancelled for non-joining within a period of one month. This condition in the appointment order is important.

10. Admittedly, even if applicant had made request for change of posting, it was not considered or responded by the Government in any manner whatsoever and therefore there was no choice to the applicant except to join at Sengaoon in terms of posting order dated 18.2.2020.

11. Thus, once the applicant was not communicated anything in response to his representation and applicant had joined at Sengaoon on 14.3.2020 under bonafide impression that his representation was not considered, then in terms of provisions of Transfer Act, 2005 he was entitled for 3 years tenure at Sengaoon. However, after joining of the applicant, belatedly Government used his request letter dated 26.2.2020 and on the basis of it transferred the applicant from Sengaoon to Aurangabad and posted respondent no.3 in his place.

12. Perusal of the record tendered by the Ld. CPO reveals that the matter was placed before the Civil Services Board (CSB) which categorically refused to make recommendation of transfer of the applicant as well as respondent no.3 specifically stating that they have not completed 3 years tenure. Despite this position, when the file was moved at the level of Hon'ble Minister incharge of the Department, applicant was ordered to be transferred at Aurangabad and in his place respondent no.3

was posted. Accordingly, transfer orders were issued. Interestingly, in the file tendered by the Ld. CPO there is recommendation letter of Shri Rahul Vedprakash Patil, MLA, Parbhani addressed to Hon'ble Minister making recommendation for transfer of respondent no.3 at Sengaon. Material to note this recommendation letter is even prior to issuance of posting order of the applicant dated 18.2.2020. As such respondent no.3 was eyeing for posting as TAO at Sengaon, District Hingoli even prior to posting of the applicant at Sengaon. Be that as it may, the recommendation made by the Hon'ble MLA seems to have influenced the Government for change of posting of the applicant from Sengaon to Aurangabad. Indeed, the practice of transfer of Government servants on the recommendations of the politicians or even Minister not connected with the department is frowned by the Hon'ble High Court. In this behalf reference can be made to the decision of the Hon'ble High Court in W.P. No.8987 of 2018 (Balasaheb Vitthalrao Tidke Vs. State of Maharashtra & Anr.) decided on 12.12.2018. The Hon'ble High Court having noticed such interference of politicians in governance had strongly deprecated practice of transfer of Government servant on recommendation of an elected representative of people or the Hon'ble Ministers who are not concerned with the process of transfer. In writ petition, Shri Dinesh Kumar Jain, the Chief Secretary filed an affidavit dated 12.12.2018 that transfers will not be influenced by any recommendations made by any political leaders or Ministers (who are not a part of the process of transfer).

13. After taking affidavit of the Chief Secretary on record, the Hon'ble High Court in para no.2 stated as under:

“2. We accept the statements made in paragraphs-1 and 2 of the said affidavit quoted above as the Undertakings given on behalf of the State of Maharashtra. Now there is a clear assurance that all transfers will be effected strictly in accordance with the provisions of

the said Act of 2005 and none of the transfers will now be influenced by the recommendations of the political leaders including the Hon'ble Ministers (who are not a part of the process of transfers). We direct that the statements made in para-1 of the said Affidavit are brought to the notice of all the concerned who have to exercise powers of transfer under the said Act of 2015 so that there will not be any attempt to make any recommendations thereby influencing the process of transfers of the Government Servants."

14. Shockingly, despite filing of affidavit and specific order of the Hon'ble High Court as reproduced above, the practice of transfer of a Government servant on recommendation of politicians seems continued unabated with impunity for which there is absolutely no explanation from the Government.

15. Now turning to the legality of transfer order dated 10.8.2020, perusal of record tendered by the Ld. CPO reveals that the transfer order was approved at the level of Hon'ble Minister only and not by the Hon'ble Chief Minister who is competent authority for such mid-term or mid-tenure transfer as contemplated in Section 4(4)(ii) and Section 4(5) of the Transfer Act, 2005.

16. True, after getting posting order dated 18.2.2020, applicant made request to change his posting from Sengaoon to Aurangabad. However, fact remains that his representation was not responded to within a reasonable time and therefore applicant had no option except to join at Sengaoon in view of specific condition mentioned in posting order as reproduced above. Thus, applicant was under bonafide belief that his representation was not considered and accordingly joined at Sengaoon. Thus, once he joined at Sengaoon he was entitled for three years normal tenure at Sengaoon and if there is any such situation warranting mid-term or mid-tenure transfer then it requires in consonance with Section 4(4)(ii) and Section 4(5) of the

Transfer Act, 2005 which inter alia provides that it is only in special cases for the reasons specifically recorded the competent authority can transfer the Government servant mid-term or mid-tenure. For such mid-term or mid-tenure transfer competent transferring authority would be Hon'ble Chief Minister and not Minister in view of Section 6 of the Transfer Act, 2005.

17. Thus, what emerges from record that there was no special case warranting mid-term or mid-tenure transfer with the approval of Hon'ble Chief Minister. All that Ld. CPO and Shri A.S. Deshmukh, Ld. Advocate for respondent no.3 sought to contend that it is not mid-term or mid-tenure transfer warranting compliance of Section 4(4)(ii) and Section 4(5) of the Transfer Act, 2005 but it is a case of transfer on request made by the applicant himself and therefore approval of Hon'ble Chief Minister is inconsequential. This submission is misconceived and fallacious.

18. Once Government failed to take decision either of the way on the recommendation made by the applicant for change of posting and applicant in terms of specific condition in posting order had joined at Sengaoon, after 5-6 months Government cannot take benefit of the request letter earlier made by the applicant and to transfer him from Sengaoon to Aurangabad. As such it has all the trappings of mid-term and mid-tenure transfer which requires compliance of Section 4(4)(ii) and Section 4(5) of the Transfer Act, 2005 which is admittedly missing in the present matter.

19. Ld. Advocate for respondent no.3 has raised issue of suppression of fact of request made by applicant for change of posting in his OA and advertent to this aspect he submits that the applicant has not come with clean hands. True, in OA applicant has not disclosed that he had earlier requested for change of posting by his representation dated 26.2.2020. In my considered opinion, absence of this disclosure in OA is inconsequential

since in law once applicant had joined at Sengaon, which he was bound to join within a period of one month from the date of posting order the provisions of Transfer Act, 2005 gets attracted.

20. One can understand if there was any communication to the applicant that his request for change of posting is under consideration or otherwise. At any rate in absence of such communication to the applicant he had no other option except to join at Sengaon otherwise he would have lost his job. As such there was inaction on the part of Government for 5-6 months and therefore Government cannot be allowed to fall back upon his old request letter so as to displace him without compliance of Section 4(4)(ii) and Section 4(5) of the Transfer Act, 2005. It is done only to favour respondent no.3.

21. In this view of the matter, I have no hesitation to sum up that the impugned order is not sustainable in law and deserves to be quashed.

ORDER

- (i) Original Application is allowed.
- (ii) Impugned transfer order dated 10.8.2020 is quashed and set aside.
- (iii) Interim relief granted by this Tribunal is made absolute.
- (iv) MA No.214 of 2020 does not survive and is disposed of accordingly.
- (v) No orders as to cost.

Sd/-
(A.P. Kurhekar)
Member (J)
25.3.2021

Dictation taken by: S.G. Jawalkar.