

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.401/2020
AND
ORIGINAL APPLICATION NO.406/2020**

DISTRICT:- DHULE/JALGAON

(1) ORIGINAL APPLICATION NO.401/2020

Kishore s/o Ambadas Kadam,
Age : 43 years, Occ : Service,
(As Tehsildar, Dhule [Rural]),
R/o. C/o Mr. Ajay Patil,
Plot No.41, Keshar Nagar,
Deopur, Dhule.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Addl. Chief Secretary,
Revenue & Forest Department,
M.S., Mantralaya, Mumbai-32.
- 2) The Divisional Commissioner,
Nashik Division, Nashik.
3. The Collector,
Dhule.
4. Smt. Gayatri Saindane,
Tehsildar,
Sardar Sarovar Project,
Nandurbar.

...RESPONDENTS

APPEARANCE :Shri A. S. Deshmukh Advocate for the
applicant.
Shri M.S.Mahajan Chief Presenting Officer
for the respondent nos.1 to 3.
Shri V.B.Wagh Advocate holding for Shri
V.D.Salunke Advocate for the respondent
no.4.

(2) ORIGINAL APPLICATION NO.406/2020

 Anil Jalu Gavit,
 Age : 44 years, Occ : Service as Tahsildar,
 R/o. C/o. Tahsil Office, Chopda,
 Tq. Chopda, Dist. Jalgaon. ...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
 Through its Addl. Chief Secretary (Revenue),
 Madam Cama Road, Hutatma Rajguru Chowk,
 Mantralaya, Mumbai-400 032.
- 2) The Divisional Commissioner, Nashik,
 Nashik Division, Government Colony,
 Nashik Road, District Nashik-422101.
3. The District Collector, Jalgaon,
 Collector Office, Mahabal Road,
 New Joshi Colony, Prabhat Colony,
 Jalgaon, Dist. Jalgaon-425001.
4. Shri Chhagan Wagh,
 Age : Major, Occ : Service as Tahsildar,
 Working as Entertainment Taxation Officer,
 Collector Office, Old Agra Road,
 Police Staff Colony,
 Nashik, District Nashik-422002. ...RESPONDENTS

 APPEARANCE :Shri V.H.Dighe Advocate for the
 applicant.
 Shri M.S.Mahajan Chief Presenting Officer
 for the respondent nos.1 to 3.
 Shri A. S. Deshmukh Advocate for the
 respondent no.4.

 CORAM : A.D.Karanjkar, Member (J)

 Decided on : 17-12-2020

COMMON JUDGMENT

1. Both the applicants are Tahsildars and they are challenging their transfers on the same grounds and same facts, therefore, for the sake of convenience both the O.As. are decided by this common order.

2. I have heard Shri A.S.Deshmukh learned Advocate for the Applicant in O.A.No.401/2020 and for the respondent no.4 in O.A.No.406/2020, Shri V.H.Dighe learned Advocate for applicant in O.A.No.406/2020, Shri M.S.Mahajan learned Chief Presenting Officer (CPO) for the respondent nos.1 to 3 in both the O.As. and Shri V.B.Wagh learned Advocate holding for Shri V.D.Salunke learned Advocate for respondent no.4 in O.A.No.401/2020. I have perused the documents placed on record by both sides.

3. In O.A.No.401/2020 the applicant was serving as Tahsildar, Dhule since 28-02-2019, he was not due for transfer. It is grievance of this applicant that the respondent no.1 issued transfer order Annexure A-3 on 01-10-2020 and posted the respondent no.4 as Tahsildar, Dhule and it was mentioned in the order that decision would be taken lateron for giving posting to the applicant.

It is submission of the applicant that the respondent no.4 was suspended when she was working at Dhule. Later on, her suspension was revoked and she was posted at Nandurbar. It is submitted that only for showing undue favour to respondent no.4, the respondent no.1 has posted the respondent no.4 at Dhule without considering the provisions of the Circular dated 20-04-2013 and the applicant was kept in abeyance without giving any posting. The transfer is mainly attacked on the ground that there was no administrative exigency or no special circumstance for transferring the applicant and merely for giving posting to the respondent no.4 the applicant is transferred without following the mandatory provisions under Section 4(4) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ("Transfer Act" for short), therefore, the impugned order of transfer is illegal. It is case of the applicant that later on, the respondent no.1 issued order Annexure A-5 on 19-11-2020 and posted the applicant as Additional Tahsildar, Devlapar, Dist. Nagpur. It is submitted that exercise of jurisdiction by the respondent no.1 is in violation of law, and therefore, the impugned transfer order is liable to be set aside.

4. In O.A.No.406/2020, the applicant was working as Tahsildar, Chopda, District Jalgaon since 20-02-2019. The respondent no.1 all of a sudden by transfer appointed respondent no.4 as Tahsildar, Chopda and in the transfer order Annexure A-1 dated 01-10-2020, it was mentioned that decision would be taken later on for giving posting to the applicant. It is contention of the applicant that the respondent no.4 was transferred to Chopda on his request and only for giving him undue favour the respondent no.1 transferred the applicant though he was not due for transfer. It is submitted that exercise of jurisdiction was in violation of Section 4(4) and 4(5) of the Transfer Act, and therefore, the transfer order is illegal. It is submission of the applicant that later on the respondent no.1 issued transfer order dated 19-11-2020 Annexure A-5 and posted the applicant as Additional Tahsildar, Pulgaon, Tq. Devli, Dist. Wardha.

5. In both the matters all the respondents have filed their reply. In O.A.No.401/2020, the respondent nos.1 to 3 have justified the transfer on the ground that it was necessary to post the respondent no.4 as Tahsildar, Dhule in the interest of public service and administrative

convenience, and therefore, she was posted there. The application is mainly attacked on the ground that respondent no.4 was transferred as per her own request and by transferring her there was no financial burden on public exchequer, therefore, it was administrative exigency. It is contention of respondent nos.1 to 3 that as per the order dated 01-10-2020, the applicants were transferred but no posting were given to the applicants, therefore, O.As. are not maintainable as premature. It is submission of respondent nos.1 to 3 that after following the provisions under Section 4(4) & (5) of the Transfer Act the applicants are transferred, therefore, there is no illegality in the transfer order. It is contention of the respondents that the order of transfer is an incidence of service, and therefore, the courts and tribunals must be very slow in interfering in the matter and as the transfer of the applicant is on administrative ground, there is no illegality in the same.

6. In O.A.No.406/2020, the stand of the respondents is same. It is their contention that the respondent no.1 made request for his transfer, therefore, he was transferred to Chopda in anticipation that the post of the applicant will become vacant. It is submitted that the transfer of the

applicant was in the interest of public and there was administrative exigency and therefore, the applicant is transferred after following the procedure laid down under Section 4(5) of the Transfer Act. There is no illegality and merit in the O.A. So far as the private respondent no.4 in both O.As. are concerned, they have justified their transfers and requested to dismiss the O.A.

7. I have heard oral submissions on behalf of the applicants and respondents. In the present case, the undisputed fact is that both the applicants were not due for transfer and in the transfer order dated 01-10-2020, no special reasons were recorded as to why it was necessary to transfer both these applicants. The legal position is settled that Government/ competent authority has power to transfer a Government servant before completion of his normal tenure at any time where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons. In this situation, it is necessary for the competent authority to record what were exceptional circumstances or special reasons for premature or mid-term transfer of the Government servant and to

place the material before the next higher authority for approval.

8. In present both the matters, the respondent nos.1 to 3 have placed on record the minutes of the meeting of the Civil Services Board, Nashik Division. So far as respondent no.4 in O.A.No.401/2020 is concerned, it was observed by the Civil Services Board that as she had not completed period of 3 years, she was not due for transfer and her request for transfer should be refused. So far as respondent no.4 in O.A.No.406/2020 is concerned, his name was not considered by the Civil Services Board. After perusing the proceeding of the meeting of the Civil Services Board, it seems that name of respondent no.4 was not before the Civil Services Board but he is transferred in place of the applicant. It is very interesting to note that both the applicants were transferred though they were not due for transfer. In the transfer order or in the note sheet which was placed for approval, no specific reasons are recorded as to why it was necessary to transfer both the applicants for giving posting on their place to the respondent no.4 in both the O.As. The legal position is settled that the statutory provisions under Section 4(4) and

4(5) are for the protection of the Government servants and to avoid the transfer of the Government servants as per whim of the competent authority. In order to achieve this object of the Act mandatory procedure is laid down u/s.4(4) &(5) of the Act, which is necessary to be followed when a Government servant is not due for transfer or the transfer is in the mid of the session. In present cases so far as the transfer orders of the respondent no.4 in both the O.As. are concerned, there is no whisper as to why it was necessary to transfer both the applicants. In both the transfer orders, it was just mentioned in paragraph 3 that posting orders of Shri Kishore Kadam applicant in O.A.No.401/2020 and Shri Anil Gavit applicant in O.A.No.406/2020 would be separately issued.

9. During the course of arguments, learned CPO submitted that services of the applicants Kishore and Anil were under the Nagpur Revenue Division where they were initially appointed and their seniority is maintained by Nagpur Revenue Division. It is further contended that both these applicants were on deputation outside the Nagpur Revenue Division, and therefore, it was necessary to repatriate them to their parent Division and for this

administrative exigency they are repatriated to their original Revenue Division. The learned CPO has filed letter dated 15-12-2020 received from the Section Officer, Maharashtra Government. It is pertinent to note that this is entirely new case made out by the respondent nos.1 to 3 to justify the transfers.

10. I have already observed that in the impugned transfer orders dated 01-10-2020, it is nowhere mentioned that policy decision was taken by the Government to repatriate the officers of the cadre of Tahsildar to their original/parent Revenue Division. Similarly in the transfer order dt/25-2-2019 when Kishor Kadam was transferred to Dhule it is nowhere mentioned that it was deputation. I have perused the transfer order dt/20-2-2019 by which Anil Gavit was transferred to Chopda, in this order it is not mentioned that it was deputation. It is not case of the respondents that policy decision was taken by the Government of Maharashtra to repatriate all the Tahsildars to their original Revenue Division and really such decision was communicated by the Government to the respective departments. This story is made out for the first time in the impugned orders giving posting to the applicants dated

19-11-2020 at Annexure A-5. In order to sustain this contention it was necessary for the respondents to produce the policy decision taken by the Government, but it is not done.

11. It is important to note that in earlier transfer order dated 01-10-2020, it was nowhere mentioned that it was policy of the Government to repatriate the Tahsildars to their original Revenue Divisions and therefore, it was necessary to transfer the Tahsildars to their original Revenue Divisions. Under these circumstances, I don't see any merit in the submissions of the learned CPO. It is important to note that the Transfer Act, 2005 came in force to safeguard interest of the Government servants and thereafter directions were given by the Hon'ble Apex Court to constitute Civil Services Board to hear grievance of the Government servants for giving them suitable posting and as such Civil Services Boards are constituted. It is pertinent to note that though decision was taken by the respondent no.1 to transfer both the applicants then as per the Government's own policy it was incumbent on the respondent no.1 to call upon both the applicants to give some choice posting in their Revenue Division but it was

not done. Thus, there appears no substance in the grounds raised by the respondents to justify the transfer orders.

12. So far as the respondent no.4 in O.A.No.401/2020 is concerned, admittedly, she was under suspension and after revocation of the suspension, posting was given to her at Nandurbar. Respondent no.4 made request for her transfer to Dhule. Annexure A-6 is Government Circular dated 20 April, 2013, paragraph 2 of the Circular is as under:

“२. उपरोक्त परिस्थिती विचारात घेऊन, निलंबित शासकीय कर्मचा—यांच्या अधिका—यांच्या पुनस्थापनेबाबत कार्यवाही करण्याकरीता खालीलप्रमाणे मार्गदर्शक सूचना देण्यात येत आहेत.

अ) राज्यस्तरीय संवर्गातील अधिकारी/कर्मचारी यांना त्यांचा मूळ महसूली विभाग (Division) व ज्या पदावर कार्यरत असताना निलंबित केले तो महसूली विभाग वगळून अन्यत्र अकार्यकारी पदावर नियुक्ती करण्यात यावी.

ब) विभागीय संवर्गातील कर्मचा—यांना पुनःस्थापित करताना त्यांचा मूळ जिल्हा व ज्या जिल्हयात कार्यरत असताना निलंबित केले तो जिल्हा वगळून अन्य जिल्हयात अकार्यकारी पदावर नियुक्ती करण्यात यावी.

क) जिल्हा संवर्गाय कर्मचा—यांना पुनःस्थापित करताना त्यांचा मूळ तालूका व ज्या तालूक्यात कार्यरत असताना निलंबित केले असेल तो तालुका वगळून अन्य तालुक्यामध्ये अकार्यकारी पदावर नियुक्ती करण्यात यावी.

ड) सर्व विभागांनी त्यांच्या अधिपत्याखालील विभागातील अकार्यकारी पदे शोधून त्यांची यादी तयार करावी.”

13. After reading this paragraph 2, it is clear that the officers in the State Cadre shall not be posted in their Parent Revenue Division or the Revenue Division where they were serving at the time of their suspension. Similarly, there was direction in this Circular not to post suspended Government servants after revocation of suspension in his/her original district and district in which he/she was suspended. It is an admitted position that the respondent no.4 was suspended when she was working in Dhule District and again respondent no.1 has given posting to the respondent no.4 in Dhule District is in violation of this Circular. Even if it is accepted that such policy decision is taken by the Government to repatriate the officers in their original Division, then also such policy decision cannot override the statutory provisions of law. Respondent no.1 was bound to comply with the mandatory provisions under Section 4(4) and 4(5) of the Transfer Act. The Competent Authority was under obligation to record the exceptional circumstances or special reasons for transferring the applicants and it is not done. Therefore,

both the impugned transfer orders and posting the respondent no.4 in place of the applicants at Dhule and Chopda respectively are bad in law. Legal position is settled that while giving request posting to one Government servant, Government has no right to cause prejudice to other Government servant. In both the matters, it is happened that only because requests were made by the respondent no.4 for choice posting and to accommodate them both applicants were transferred from Dhule and Chopda respectively and that too in absence of exceptional circumstances or special reasons. Therefore, both transfer orders cannot be justified. In view of this, I pass following order.

O R D E R

- (i) O.A.No.401/2020 and O.A.No.406/2020 are allowed.
- (ii) Both the impugned transfer orders dated 01-10-2020 and 19-11-2020 in both O.As. transferring the applicants and giving them respective postings are hereby quashed and set aside.

- (iii) Respondent no.1 is directed to give posting to the applicants on the post held by them before 01-10-2020.
- (iv) Respondent no.1 shall comply with this order within 15 days from the date of receipt of this order.
- (v) There shall be no order as to costs.

(A.D.KARANJKAR)
MEMBER (J)

Place : Aurangabad
Date : 17-12-2020.