

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 961 OF 2017**

**DISTRICT : SINDHUDURG**

Shri Pradeep Sadashiv Vhatkar )...**Applicant**

**Versus**

The Government of Maharashtra & Ors )...**Respondents**

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

Shri G.S Shukla learned Special Counsel with Ms Savita Suryavanshi, learned Presenting Officer for the Respondents.

**CORAM : Shri Justice A.H Joshi (Chairman)**

**DATE : 12.02.2018**

**ORDER**

1. Heard Shri M.D Lonkar, learned advocate for the Applicant and Shri G.S Shukla learned Special Counsel with Ms Savita Suryavanshi, learned Presenting Officer for the Respondents.

2. Learned Special Counsel for the Respondents has tendered affidavit in reply. It is taken on record.

3. Learned advocate for the applicant, who was already served with affidavit in reply has tendered affidavit in rejoinder, and the same is taken on record.

4. It is necessary to recall the circumstances in which Principal Secretary, P.W.D Shri Ashish Kumar Singh was directed to file affidavit as was recorded in this Tribunal's order dated 12.10.2017. For ready reference, relevant part of the order dated 12.10.2017 is quoted below:-

“14. What prima facie reveals after perusal of the record is the following:

- (i) The Civil Services Board considered transfer and posting of respondent no.2 and seven others.
- (ii) The applicant's case was not a part of consideration of transfer by the Civil Services Board.
- (iii) When the minutes of the Civil Services Board were put up for approval of Hon'ble Minister, the Hon'ble Minister has made an endorsement which reads as follows:  
  

“श्री.व्हटकर E.E. सिंधुदुर्ग यांची बदली पतन अभियंता सिंधुदुर्ग या रिक्त पदी करावी. श्री. मुळे यांना श्री.व्हटकर यांचे जागी द्यावे. अनुक्रमांक ५ मधील प्रस्ताव वगळून इतर प्रस्ताव मान्य.”
- (iv) The decision recorded by the Hon'ble Minister is not preceded by the expression or recording of reasons which have led to the transfer of applicant from present posting to new posting.

15. The shape in which the facts have transpired, prima facie, present is a case where the transfer is ordered without placing on record special reasons or exceptional circumstances which have propelled impugned transfer order.

16. What shocks further is that Hon'ble Minister may have certain reasons which have impelled the impugned transfer in the mind of Hon'ble Minister, when the Hon'ble Minister made the endorsement or order. It is evident from record that the Secretary of the Department has signed the note/order of Hon'ble Minister. It is but natural that the Secretary has noted that reasons have not been brought on record or that those are not recorded by Hon'ble Minister.

17. It has to be recorded that the Secretary of the Department, who enjoys the status of the administrative head of the department though the executive powers do continue to vest with the Minister. Therefore, as a guardian of observance of provision of law, the Secretary ought to have brought to the notice of the Hon'ble Minister that Sections 4(4) & 4(5) of ROT Act, 2005 require that the special reasons and exceptional circumstances has to be brought on record.

18. It was the duty of Secretary to bring to the notice of Hon'ble Minister that due to absence of reasons the decision of Hon'ble Minister was vulnerable and difficult to stand to the acid test of norms and mandatory conditions prescribed by the law, whenever those would be tested before any court or forum."

19. In these circumstances it is considered necessary to protect the applicant and **at the same time call the Secretary of P.W Department to file affidavit as to what precluded from bringing to the notice of the Hon'ble Minister, the provisions of law ROT Act 2005 even after Hon'ble Minister had endorsed his order and before actual issuance of orders.** The Secretary, Public Works Department, who has proposed/endorsed and signed the note after Hon'ble Minister's signature, is called upon to file his own affidavit on the aforesaid point apart from answer to OA if he chooses to file for opposing the OA.

(Quoted from pages 3, 4 and 5 of order dated 12.10.2017 in O.A 961/2017).

5. Perused the affidavit of Secretary Shri Ashish Kumar Singh, purportedly filed in compliance with the order and in particular para No. 19, of the part of text of order which is quoted in foregoing paragraph.

6. In the affidavit filed by Shri Ashish Kumar Singh he has dealt with the observations of this Tribunal, in relation to failure to consult the Civil Services Board. In regard to said aspect, he has raised legal submissions summary where of is as follows:-

Consultation of Civil Services Board as required in T.S.R Subramanian's case (AIR 2014 SC 263) before decision to transfer is not mandatory, because competent authority, i.e. Hon'ble Minister in present case is the authority competent to pass order without reference or consultation of Civil Services Board.

7. Learned Principal Secretary has gone ahead in reminding this Tribunal, its own judgment rendered in O.A 19/2017 in case of Sampat Trimbak Gunjal by annexing its copy at page 60 of the affidavit, although in no manner it was possible for anyone to draw an inference that this Tribunal was in the process of departing from the ratio of said judgment.

8. As regards this Tribunal's observations regarding failure of the Government, to record the reasons, Principal Secretary, Shri Ashish Kumar Singh, has exerted to place on record voluminous reasons which are according to him 'good and adequate reasons' and also that those must be very well borne "in the mind of Hon'ble Minister" due to which impugned decision was taken. However, he adds certain things, summary whereof is thus:-

Hon'ble Minister or competent Transferring Authority is equipped with full powers and is competent to order transfer in the event said authority is knowing reasons and possess the adverse material to be the foundation of transfer on the ground of complaints or adverse material, (probably without recording reasons).

9. In fact, the Government Resolution dated 11<sup>th</sup> February, 2015, which is based on the judgments of this Tribunal (which were confirmed by Hon'ble High Court) laying down in unambiguous terms that the decision to transfer mid-term and mid-tenure requires mandatory compliance of recording of reasons is expected to be within the knowledge of Shri Ashish Kumar Singh been totally ignored/connived at in the affidavit of the Secretary. At

the same time he holds eloquent silence on the aspect of prior condition of recording reasons, though in O.A specific averments are made and reliance is placed on Circular dated 11.2.2015, Exh. D, which is issued by the Government.

10. Apparently in regard to other point referred to in para Nos 17 to 19 of this Tribunal's order dated 12.10.2017 quoted in para No. 4, Shri Ashish Kuma Singh, the learned Secretary has averred in the affidavit as follows:-

“Submissions with regard to the observations of this Hon'ble Tribunal.

11. I further state in the context of observations made in paras 16 to 19 of the interim order dated 12.10.2017, as under:-

The Hon'ble Minister is aware of the provisions of the ROT Act as the same is discussed in almost every meeting held while effecting transfers. **As a subordinate of the Hon'ble Minister, I cannot prevail upon the Hon'ble Minister to write his endorsement in a specific way.** I further humbly state and submit that the issue of allegations was very much before the Hon'ble Minister and the impugned order is the outcome of the same.”

(Quoted from page 32 of the Original Application).

11. It is evident that the Principal Secretary, Shri Ashish Kumar Singh goes to aver and to add to suggest that Hon'ble Minister is aware of law and yet he has passed impugned order, and suggest that the Hon'ble Minister violates the provisions of law with open eyes and Hon'ble Minister is consciously obstinate.

12. It appears that he was guided due to his own learning or legal advice, though law requires recording of reasons, and essentially in the process of reaching the decision and not repost facto, the reasons could be supplanted. In an effort to supplant

the reasons, learned Principal Secretary has disregarded Government Circular dated 11.2.2015, copy whereof is on record as Exh. D and is at page 16 of Paper Book of O.A.

13. It appears that while averring that since Hon'ble Minister being competent authority is not required to wait for views of Civil Services Board as well can act upon knowledge and reasons in the mind of Hon'ble Minister, Shri Ashish Kumar Singh has created or learnt new jurisprudence that reasons can be supplanted and he wants to teach it to this Tribunal. Be it as it may, learning, wit and wisdom are his personal achievements.

14. There did not exist an occasion or cause to urge and cite said judgment of this Tribunal in O.A 19/2017. This expression demonstrate the attitude of attempting to teach new jurisprudence with arrogance of status and purported belief of knowledge which prima facie is ignorance.

15. In fact, the observations of this Tribunal in may of its earlier judgments could have been used by Shri Ashish Singh the learned Secretary as a ladder and/or as a device or a path officially and authentically made available by this Tribunal to the Secretary to approach the Hon'ble Minister and point out the deficiency rather an illegality, which on his own he appears to have perceived to be an embarrassing job.

16. While it is a fact that the Secretary can never direct or modulate the manner in which Hon'ble Minister should write, due to his status of his being guardian of law and of legal governance, apart from being head of administration of the Department, he is supposed to bring to the knowledge of the Hon'ble Minister, if necessarily once again as well again and again. This reminding

could/has to be necessarily in the politely narrated noting, the deficiency in Hon'ble Minister's decision extempore or random endorsement or purportedly or for reasons of Hon'ble Minister's personal knowledge rendered by Hon'ble Minister extempore or randomly or even if it be consciously whenever it is seen to be in violation of law, or when it fails to comply with the mandate of law or a binding decision or a binding precedent.

17. It was also open for the Secretary to suo motu put up or to seek leave of Hon'ble Minister to have the file put up once again, for keeping the decision in abeyance and reinitiate process of transfer after compiling record adverse to the employee concerned and thereafter process the transfer proposal for either party or in totality, so that if there exist special reasons etc., to sustain the intent and earlier decision.

18. Role of Secretary cannot be that of a dumb spectator. Ideally Secretary, though being a subordinate, due to his long standing experience as a senior Officer, learning and articulation of behavioral techniques, can prove to be a friend, philosopher and guide of Hon'ble Minister. Because as an executive in the Government, the Hon'ble Minister may not possess as much degree of proficiency in administration as the Secretary could have, because administration is not the profession of Hon'ble Minister. In this background Secretary could have conveniently chosen to follow the route of resubmitting the file by utilizing his knowledge, training and moral being loyal to law and his duty by courage.

19. Any Secretary ought not feel astitute shy or helpless if his own morale and reputation image is strong and worth pride. Nothing stops him from recording his views and leaving Hon'ble Minister free to follow the advise or to reiterate / repeat the act

which has the effect of openly violating the provisions of law and even binding precedents and then to leave the Hon'ble Minister alone for Judicial Review.

20. It is pertinent to note that the Secretary took almost 3 ½ months for filing affidavit. Learned Principal Secretary could have used this long span of 3 ½ months in resubmitting the file for reconsideration before Hon'ble Minister, instead he seems to have got enraged because of observations contained in the Tribunal's order dated 12.10.2017 and has angrily drafted the affidavit with unapt tone of language, as a job easier than to be candid and firm while going before Hon'ble Minister. He seems to be keen on seeing that Hon'ble Minister is not disappointed or displeased, and to let the Tribunal to be presented and dealt with unworthy language.

21. It appears to be easy for the officers to make averments before the Tribunal apparently consisting of impolite, discourteous and outrageous language by totally departing from humility, rather than becoming candid and upright but legal before the Hon'ble Minister. Boldness seems to be becoming stronger before the Tribunal and helplessness seems to be standing temperament while being before Hon'ble Minister. Learned Secretary is professing to be braver while filing affidavit before this Tribunal, and is illustrably coy or subdued before Hon'ble Minister.

22. In the present case, learned Principal Secretary, Shri Ashish Kumar Singh could have used this Tribunal's order dated 12.10.2017, as a device, i.e. a ladder and could have resubmitted a note soliciting fresh orders. Instead of paving a locus which was created by order of this Tribunal, learned Principal Secretary has shown helplessness before Hon'ble Minister, he elects to boldly



blame Hon'ble Minister before this Tribunal and behind the back stating that despite knowledge of law because in each meeting provisions of law are discussed with Hon'ble Minister, yet Hon'ble Minister has passed impugned order, as if Hon'ble Minister does not wish to follow the law.

While acting in aforesaid manner, Principal Secretary, Shri Ashish Kumar Singh maintains eloquent silence to reply the crucial direction contained in para No. 19 of the order, which is quoted below at the cost of repetition as follows:-

“19. In these circumstances it is considered necessary to protect the applicant and **at the same time call the Secretary of P.W Department to file affidavit as to what precluded from bringing to the notice of the Hon'ble Minister, the provisions of law ROT Act 2005 even after Hon'ble Minister had endorsed his order and before actual issuance of orders.** The Secretary, Public Works Department, who has proposed/endorsed and signed the note after Hon'ble Minister's signature, is called upon to file his own affidavit on the aforesaid point apart from answer to OA if he chooses to file for opposing the OA.”

(Quoted from order dated 12.10.2017)

23. It also appears from the language employed by Shri Ashish Singh, the learned Secretary in the affidavit that whatever was recorded in paragraphs 14 to 19 of order dated 12.10.2017, was treated by the Officer to hurt him personally. Instead of choosing easy, authentic and legitimately available course, an affidavit expressing anguish and by raising arguments in a louder tone with undue and gross impropriety is filed. In the said background, he has averred and addressed this Tribunal in the manner and language in the affidavit referred to in foregoing para numbers 5 to 10, which on one hand is in effect attempt to shirk the responsibility and at the same time to express his anguish in a

circuitous way. Right of free expression is welcome, but etiquettes and self-restraints are more welcome.

24. Instead of availing a course which Secretary was duty bound to follow he proceeds to employ unworthy language in his affidavit. Be it as it may, choice of language to be employed in the affidavit is a matter of grooming discretion and wit of the Officer, and this Tribunal would elect to refrain from making any further observations, by wishing him good for apt discretion and proper etiquettes for expression, in future.

25. In this background, this Tribunal considers it appropriate to pass on responsibility on the Special Counsel to take appointment of Hon'ble Minister concerned apprise Hon'ble Minister of exact deficiency, the type of language used in affidavit of the Secretary of attributing violation of law on the part of Hon'ble Minister and evasive attitude towards uprightness and righteousness. Learned Special Counsel should also apprise to the Hon'ble Minister as to the manner in which matters are handled at the level of Secretary, which is discussed in decision of this Tribunal in O.A 770/2016 and O.A 681/2017, based on judgment in T.S.R Subramanian's case.

26. The Principal Secretary should take steps to ensure that the learned Special Counsel gets an appointment from the Hon'ble Minister for discussion. The Special Counsel should also write a letter to the Hon'ble Minister's Personal Secretary for an appointment.

27. Learned Special Counsel is granted two weeks' time to take necessary steps, and report the outcome.

28. S.O to 27.3.2018.

29. Steno copy and Hamdast is granted. Learned Presenting Officer is directed to communicate this order to the Respondents.

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

**Place : Mumbai**  
**Date : 12.02.2018**  
**Dictation taken by : A.K. Nair.**