

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.515 OF 2018**

DISTRICT : THANE

Shri Santosh Machhindra Thite,)
Sub Divisional Officer, Bhiwandi, District Thane)
R/o Flat No.5, Sharavati Building, Opp. Officers Club,)
Kopari, Thane)..Applicant

Versus

1. The State of Maharashtra,)
Through Principal Secretary (Revenue),)
Revenue & Forest Department,)
Mantralaya, Mumbai 400032)
2. Shri Mohan Naladkar,)
Sub Divisional Officer, Wada, District Palghar,)
transferred in place of the Applicant as)
Sub Divisional Officer, Bhiwandi)
3. Smt. Archana Kadam,)
Sub Divisional Officer, Wada, District Palghar)..Respondents

Shri A.V. Bandiwadekar – Advocate for the Applicant

Miss S.P. Manchekar – Chief Presenting Officer for Respondent No.1

Shri M.D. Lonkar – Advocate for Respondents No.2 and 3

CORAM : Shri P.N. Dixit, Member (A)
RESERVED ON : 1st August, 2018
PRONOUNCED ON : 7th August, 2018

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, Advocate for the Applicant, Smt. S.P. Manchekar, Learned Chief Presenting Officer for Respondent No.1 and Shri M.D. Lonkar, Advocate for Respondents No.2 and 3.

Facts and Prayer in the case:

2. Applicant was working at Bhivandi as Sub Divisional Officer from 17.11.2015. By impugned order dated 7.6.2018 (Exhibit A page 16) the Applicant was transferred to the post of Deputy Collector (Land Acquisition No.4), Mumbai Suburban in place of Respondent No.3. The Advocate for the Applicant states that the Applicant had four months in balance to complete three years which is tenure period and, therefore, this is a mid-term and mid-tenure transfer. Applicant, therefore, prays to quash and set aside the impugned transfer order dated 7.6.2018.

3. Advocate for the Applicant furnishes following grounds:

- (a) The Applicant did not complete tenure of three years.
- (b) CSB did not recommend name of the Applicant or Private Respondents.
- (c) The impugned order did not follow mandatory compliances of the provision of Section 4(4)(ii) read with Section 4(5) of the Transfer Act. The said sections read as follows:

“4(4)(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.

4(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 permission of the immediately preceding Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

- (d) The impugned order is mala fides as it is issued to accommodate Respondent No.2. He contends, out of 16 other SDO's associated with 'Samurdhi Project'; no one has been transferred except himself.
- (e) No special reasons are mentioned against the name of the Applicant for transfer.
- (f) Referring to Reply by Respondent No 1 in his affidavit on page 72 of the OA providing reasons for transfer of the applicant as well as Respondent No.2, Advocate for the Applicant contends, there is nothing to show that the applicant could not have executed the job which was required to be done by him including the work of 'Samurdhi Mahamarg'.
- (g) Referring to additional Affidavit by Respondent No 1 that the Election Commission of India has instructed not to transfer anybody such as the Applicant working as Electoral

Registration Officers (ERO) from June onwards, Advocate for the Applicant contends that this development is subsequent to issuing of the impugned order and hence is irrelevant in present case.

4. Advocate for the Applicant relies on following judgments:

1) Gopabandhu Biswal Vs. Krishna Chandra Mohanty & Ors. (1998) 4 SCC 447 decided by Hon'ble Supreme Court.

Judgment pertains to relevance of intervention by third party.

2) Sheetal Vishnu Pund Vs. The State of Maharashtra & Anr. decided by Hon'ble Bombay High Court in Writ Petition (Stamp) No.15201 of 2018 dated 24.7.2018. Para 24 reads as under:

“24. No doubt, looking to the scheme of section 4(4) of the said Act, it may be possible for the competent authority to over rule the recommendations of the CSB. However, the competent authority, would then be obliged to indicate exceptional circumstances and record special reasons.”

3) Ramakant Baburao Kendre Vs. State of Maharashtra & Anr. 2012(1) Mh.L.J. 951 decided by Hon'ble Bombay High Court. Para 22 reads as under:

22.
However, in the present case, we are not interfering with the transfer order on the ground that it is being done at the behest of public representative, but we are interfering on the ground that the same is being done without following the relevant provisions of the Maharashtra Transfer Act. For the sake of repetition, we reiterate that

such a transfer, either of Respondent No. 2 or the petitioner, which is a subject matter of the present petition, could be done only in an exceptional circumstances and for special reasons and that too by recording the reasons in writing. We find that no such reasons or circumstances of whatsoever nature are recorded in the impugned order of transfer and also in the impugned order passed by the learned Maharashtra Administrative Tribunal. Therefore, the only course that is available to us is to find out the reason from the impugned transfer order dated 8th July, 2011. The only reasoning given is "in the public interest" and "administrative convenience". When the Maharashtra Transfer Act stipulates recording of reasons, first it has to be recorded in the original file. If any transfer which takes away the right guaranteed to an employee of not being transferred prior to completion of his tenure is allowed, only by stating that it is "in the public interest" or on the ground of "administrative exigency", then it would frustrate the very purpose of the Act and makes the provisions of such Act redundant. In our considered view, it is necessary to record at least some reason as to how "a special case" is made out. No doubt that we do not expect an authority to write an elaborate judgment to make out "a special case". However, at the same time, in order to enable the Court to exercise the powers of judicial review, at least it is necessary for an authority to write in brief as to how "a special case" is made out, so that the powers of judicial review, which has been held to be a basic structure of the Constitution, can be properly exercised by the High Court/Supreme Court. In that view of the matter, we find that the petition deserves to be allowed."

4) Pradeepkumar Kothiram Deshbhratar Vs. State of Maharashtra & Ors. 2011(5) Maharashtra Law Journal, 158 decided by Hon'ble High Court. Para 24 reads as under:

“24.

The note put up for consultation and for approval before the Hon’ble Minister itself is defective and does not make out any legal ground for treating it as special case.”

5) Shri Sanjay Dnyandeo Surve Vs. The State of Maharashtra & Ors. OA No.784 of 2017 decided by this Tribunal on 30.7.2018.

If the Applicant is found suitable to work at other similar place he can be considered suitable at original place as well.

6) Shri Pramod H. Sawakhande V/s. State of Maharashtra & Anr., O.A. No.614/2017 decided by this Tribunal on 27.03.2018. He contends, the impugned Order is in violation of G.R. dated 20.07.2016 (Exb. ‘E’ page 54 of the O.A.). Para 1 and 3 of the GR reads as under:

“शासन निर्णय :

१. सामान्य प्रशासन विभागाच्या संदर्भित क्र.१ येथील शासन निर्णयान्वये दिलेल्या सूचनांप्रमाणे महसूल विभागाच्या अधिपत्याखालील गट-अ मधील :-

१) अपर जिल्हाधिकारी/अपर जिल्हाधिकारी (निवडश्रेणी) संवर्गातील अधिका-यांच्या पदस्थापना तसेच महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडताना होणा-या विलंबास प्रतिबंध अधिनियम, २००५ मधील तरतुदीनुसार करावयाच्या बदल्यांच्या संदर्भात आणि प्रतिनियुक्तीने नियुक्तीसाठी सक्षम प्राधिका-यांना शिफारशी करण्यासाठी, तसेच,

२) उपजिल्हाधिकारी/उपजिल्हाधिकारी (निवडश्रेणी)संवर्गातील अधिका-यांच्या पदस्थापना तसेच महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडताना होणा-या विलंबास प्रतिबंध अधिनियम, २००५ मधील कलम ४(४) व ४ (५) च्या तरतुदीनुसार करावयाच्या अनियतकालिक व मुदतपूर्व बदल्या तसेच विभागबाह्य बदल्यांच्या संदर्भात आणि प्रतिनियुक्तीने नियुक्तीसाठी सक्षम प्राधिका-यांना शिफारशी करण्यासाठी, खालीलप्रमाणे नागरी सेवा मंडळ स्थापना करण्यात येत आहे:-

१.	अपर मुख्य सचिव / प्रधान सचिव (महसूल)	अध्यक्ष
२.	प्रधान सचिव /सचिव (वने)	सदस्य
३.	आदिवासी विकास विभागाचे सह सचिव / उप सचिव (आस्थापना)	सदस्य
४.	सह सचिव /उप सचिव, महसूल (ई-१ /ई-२), महसूल व वन विभाग	सदस्य सचिव

२.

३. सर्व संबंधित कार्यासनांनी, अपर जिल्हाधिकारी / अपर जिल्हाधिकारी (निवडश्रेणी) व उपजिल्हाधिकारी / उपजिल्हाधिकारी (निवडश्रेणी) या संवर्गातील पदांवर अधिका-यांची पदोन्नतीने /सरळसेवेने नियुक्तीसाठी सक्षम प्राधिका-यांनी विभागीय संवर्ग वाटप अंतिम केल्यावर त्या यादीतील अधिका-यांच्या पदस्थापनेचे प्रस्ताव, तसेच बदल्या आणि प्रतिनियुक्तीबाबतचे प्रस्ताव, संदर्भाधीन अ.क्र.२ येथे नमूद दिनांक २८.०४.२०१५ च्या शासन अधिसूचनेतील सूचना व महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडताना होणा-या विलंबास प्रतिबंध अधिनियम, २००५ मधील तरतुदीनुसार, नागरी सेवा मंडळास सादर करावेत. नागरी सेवा मंडळाकडून शिफारस प्राप्त झाल्यावर सदर प्रस्ताव मान्यतेसाठी संदर्भाधीन शासन निर्णयातील सूचनांप्रमाणे सक्षम प्राधिका-यास सादर करण्यात येतील.’’

7) Dr. S.S. Wakchaure V/s. The State of Maharashtra & Anr., O.A. No.1127 of 2017 decided by this Tribunal on 27.02.2018. Relevant para 13 & 14 are quoted below:

“13. From the foregoing discussion following conclusion emerges:

(a) Proposal for transferring the applicant is mid-term and mid-tenure as on the date of decision.

(b) Civil Services Board had no occasion to apply mind to the proposal, since there was no proposal before the Civil Services Board.

(c) Special reasons or exceptional circumstances for shifting the applicant from his present post mid-term are not recorded.

(d) Since transfer of the applicant is mid-term and mid-tenure, the approval of authority higher in hierarchy above competent authority, though necessary, is not taken.”

8) Dr. Sunil Purushottam Bhamre Vs. The State of Maharashtra & Ors. OA No.542 of 2017 decided by Aurangabad Bench of the Tribunal on 1.2.2018. Relevant para 9 is quoted below:

“9.
General established principles of administrative law on the subject of transfer are highlighted in these cases by the Hon’ble Supreme Court. In the State of Maharashtra, however, we have the Transfer Act, 2005 and therefore administration is required to follow the provisions of the said Act.”

9) Interim order dated 18.9.2017 passed by this Tribunal in OA No.770 of 2017 in Shri S.M. Soundane Vs. The State of Maharashtra & Ors.

“3. *It is clearly indisputable position that the transfer orders were issued at the time the Civil Services Board was not even constituted. The learned PO repeatedly insisted on the fact that concurrence of the Hon’ble Minister and Hon’ble Chief Minister*

was taken. However, going by the essence of the Hon'ble Supreme Court's judgment in the matter of T.S.R. Subramanian & Ors. Vs. Union of India & Ors. 2014 (1) SLR 1 (SC), it will have to be held that prima facie at least there is a reasonable ground that the case of interim relief is made out."

10) Mrs. Vaishali S. Lambhate V/s. The State of Maharashtra & Ors., O.A. No.484 of 2016 decided by this Tribunal on 11.8.2016.

"8. The Applicant was in effect, transferred once the decision was taken to post the Respondent No.2 in her place. The order posting the Respondent No.2 in her place was issued on 27.05.2016. No special case was made out for transferring the Applicant. The ultimate order dated 4.6.2016 was issued in violation of the provisions of Section 4(5) of the Transfer Act. Also, actual order of transfer of the Applicant was issued in the month of June so it was a mid-term transfer order. No exceptional circumstances or special reasons were mentioned. The order dated 4.6.2016 is issued in violation of Section 4(4)(ii) of the Transfer Act".

5. Shri M.D. Lonkar, learned Advocate for Respondents No.2 and 3 has filed affidavits in reply and contested the claim of the Applicant. He inter alia contended that the impugned order is legal and valid and the OA may be dismissed. In the affidavit in reply filed on behalf of Respondent no.2 at pages 376 to 383 he has submitted as under:

"4. The petitioner has failed to make out a case warranting judicial intervention at the hands of this Hon'ble Tribunal while exercising the power of judicial review. The order impugned dated 7.6.2018 has been issued in accordance with the statutory provisions incorporated under ROTA-2005. The order impugned is free from mala fides. Order impugned has been issued by the competent authority.

9. *The competent authority has power to curtail the normal tenure of 3 years. Justifiable reasons permit the competent authority to exercise the power and curtail the normal tenure of 3 years.*

11. *Once it is evident and established that the petitioner is transferred by following due procedure, then in that event it is not the lookout of the petitioner as to who is posted in the post occupied by the petitioner. It is not open for the petitioner to request this Hon'ble Tribunal to conduct roving enquiries, in as much as, this Hon'ble Tribunal does not sit as an appellate authority over and above the administrative orders passed by the government. Power conferred upon this Hon'ble Tribunal is a power of judicial review and judicial intervention is warranted only if the case is made out. The petitioner has miserably failed to make out a case in that regard. The order impugned specifically refers to the statutory provisions in pursuance of which the power is exercised.*

13. *Record would reveal that in the present case Civil Services Board is not totally bypassed. Competent authority has taken a conscious decision by recording exceptional circumstances and thus making out a special case to transfer the petitioner. Apprehension raised by the petitioner is unfounded and therefore deserves dismissal.*

15. *The order impugned specifically refers to the provisions of Section 4(4) and 4(5) of ROTA-2005. The competent authority has clearly made out a special case by recording special reasons and exceptional circumstances.*

22. *I wish to refer to and rely upon the law laid down by the Hon'ble High Court vide order and judgment dated 23.8.2007 in WP (L) No.148, 149 and 1430 of 2007 in the matter of V.B. Gadekar Vs. MHADA & Anr., by which it is clearly held that the provisions incorporated under ROTA-2005 are regulatory and not prohibitory. It is further held that the discretion is vested in the authority to make exception of tenure wherever special circumstances exist. In the light of authoritative judgment rendered by the Hon'ble High Court, the Original Application filed by the petitioner is liable to be dismissed."*

Refutation by the CPO:

6. Learned C.P.O. produces the original record wherein the proposal for transfers is mentioned in the proceedings of C.S.B. (Exhibit R-2, from 68 & 69). She further states that on page 71, name of the Applicant is proposed for transfer and approved by the Minister. The proposal is further submitted to the Hon'ble Chief Minister (page 72) and he has approved the same. This reads as under:

३	श्री. संतोष थिटे उपविभागीय अधिकारी, वाडा, पालघर	उपजिल्हाधिकारी (भूसंपादन) क्र.४, मुंबई उपनगर रिक्त होणारे पद भरणे आवश्यक
४	श्री. मोहन नळदकर उपविभागीय अधिकारी, भिवंडी, जि. ठाणे	उपविभागीय अधिकारी, भिवंडी, जि. ठाणे कार्यरत अधिकारी नोव्हेंबर २०१८ मध्ये बदलीपात्र असून समृद्धी महामार्गाच्या कामकाज प्राथम्याने होणे आवश्यक असल्याने प्रशासकीय कारणास्तव.

विभागाचे कामकाज प्रभावीपणे राबविण्याच्या दृष्टीने नागरी सेवा मंडळाने सादर केलेल्या प्रस्तावात प्रशासकीय कारणास्तव काही बदल करणे आवश्यक असल्याने वरील बदल्यांसह नागरी सेवा मंडळाच्या उर्वरित प्रस्ताव मान्य करण्यात यावा, हि विनंती.

7. Before forwarding the transfer proposal, the Minister has approved the name of the Applicant and has stated 'administrative exigencies' as the special reason. She further refers to the name of Respondent No.2 who is at Serial No.4, and is transferred as S.D.O. Bhiwandi. As the Applicant was due for transfer in November 2018, and the work of the "Samurdhi Mahamarg" is not hampered, Respondent No 2 is transferred in his place.

8. She underlines that there is no mala fides and no favouritism. She contends that as per legal requirements, the proposal has been approved [Exhibit R-2 (page 73)] by the Hon'ble Chief Minister. As such, provisions of the Transfer Act have been complied with and therefore there should be no interference in the same by this Tribunal.

9. Learned C.P.O. relies on the judgment given by the Hon'ble High Court in Writ Petition No.1677 of 2012 dated 09.10.2012. Relevant paragraphs are 9, 10, 11, 12 and 16. Particularly paragraph no.16 reads as under:-

“16. For the reasons already recorded by us hitherto, this argument will have to be stated to be rejected. For, it has been held that the transfer order passed against the petitioner, in no uncertain terms, records the reason for mid-term transfer of the petitioner “for administrative reasons”. It is not a case of no reason recorded in the transfer order at all. Further, the Department would be justified in supporting its administrative action on the basis of contemporaneous office record such as the proposal for transferring the petitioner which preceded the issuance of transfer order in question. If, even that document did not contain the reason required to be noted for the purpose of Section 4(4) proviso (ii) or 4(5), then, it would be a different matter. In that case, it may not be possible for the Department to supplement or supplant the reason latter on by way of affidavit. Suffice it to observe that the argument under consideration is devoid of merits.”

10. Learned C.P.O. mentions that prior approval of the competent authority, i.e. Hon'ble Chief Minister has been obtained before issuing of the impugned order. According to learned C.P.O. the judgment referred above is therefore relevant in the present case as well.

11. Learned C.P.O. relies on the judgment given in the O.A. by this Tribunal in O.A.No.19 of 2016. Relevant paragraph No.14 reads as under:-

“14. The principles and directions contained in the aforesaid T.S.R. Subramanian's case and adopted by the Government of Maharashtra in aforesaid Government decision, are summarized as follows :-

(i) *The Civil Services Board had to be constituted and it has to function as per the principles laid down in T.S.R. Subramanian's case supra.*

(ii) *The Government is under obligation to consult Civil Services Board. The proposal for Transfer must be routed through Service Selection Board.*

(iii) *The authority competent to transfer has primacy in the matter of deciding the modality, the course of exact action and decision.*

(iv) *Therefore, though the Civil Services Board has to be consulted, final authority to Transfer rests with competent authority empowered to Transfer."*

12. According to learned C.P.O. the competent authority has considered it appropriate to transfer the applicant as after four months he was due to transfer. Completing the work of 'Samrudhi project' is an important administrative consideration. The same has been recorded as Reasons while proposing the transfer and approved by the competent authority. She therefore contends that the impugned order should not be interfered with by this Tribunal and the OA has no merits.

13. Issues for consideration:

- (1) Whether the impugned order is issued to favour the private respondent No.2?
- (2) Whether the impugned order is issued without mentioning valid reasons?
- (3) Whether the order is illegal?

Findings with reasons:

14. The Applicant was working as SDO at Bhivandi from 17/11/2015. Reasons for posting in month of November are not available, but he came to be posted at Bhivandi in the middle of the year instead of general transfer expected to be in month of May. Assuming that the general transfer orders at that time, might have been delayed by few months due to administrative reasons, it is not justifiable to continue with that aberration and delay the transfers in the succeeding years as well. Thus there is no justification to believe that the present impugned order is midterm and mid tenure transfer.

15. Considering that the impugned order was midterm and mid tenure, obviously the CSB did not have names of officers who were short of completing three years as per the provisions. After noticing the omission and realizing the importance of completing the 'Samrudhi project' without entertaining administrative difficulties, the name of the Applicant has been mentioned in the proposal and approved by the Minister. The Minister has further submitted the same to Hon'ble C.M. who is the supervisory authority. The C.M. has considered the same and approved it as per the provisions of the Transfer Act. The competent authority has mentioned the special reasons for transfer of the Applicant.

16. The impugned order mentions 'administrative reasons'. These may be many out of which an important has been mentioned above. The fact that Applicant being ERO could not be transferred in November as the work being attended by Electoral Registration Officers such as the Applicant might have been one of the administrative reasons. This fact though brought on record later cannot be rejected as irrelevant only because it was stated subsequently. The timing and revising of the electoral rolls is a well known fact. But the benefit of doubt can be given to

the Applicant and I am inclined not to consider it as relevant, since it is not on record at the time of issuing the order.

17. Perusal of the record does not confirm the allegations by the Applicant that the impugned order is issued to favour the Private Respondent No 2. Reasons for the transfer have been mentioned as administrative and particularly for expeditious completion of the 'Samrudhi project'. Thus this is not a case where reasons have not been mentioned. The argument therefore against the same is devoid of merits. The impugned order is in conformity with the directives of the Tribunal and other judgments mentioned by the Learned CPO. As the facts in the present case are different from the judgments referred to by the Advocate for the Applicant, the findings in the same on which he has based his arguments are not relevant.

18. The impugned order is issued by mentioning valid reasons. There appears to be no bias in favour of the Private Respondent No 2. The order is approved by the Minister and the CM as per legal requirements.

19. I, therefore, do not find any illegality in the impugned order. Hence, the OA is dismissed without costs.

Sd/-
(P.N. Dixit)
Member (A)
7.8.2018

Dictation taken by: S.G. Jawalkar.

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