

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1050 OF 2022

**DISTRICT: SOLAPUR
SUBJECT: TRANSFER**

Dineshsingh Dilipsingh Pardeshi,)
Aged 40 yrs, Working as Executive Engineer in the)
office of the Maharashtra Rural Roads Development)
Authority, Solapur, R/o. Mangal Residency, B-Wing)
Second Floor, Flat No.204, Jule-Solapur, Dist. Solapur)... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through the Additional Chief Secretary,)
Public Works Department, Having office at)
Mantralaya, Mumbai – 400 032.)
- 2) Shri Vilas H. More,)
Aged Adult, Working as Executive Engineer)
Zilla Parishad (Public Works) Division No.1)
Solapur.)...**Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

Smt. Archana B. Kologi, learned Presenting Officer for the Respondents.

Shri Kishor R. Jagdale, learned Advocate for the Respondent No.2.

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 14.12.2022.

JUDGMENT

1. The Applicant has challenged order dated 17.10.2022 issued by Respondent No.1 thereby displacing him from the post of Executive Engineer, Maharashtra Rural Development Authority and posting Respondent No.2 in his place leaving the Applicant without posting

invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated undisputed facts giving rise to this O.A. are as under:-

The Applicant is serving in the cadre of Executive Engineer. Government by order dated 27.04.2012 promoted him in the cadre of Executive Engineer and by order dated 08.08.2022 he was posted as Executive Engineer, Maharashtra Rural Road Development Authority, Solapur (MRRDA) on vacant post. In terms of Section 3 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) his tenure was three years on the said post. However, the Government displaced him unceremoniously by impugned order dated 17.10.2022 and posted Respondent No.2 in his place. Indeed, Respondent No.2 was not due for transfer since he had joined as Executive Engineer, Zilla Parishad (P.W.D. Division - 1), Solapur on 25.07.2022. However, he made request for posting in MRRDA in place of the Applicant. It is on this background, the Applicant is shifted from the present post without giving him any other posting.

3. The Tribunal has granted interim relief by order dated 18.10.2022 having found that *prima-faice* the Applicant is displaced and transferred only to favour Respondent No.2 in contravention of the provisions of Transfer Act, 2005 since there was no case of any such administrative exigencies or special case for his mid-term or mid-tenure transfer and notices were issued.

4. Respondents thereafter filed Affidavit-in-Reply *inter-alia* contending that the Transfer order is approved by competent authority and there is no such violation of Transfer Act, 2005.

5. Today matter is heard for final disposal.

6. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant, Smt. Archana B.K, learned Presenting Officer for the Respondents and Shri K.R. Jagdale, learned Advocate for the Respondent No.2.

7. At the very outset, the submission advanced by Shri K.R. Jagdale, learned Advocate for the Respondent No.2 that O.A. is premature is totally mis-conceived and fallacious. According to him there is no posting order of the Applicant at particular place and in absence of any such order he can't challenge transfer order dated 17.10.2022. True, in impugned order dated 17.10.2022 it is stated that posting order of the Applicant would be issued independently. However, fact remains that the Government has displaced him by giving posting to Respondent No.2 in his place which in law amounts to mid-term and mid-tenure transfer of the Applicant. The Applicant is certainly aggrieved by such order which left him without post. I therefore see no substance in the objection raised by the learned Advocate for the Respondent No.2 in this behalf.

8. Learned P.O. all that could say that transfer order is approved by Hon'ble Chief Minister, and therefore challenge to the impugned order is without merit. Only because transfer is approved by Hon'ble Chief Minister that *ipso-facto* would not render transfer legal and valid. In this behalf, Section 4(5) of Transfer Act, 2005 provides that it is only in special case after recording reason in writing and with the prior approval of immediately superior Competent Transferring Authority a Government servant can be transferred before completion of his tenure of post. Suffice to say, there has to be some special reasons or administrative exigencies for such mid-term transfer as a condition precedent for valid transfer order which is completely missing in the present case.

9. Needless, to mention that though transfer is incidence of Government service. Now transfers of Government servant are controlled

and regularized by Transfer Act, 2005. It is not left at the whims and caprice of the Government. As per Section 3 the Applicant was entitled for three years tenure as Executive Engineer, MRRDA but he is displaced unceremoniously within three months to only favour the Respondent No.2.

10. File noting (Pg 57) itself makes it clear that there is no such special case or any kind of administrative exigencies to displace the Applicant mid-term and mid-tenure. The perusal of file noting reveals that Respondents had secured recommendation of some politician/ MLA and in reference to it and matter was placed before the Hon'ble Chief Minister through CSB by circulation and on request of Respondent No.2 it was accepted. It is thus explicit that there is no such special case or administrative exigencies to displace or transfer the Applicant from present post. Indeed, Respondent No.2 was at Solapur for about seven years but again he made representation (pg 56) seeking posting as Executive Engineer, MRDA, Solapur which was accepted at a drop of hat which is blatant violation without Section 4(5) of Transfer Act, 2005.

11. The pleading made in Affidavit-in-Reply of Respondent No.1 in Para 8.1 that the letter of Dr. Shahjibapu Patil and Dr. Tanaji Sawant, Members of Legislative Assembly, although sent request to transfer Respondent No.2 but these letters were not considered as recommendation or political interference is totally incorrect, rather it is misleading the Tribunal. In file noting (Pg 57) itself there is specific noting that the file was moved only on the basis of recommendations made by Dr. Shahjibapu Patil and Dr. Tanaji Sawant. It clearly spells that only for undue favour to Respondent No.2 the Applicant is ousted.

12. Indeed, the practice to transfer Government servant on the recommendation of Politician is frowned upon by Hon'ble High Court in Writ Petition No.8987/2018 [Balasaheb V. Tidke Vs. The State of Maharashtra] decided on 12.12.2018, in which the then Chief Secretary

had filed Affidavit that the process of transfer at the level of Government will not be influenced by any recommendation made by any political leaders or Ministers who are not part of the process of transfer. Despite filing of Affidavit before Hon'ble High Court the practice of transfer on influence of politician seems continued unabated which is nothing but contempt of the undertaking given before Hon'ble High Court.

13. Suffice to say, impugned order dated 17.10.2022 is blatant violation of provisions of Transfer Act, 2005 as well as arbitrary and sheer abuse of power. This is nothing but open defiance of the executive to trampled upon the provisions of Transfer Act 2005. Impugned order is therefore liable to be quashed and set aside. O.A. deserves to be allowed with exemplary costs, since the Applicant is unnecessarily dragged to file the litigation and subject to inconvenience. Hence, the order.

ORDER

- A) The Original Application is allowed.
- B) Impugned order dated 17.10.2022 is quashed and set aside.
- C) Interim relief granted by order dated 18.10.2022 is made absolute.
- D) Respondents are liable to pay cost of Rs.25,000/- (Twenty Five Thousand Only) to the Applicant jointly or severally.
- E) The cost be deposited within a month from today. On deposit it be paid to the Applicant.

Sd/-

(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 14.12.2022
Dictation taken by: N.M. Naik.

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