

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.697 OF 2019

DISTRICT : SANGLI

Shri Vijaysing Ganpatrao Suryawanshi.)
Age : 46 Yrs., Occu.: Maintenance)
Surveyor and R/at Plot No.22, Middle)
Income Housing Society, Near MSCB,)
Vishrambag, Sangli - 416 416.)...Applicant

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai - 400 032.)
2. Settlement Commissioner & Director)
of Land Records, M.S, Pune.)
3. Dy. Director Land Record.)
Pune Region, Pune.)...Respondents

Mr. M.B. Kadam, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 18.11.2019

JUDGMENT

1. The Applicant has challenged the impugned transfer order dated 31st May, 2019 on the ground that it is in contravention of

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provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity) invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under:-

The Applicant was serving as Maintenance Surveyor in City Survey Office, Sangli. He was posted at Sangli on promotion by order dated 9th December, 2013 and had not completed normal tenure of six years as per proviso to Section 3(1) of 'Transfer Act 2005'. However, by order dated 31.05.2019, he was transferred mid-tenure and posted as Maintenance Surveyor in the office of Deputy Superintendent, Land Record, Jat, District : Sangli. The Applicant has challenged the impugned transfer order *inter-alia* on the ground that, though he is entitled to two full tenures at Sangli, he is transferred by impugned order before completion of two full tenures without any administrative exigency or special reason. Indeed, in transfer order dated 31.05.2019, he was shown transferred on request which is obviously erroneous, as he never requested for transfer. He further contends that there is no approval to mid-tenure transfer by immediately preceding Competent Authority as mandated in Section 4(5) read with Section 6 of 'Transfer Act 2005', and therefore, the transfer order is *ex-facie* illegal. He further pleads that his father is quite old and suffering from serious ailment and requires continuous medical treatment which is available at Sangli only. Therefore, the transfer at Jat which is far away from Sangli is highly inconvenient to him. With these pleadings, he prayed to set aside the impugned order dated 31.05.2019.

3. The Respondents resisted the application by filing Affidavit-in-reply *inter-alia* denying that the impugned transfer order suffers from

any illegality. It is not in dispute that the Applicant had not completed two full tenures at Sangli at the time of impugned transfer order. The Respondents, however, sought to justify the transfer order contending that, while the Applicant was serving as Maintenance Surveyor at Sangli, there were several complaints of dereliction in duties, non-performance, negligence in discharging duties, habitual absence, etc. Therefore, the charge-sheet was issued to him for minor punishment under Rule 10 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity) and he was censured by order dated 31.01.2017. However, there was no improvement in his performance. Therefore again, charge-sheet was issued for minor punishment under Rule 10 of 'Rules of 1979' and by order dated 16.07.2018, his next two increments were withheld with cumulative effect. As such, in view of misconduct, it was necessary to transfer the Applicant from Sangli. The Respondents, therefore, contend that the Civil Services Board (CSB) had recommended for transfer of the Applicant and accordingly, same was approved by Respondent No.1 - Settlement Commissioner and Director of Land Records, M.S, Pune to whom powers are delegated by G.R. dated 22.08.2017. By this G.R, the powers conferred upon the Minister Incharge in consultation with Secretaries of the concerned Department contemplated in Clause (b) of Table of Section 6 of 'Transfer Act 2005' are delegated to Settlement Commissioner and Director of Land Records. The Respondents, therefore, sought to justify the impugned transfer order and prayed to dismiss the O.A.

4. Heard Shri M.B. Kadam, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

5. In view of submissions advanced at the Bar, the issue posed for consideration is whether the impugned transfer order dated

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31.05.2019 being admittedly mid-tenure transfer is legal and valid in terms of mandatory requirement of Section 4(5) of 'Transfer Act 2005'.

6. At the very outset, let it be cleared that, though in impugned transfer order dated 31.05.2019 (Page No.10 of Paper Book), the Applicant is shown transferred on request, later by way of Corrigendum (Page No.113 of P.B.) dated 01.08.2019, the mistake is rectified and transfer is shown on administrative ground. As such, in impugned order dated 31.05.2019, the Applicant was shown transferred on request inadvertently, but later the mistake is rectified.

7. There is no denying that the Applicant being Group 'C' employee is entitled for two full tenure as per Proviso to Section 3(1) of 'Transfer Act 2005', but he was transferred without allowing him two full tenure. He had joined at Sangli on 09.12.2013 and had completed about five and half years at the time of impugned transfer order, which was short by seven months for completion of two full tenure. This being the admitted position, such transfer should be in consonance with Section 4(5) of 'Transfer Act 2005', which is as follows :-

"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 approval of immediately superior Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post."

8. Now, the question comes whether the Respondents have make out special case and had obtained prior permission of immediately preceding Competent Transferring Authority as contemplated in Section 4(5) of 'Transfer Act 2005' as reproduced above. Needless to mention that, in view of decision of Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**, it was mandatory to place the issue of transfer of the Applicant

before CSB and then to obtain permission of immediately preceding Competent Transferring Authority, it being mid-tenure transfer.

9. The learned Presenting Officer sought to justify the impugned transfer order on the ground of complaints against the Applicant as well as orders passed in Departmental Enquiry against him. True, because of alleged misconduct, negligence in performance of duties, etc., initially by order dated 31.01.2017, the Applicant was censured and thereafter again, the charge-sheet was issued against him for minor punishment wherein by order dated 16.07.2018, the punishment of imposition of withholding of two increments with cumulative effect was imposed. It is on this background, the District Superintendent, Land Record, Sangli by letter dated 27.05.2019 forwarded the recommendation to Respondent No.2 - Settlement Commissioner & Director of Land Records, Pune. Page Nos.91 to 97 are the recommendations for the transfer of employees including the Applicant. In this reference, by letter dated 31.05.2019, the Additional Commissioner and Additional Director of Land Record, Pune had forwarded list of employees allegedly approved by CSB for transfer. The letter is at Page No.105 and list is at Page Nos.106 to 111 of P.B. What is significant to note that, though there is reference in letter dated 31.05.2019 that the list appended thereto (Page Nos.106 to 111 of P.B.) is approved by CSB, the minutes of CSB which allegedly recommended transfers have not seen the day of light. The list at Page Nos.106 to 111 appears to have been forwarded by Additional Settlement Commissioner and Additional Director, Land Record under his signature. The Respondents themselves have produced letter dated 07.12.2017 which *inter-alia* establishes that for regular and mid-term transfer of Group 'C' employees working in Land Record Officer, the CSB has been constituted under Chairmanship of Deputy Director of Land Record, Pune with Deputy Director of concerned Division as a Member and Officer Superintendent, Establishment as Member Secretary. As such, the CSB consists of

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Chairman and two Members has been constituted to consider the regular as well as mid-tenure transfer of Group 'C' employees working in Land Record Office. As such, though CSB seems to have been constituted, the matter of transfer of Applicant was not at all placed before the CSB. Despite, specific query and enough opportunities, the learned P.O. was not able to produce minutes of CSB. This gives rise to the adverse inference that no such Resolution or recommendation was actually made for CSB. Had CSB recommended transfer of the Applicant, it ought to have been filed along with the reply or thereafter, when specific query in this behalf was raised by the Tribunal. As such, the absence of recommendation by CSB is one of the major illegality which render the impugned order unsustainable.

10. Now turning to the aspect of approval of Competent Transferring Authority as contemplated in Section 4(5) of 'Transfer Act 2005', the learned Advocate for the Applicant vehemently urged that there is no such approval of immediately superior Competent Transferring Authority as mandated in law, and therefore, on that ground also, the impugned order is unsustainable.

11. Whereas, Shri A.J. Chougule, learned Presenting Officer sought to justify the impugned transfer order contending that in view of G.R. dated 28th August, 2017, the powers of Minister Incharge in consultation with the Secretaries of the concerned Department as mentioned in Table of Section 6 of 'Transfer Act 2005' have been delegated to Respondent No.2 - Settlement Commissioner and Director of Land Record, Pune. According to him, the impugned transfer order is approved by Respondent No.2 in terms of G.R. dated 28th August, 2017, and therefore, the challenge is without merit.

12. Turning to Section 6 of 'Transfer Act 2005' as per Clause (b) of Table attached to Section 6, the Minister Incharge in consultation with the Secretaries of concerned Department is Competent

Transferring Authority for Group 'B' employees and of Group 'A' having pay scale less than 10750-15850. Whereas, the perusal of G.R. dated 28.08.2017 reveals that the Government has delegated these powers to Settlement Commissioner and Director of Land Record, Pune for transfer of Group 'B' (Non-gazetted) as well as for Group 'C' employees. As such, by G.R. dated 28.08.2017, for Group 'C' also, powers are delegated to Settlement Commissioner and Director of Land Record, Pune. Here it would be apposite to note Para 2(b) of G.R. which is as follows :-

“ब) सर्वसाधारण बदल्याव्यतिरिक्त इतर वेळी करावयाच्या बदल्यांविषयी अवलंबावयाची कार्यपध्दती :-

i) सर्वसाधारण बदल्याव्यतिरिक्त इतर वेळी भूमी अभिलेखा विभागातील गट-ब (अराजपत्रित) व गट -क संवर्गातील ज्या कर्मचा-यांची विशेष कारणरतव बदली करावयाची असेल अशा अधिका-यांच्या बाबतीत बदली प्रस्ताव संबंधित जिल्ह्याचे जिल्हाधिकारी तथा पदसिद्ध उप संचालक भूमी अभिलेख यांनी आपल्या अभिप्रायांसह जमाबंदी आयुक्त आणि संचालक भूमी अभिलेख (म.रा.) पुणे यांना सादर करावा व अशा बदली प्रस्तावाविषयी जमाबंदी आयुक्त आणि संचालक भूमी अभिलेख (म.रा.) पुणे यांच्या स्तरावर गठीत करण्यात आलेल्या नागरी सेवा मंडळाच्या शिफारशी / अभिप्राय प्राप्त करून जमाबंदी आयुक्त आणि संचालक भूमी अभिलेख (महाराष्ट्र राज्य) पुणे यांनी त्याबाबत अंतिम निर्णय घ्यावा.”

13. Thus, it is explicit that for mid-tenure transfer of Group 'C' employee, the matter is required to be placed before CSB constituted at the level of Settlement Commissioner and Director of Land Record and after obtaining recommendation of CSB, the Settlement Commissioner and Director of Land Record, Pune needs to take final decision.

14. As such, even if the powers of Minister Incharge in consultation with the Secretaries of concerned Department are delegated to Settlement Commissioner and Director of Land Record, there has to be recommendation of CSB and approval of Settlement Commissioner and Director of Land Record for such mid-term or mid-tenure transfer. However, in the present case, no such approval of Settlement Commissioner and Director of Land Record is forthcoming.

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15. Here, significant to note that by letter dated 31.05.2019 (Page No.105 of P.B.) Shri Oprakash Deshmukh, Additional Settlement Commissioner and Additional Director of Land Record, Pune has forwarded the list of the employees allegedly approved by CSB and directed Deputy Director, Land Record, Pune to examine the matters and pass appropriate orders at his level. It is in response to this letter, the Deputy Director, Land Record has passed impugned order under his authority. Indeed, the file was required to be placed before Settlement Commissioner and Director of Land Record along with minutes of CSB and it is Settlement Commissioner and Director of Land Record, who was competent to pass appropriate orders about the transfer of the Applicant. However, no such course of action was adopted as instructed by G.R. dated 28.08.2017 and on the contrary, the Additional Settlement Commissioner forwarded file to Deputy Director of Land Record, Pune for passing orders at his level which is apparently illegal. When this aspect was noted by the Tribunal, the specific query was raised to the learned P.O. to point out the approval of Settlement Commissioner and Director of Land Record to the transfer of the Applicant. However, he failed to substantiate that there is prior approval of Settlement Commissioner and Director of Land Record to whom powers are purportedly delegated by G.R. dated 28.08.2017.

16. Thus, what emerges from the record that neither there is recommendation of CSB nor prior approval of Settlement Commissioner and Director of Land Record who is Competent Transferring Authority for mid-term transfer by virtue of G.R. dated 28.08.2017. In other words, there is no compliance of mandatory requirement of Section 4(5) of 'Transfer Act 2005'. The impugned transfer order is in blatant violation of Section 4(5) of 'Transfer Act 2005', and therefore, deserves to be quashed.

17. The totality of aforesaid discussion leads me to conclude that the impugned order dated 31st May, 2019 is not sustainable in law and O.A. deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 31.05.2019 is quashed and set aside.
- (C) The Applicant be reposted on the post he is transferred from within two weeks from today.
- (D) No order as to costs.

N. J.
Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 18.11.2019
Dictation taken by :
S.K. Wamanse.