

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.108/2018

DISTRICT: JALGAON

Meghsyam s/o. Murlidhar Barot,
Age : 56 years, Occu. : Service as a
Superintendent Pay and P.F. Unit (Secondary),
Jalgaon Dist. Jalgaon.
R/o. Address: C/o. MR. Simpi,
Mukatai Nagar, Near S.M.I.T. College,
Jalgaon, Dist. Jalgaon.

...APPLICANT

V E R S U S

- 1) The Government of Maharashtra,
Through The Secretary,
School Education and Sports Department,
Madam Kama Road, Hutatma Rajguru Chock,
Mantralaya, Mumbai.
- 2) The Commissioner of Education,
Central Building, Maharashtra State,
Pune.
- 3) Dy. Director of Education,
Nashik Division, Dist. Nashik,
In the premises of Divisional Commissioner Office,
Nashik Raod, Nashik.
- 4) The Education Officer (Primary),
Zilla Parishad, Nandurbar. ...RESPONDENTS

APPEARANCE :Shri M. R. Kulkarni Advocate for the
Applicant.

:Shri B. S. Deokar Presenting Officer for
the respondents.

CORAM : B. P. Patil, Member (J)

DATE : 23rd July, 2018

ORDER
[Delivered on 23rd day of July, 2018]

The applicant has challenged the transfer order dated 07-07-2017 issued by the respondent no.1 transferring him from the office of Pay and P.F. Unit (Primary) Nandurbar to Pay and G.P.F. Unit (Secondary) Jalgaon by filing the present O.A.

2. Applicant was serving as Superintendent, Pay and P.F. Unit (Primary), Nandurbar and is a Group-B officer. By order dated 29-05-2014 issued by the respondent no.1, he was transferred from the post of Junior Administrative Officer, office of Deputy Director, Nashik to the office of Pay and G.P.F. Unit (Primary), Zilla Parishad, Nandurbar. He was relieved on 08-08-2014 and thereafter he joined his new post on 17-10-2014 and since then he was serving at Nandurbar. He has completed 2 years and 9 months on the post of Superintendent, Pay and P.F. Unit (Primary), Nandurbar. He has not completed his 3 years' tenure at the said post. He had not made request to transfer him at Jalgaon but the respondent no.1 by issuing the impugned order dated 07-07-2017 transferred him from Nandurbar to Jalgaon on the ground that it is his request.

3. It is further contention of the applicant that he never made request to transfer him at Jalgaon. Respondent no.1 issued the impugned transfer order in violation of the provisions of S.4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ("the Transfer Act" for short), which is a mid-term transfer. It is his contention that the impugned order does not disclose that the said transfer is made on the recommendation of the Civil Services Board. It is his further contention that his family members are residing at Vadodara, Gujrat, and therefore, new posting at Jalgaon is inconvenient to him as he could not be able to visit his family from Jalgaon as distance between Jalgaon and Vadodara is 400 km. It is his further contention that the impugned transfer order is illegal and is in violation of the provisions of the Transfer Act. Therefore, he prayed to quash the same by allowing the O.A.

4. Respondent nos.1 to 3 resisted the application by filing affidavit in reply. They have not disputed the fact that the applicant has been transferred to Nandurbar in the year 2014 and since then he was serving there. They have admitted the fact that he has completed 2 years and 9

months at Nandurbar. They have also admitted that the applicant has not specifically made request to transfer at Jalgaon. It is their contention that on 04-01-2017 the applicant made an application stating that he is working at Pay and P.F. Unit (Primary), Nandurbar since 2014, and therefore, he requested to transfer him at Pay and P.F. Unit (Secondary) Nandurbar. It is their contention that one Mrs. Smita Uday Wagh, Member of Maharashtra Legislative Council (MLC) has recommended Hon'ble Minister to transfer the applicant on the post of Pay and P.F. Unit (Secondary) Thane by her letter dated 07-03-2017.

5. It is contention of the respondents that thereafter the proposal regarding transfer of the applicant on his request has been placed before Civil Services Board but the Civil Services Board rejected the proposal of transfer of the applicant in its meeting held on 16-05-2017. Said proposal along with recommendation of the Civil Services Board was placed before the Hon'ble Minister of Education. The Minister of Education in his capacity as competent transferring authority transferred the applicant as Superintendent, Pay and P.F. Unit (Secondary), Jalgaon and made note in the note sheet. Accordingly, impugned

order has been issued by the respondent no.1 transferring the applicant from Nandurbar to Jalgaon. It is their contention that the applicant was relieved from his post from Nandurbar and thereafter joined his new posting at Jalgaon.

6. One Shri P.S.Patil has joined on 27-02-2018 as Superintendent Pay and P.F. Unit (Primary), Nandurbar. One Shri S.R.Chavan is working on the post of Superintendent, Pay and P.F. Unit (Secondary), Nandurbar since 24-08-2017 and at present there is no vacancy at Nandurbar to transfer the applicant. Therefore, no question of cancelling the order of the applicant and retaining him at Nandurbar arises. It is their contention that the applicant made request for his transfer at Nandurbar and Thane but the Hon'ble Minister posted him at Jalgaon considering his request. They have submitted that the impugned transfer order is issued after following provisions of the Transfer Act and there is no irregularity or illegality in making transfer of the applicant. Therefore, they justified the impugned transfer order and prayed to reject the O.A.

7. I have heard Shri M.R.Kulkarni Advocate for the Applicant and Shri B.S.Deokar Presenting Officer for the respondents. Perused documents placed on record by the parties.

8. Admittedly, the applicant was posted as Superintendent, Pay and P.F. Unit (Primary), Nandurbar by order dated 29-05-2014 issued by the respondent no.1. He was relieved from his earlier post at Nashik on 08-08-2014 and thereafter he joined his new post at Nandurbar on 17-07-2014. Admittedly, the applicant has not completed his normal tenure of posting at Nandurbar. He had completed 2 years and 9 months on his post at Nandurbar. On 04-01-2017 the applicant made request to the competent transferring authority i.e. Minister in charge to transfer him in the office of Pay and P.F. Unit (Secondary) Nandurbar by filing the application. Not only this but thereafter on 07-03-2017 one Mrs. Smita Uday Wagh, Member of Maharashtra Legislative Assembly requested the concerned Minister to transfer the applicant at Thane considering his family problems. The proposal regarding transfer of the applicant had been placed before Civil services Board in the meeting dated 16-05-2017. The

Civil Services Board refused to recommend transfer of the applicant. The said recommendation along with note of the concerned department has been placed before the Hon'ble Minister i.e. competent transferring authority. Hon'ble Minister has not accepted the recommendations of the Civil Services Board to the extent of applicant and transferred the applicant at Jalgaon.

9. Learned Advocate for the applicant has submitted that the applicant was not due for transfer as he had not completed his normal tenure of posting at Nandurbar but the respondent no.1 transferred him at Jalgaon before completion of his tenure. He has submitted that the impugned transfer order is a mid-term transfer order and it has been issued in contravention of the provision of the Transfer Act, 2005. He has submitted that the applicant never made request to the respondents to transfer him at Jalgaon but the impugned transfer order shows that his transfer was made as per his request. He has submitted that the family members of the applicant are residing at Vadodara, Gujrat, and therefore, the posting of applicant at Jalgaon is inconvenient for him. Therefore, he prayed to quash the impugned order by allowing the present O.A.

10. Learned Advocate for the applicant has submitted that the applicant has not completed his normal tenure of posting but he made request to the concerned Minister who is competent transferring authority to transfer him from the office of Pay and P.F. Unit (Primary) Nandurbar to Pay and P.F. Unit (Secondary), Nandurbar. Not only this but Mrs. Smita Uday Wagh, Member of Maharashtra Legislative Council (MLC) has recommended Hon'ble Minister to transfer the applicant on the post of Pay and P.F. Unit (Secondary) Thane by her letter dated 07-03-2017 considering family problems of the applicant. He has submitted that as applicant made request to transfer him, proposal was placed before the Civil Services Board in the meeting dated 16-05-2017 but the Board had not recommended transfer of the applicant. But the concerned Minister i.e. competent transferring authority considered the request of the applicant and decided to transfer him and posted him at Jalgaon. He has submitted that as the transfer of the applicant has been made on his request, it has been mentioned in the impugned order accordingly and there is no illegality in the same. Therefore, he prayed to reject the O.A.

11. On perusal of record it reveals that on 04-01-2017 the applicant filed an application and requested to transfer him from the post and he prayed to transfer him at Pay and P.F. Unit (Secondary), Nandurbar. Thereafter, again in the month of March i.e. on 07-03-2017 Mrs. Smita Uday Wagh, Member of Maharashtra Legislative Council (MLC) has sent letter to competent transferring authority i.e. Hon'ble Minister to transfer the applicant on the post of Pay and P.F. Unit (Secondary) Thane considering his family problems. It shows that the applicant was insisting for his transfer from the post of Pay and P.F. Unit (Primary), Nandurbar though he had not completed his normal tenure of posting at Nandurbar. As he was not due for transfer and he had not completed his normal tenure, Civil Services Board had not recommended transfer of the applicant in view of the decision taken by the Board in the meeting held on 16-05-2017. Said recommendations along with note of the concerned department had been placed before the Hon'ble Education Minister who is a competent transferring authority. The Minister had not accepted the recommendations of Civil Services Board so far as the applicant is concerned and decided to transfer the

applicant as per his request and transferred him at Jalgaon. These facts show that the impugned transfer has been made as per his request.

12. The request of the applicant has been considered by the competent transferring authority and thereafter he decided to transfer the applicant at Jalgaon. While making transfer of the applicant provisions of the Transfer Act have been duly followed by the competent transferring authority. In these circumstances in my opinion, there is no illegality or violation of any provision of the Transfer Act while making transfer of the applicant at Jalgaon. Therefore, I do not find substance in the submissions advanced by the learned Advocate for the applicant in that regard. There is no illegality or irregularity in the impugned order, and therefore, no interference is called for in the same. There is no merit in the O.A. Consequently, the O.A. deserves to be dismissed.

13. In view of the above discussion, O.A. stands dismissed without any order as to costs.

Place : Aurangabad

Date : 23-07-2018.

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(B. P. PATIL)
MEMBER (J)