

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1024 OF 2017

DISTRICT : PUNE

Shri Suresh Atmaram Markad,)
Block Development Officer, Class-I,)
Panchayat Samiti, Malshiras,)
District Solapur, residing at and post Rui,)
Tal-Indapur, Dist-Pune.)...**Applicant**

Versus

1. Government of Maharashtra)
Through the Secretary,)
Rural Development Department,)
Mantralaya, Mumbai.)
2. Smt A.K Waghmale,)
Block Development Officer, Class-I,)
Panchayat Samiti, Sangola,)
Dist-Solapur.)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Ms Archana B.K, learned Presenting Officer for the Respondents.

CORAM : Shri Justice A.H Joshi (Chairman)

DATE : 14.02.2018

ORDER

1. Heard Shri M.D Lonkar, learned advocate for the Applicant and Ms Archana B.K, learned Presenting Officer for the Respondents.

2. Notice was issued on 7.11.2017 with ex-parte ad-interim relief.

3. Notice was served on the Respondents on 10.11.2017.

4. On 23.1.2018, this Tribunal directed as follows:-

“2. By consent adjourned. Pendency of this O.A shall not operate as an impediment, if Government decides applicant’s representation submitted by him on 22.1.2018.”

5. Today, learned Presenting Officer has reported that the representation is decided and it is rejected.

6. O.A is taken up for final hearing.

7. Learned P.O states that para wise remarks are received, though affidavit in reply is not ready. Learned Advocate for applicant has no objection for accepting the para wise remarks as reply/counter.

8. Learned P.O was called to tender para-wise remarks as this could be accepted in lieu of affidavit in reply.

9. Heard both sides for final disposal.

10. Applicant has averred as ground of challenge, the factual and legal grounds as follows:-

“(a) Normal tenure of 3 years is sought to be curtailed in absence of any exceptional circumstances or any attempt is made to make out a special case and in fact there was no material available at the disposal of the Competent Authority. Order impugned is thus violative

of the provisions of Section 3 and 4(4) and 4(5) of ROT Act 2005.

- (b) There was no material to place the case before the Civil Services Board for transfer of the Petitioner and in fact order impugned is issued without following mandatory provision of effective consultation with Civil Services Board.”

(Quoted from page 4 of the O.A).

11. In the para wise remarks those averments are replied with following averments:-

“Para 7(a): The contention in this para is denied. According to the complaints received against the applicant from Hon’ble MLA Shri Hanumant Dolas, Malsiras, Dist-Solapur and Shri R.T Deshmukh, Hon’ble MLA, Majalgaon, Dist-Beed were in it was requested to the Government to transfer the applicant from Block Development Officer, Panchayat Samiti, Malsiras, Dist-Solapur. Hence the Government had transferred the applicant as per the provisions in section 4(4) and 4(5) of ROT Act, 2005 by approval of Competent Authority, vide order dated 2.11.2017.

Para 7(b) The contention in this para is not denied.”

(Quoted from para wise comments of the Respondents)

12. Learned P.O was called to answer following questions:-

Whether complaint received from M.L.A Shri Hanumant Dolas from Malshiras and Shri R.T Deshmukh from Majalgaon were inquired into?

13. Learned P.O has answered as follows:-

- (a) Rural Development Department had directed the Divisional Commissioner, Pune in January, 2017 that the complaint against the applicant to be inquired.

- (b) Reminder was sent in June, 2017.
- (c) However, so far report is not received.

14. It is thus evident that the proposal for transferring the applicant was considered:-

- (a) without placing before Civil Services Board
- (b) without collecting any material for substantiating the complaint or without even a preliminary enquiry in the alleged complaints.

15. It is also evident from record that no reasons whatsoever, much less “special reasons” or “exceptional circumstances” are recorded before passing or at the time of passing the impugned order.

16. The result is to be obvious that impugned order is passed in violation of Sections 4(4) and 4(5) of ROT Act, 2005 and ratio as laid down in T.S.R Subramanian’s case (AIR 2014 SC 263).

17. In the result, Original Application is allowed. The impugned order dated 2.11.2017 is quashed and set aside.

18. In the circumstances parties are directed to bear their own costs.

Sd/-
(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 14.02.2018
Dictation taken by : A.K. Nair.