

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1335 OF 2024

DISTRICT : PUNE

Shri Mahesh J. Awatade) ...**Applicant**

Versus

The State of Maharashtra & Ors. ...**Respondents**

Shri A.V Bandiwadekar, learned counsel for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondent No.1.

Smt. Punam Mahajan, learned counsel for Respondent No. 2.

CORAM : Justice Mridula Bhatkar (Chairperson)

DATE : 16.10.2024

ORDER

1. Applicant working as Chief Accounts and Finance Officer, challenges order dated 11.10.2024 issued by Respondent No.1, thereby transferring Respondent No.2 in the place of the Applicant as Chief Accounts and Finance Officer, Zilla Parishad, Pune from Municipal Corporation, Ahmednagar and transferring the Applicant to the post of Deputy Director, GST Commissionerate, Mumbai.

2. Learned Counsel Mr. Bandiwadekar has submitted that by order dated 06.10.2021 the Applicant was transferred as Chief Accounts and Finance Officer and he joined on 12.10.2021. Thus, the Applicant has completed the tenure of three years. He has

submitted that the copy of O.A. is served on all the respondents. He has challenged the transfer order on the following grounds:-

- (a) No Civil Services Board (C.S.B.) meeting was held for the transfer of Applicant.
- (b) Applicant's transfer is mid-term as the transfer order is passed in violation of Section 4(4)(ii) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties, Act, 2005 (hereinafter referred as 'ROTA 2005' for brevity).
- (c) Learned Counsel Mr. Bandiwadekar has submitted that applicant has been informed about his transfer by email on Friday, 11th October, 24 at 10.00 p.m. from Z.P. Pune and he stood relieved and transferred to Mumbai. Thus, applicant approached the Tribunal yesterday i.e., on 14.10.2024 and has served copy to the Respondents. Applicant has not handed over his charge. The rules No.29 and 31 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981
- (d) Learned Counsel Mr. Bandiwadekar has submitted that there is a patent breach of Rule 8 of the Divisional Cadre Allotment Rules, 2021, for appointment by nomination and promotion to the posts of Group A and Group B (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2015 wherein such officers shall be eligible for transfer as per the ROTA 2005.
- (e) Learned Counsel has submitted that Respondent No.2 was transferred to Ahmednagar by order dated 20.04.2022. Respondent No.2 was earlier in Nashik Division and thereafter he was allotted Ahmednagar, so he did not complete the requisite period of three years when he was posted on promotion in Nashik Division.
- (f) Learned Counsel Mr. Bandiwadekar pointed out under Rule 7 and Rule 12 of the Divisional Cadre Allotment Rules, 2021, for appointment by nomination and promotion to the posts of Group A and Group B (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2015 dated 14.07.2021 the officers are exempted from completing 3 years in the Division. However, the case of Respondent No.2 is neither covered under Rule 7 nor under Rule 12.

- (g) Applicant's mother is blind, paralyzed and needs psychological consultation in Pune.
- (h) Applicant also challenges transfer order on the point of competency of the transferring authority issuing the order of transfer. Applicant has submitted that considering the pay scale of the applicant, applicant falls in Class (a) of the Table appended to Section 6 of the said Act. Thus, transfer order is to be issued by the Hon'ble Chief Minister, who is the competent authority in case of applicant and not as the immediate Superintending Authority.
- (i) Applicant is not connected with election duties hence is not covered and due for transfer under guidelines dated 31.07.2024 issued by the Election Commission.
- (j) There is blatant breach of Rules 29 & 31 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 in taking over charge by the Respondent no.4.

3. Thus, learned Counsel for the Applicant prays for mandatory injunction to restore the earlier position. In support of his submissions learned Counsel Mr. Bandiwadekar has relied on the following decisions:-

- (i) Judgment of this Tribunal dated 09.10.2024 in **O.A.No.1006/2024, S.S. Mali Versus The State of Maharashtra & Ors.**, wherein Rules 29 and 31 of the Maharashtra Civil Service (General Conditions of Service) Rules, 1981 is discussed.
- (ii) Judgment of the Hon'ble Supreme Court in **Dorab Cawasji Warden Vs. Coomi Sorab Warden & Ors, (1990) 2 SCC 117.**

4. Learned Counsel Ms. Mahajan appearing for Respondent No.2 has submitted that Respondent No.2 has taken charge on 14.10.2024. Learned Counsel Ms. Mahajan has pointed out Clause 9 of the guidelines dated 31.07.2024 issued by the Election Commission of India. Learned counsel further submitted that the applicant was due for transfer as he has completed 3 years on the said post and as per Clause 3(ii) of the guidelines of Election

Commission of India if a Government servant has put in 3 years out of 4 years in a District and he is directly related with Election duty then he is liable for transfer. The applicant is working as Chief Accounts and Finance Officer, handling the Management and Election Expenses and therefore he is connected directly with Election duty. As the name of the applicant is shown in Column No. 9 as he is concerned with the Election Expenses and Management of Funds, so he is having duty connected with the Election and therefore he is transferred without placing his case before the Civil Services Board. Learned Counsel Mr. Bandiwadekar in reply has submitted by order dated 03.10.2024, Shri Sonappa Yamgar, Additional Collector, was appointed as Nodal Officer for Election Expenses and Management of Funds and the applicant as Assistant Officer to Nodal Officer, Shri Sonappa Yamgar as per order dated 17.9.2024. Learned Counsel for the Respondent No. 2 has relied on the judgment of the Hon'ble High Court in the case of **Prashant S. Bedse Vs. The State of Maharashtra & Ors, W.P 7679/2023** wherein it is held that the Tribunal has no power to pass the interlocutory status quo ante order.

5. Learned counsel for the Applicant distinguished the case of **Bedse (supra)** from the present case.

- (i) In the present case there is no proposal for the transfer of the Applicant and Respondent No. 2. However, in the case of **Bedse (supra)**, there was proposal for transfer of both the applicant and the private Respondent.
- (ii) The case of the present applicant and the Respondent No. 2 were not placed in the meeting before the Civil Services Board.
- (iii) The name of the present applicant and the Respondent No. 2 were inserted for the first time in the office of the Hon'ble Chief Minister. However, in the case of **Bedse (supra)**, the names were not inserted.

- (iv) In the present case, there is a breach of Rule 8 of the Divisional Cadre Allotment Rules. However, in case of **Bedse (supra)**, there was no breach of the said Rule.
- (v) In the present case the Hon'ble Chief Minister is the Competent Authority and not immediate Superior Authority as per Section 6 of the ROTA 2005, in view of the pay scale of the applicant. This was not the position in the case of **Bedse (supra)**.

6. Learned Presenting Officer has submitted that the competent authority i.e. the Hon'ble Cabinet Minister (Revenue and Forest Department) and the Hon'ble Chief Minister, both have approved the order of transfer of the applicant. He has placed on record the noting disclosing the minutes of the C.S.B. meeting held on 30.08.2024.

7. Let me point out that in the transfer order dated 11.10.2024 the reason for transfer is given as per the provisions of Sections 4(4) and 4(5) of the ROTA 2005. No other reason is mentioned especially the transfer under the Guidelines issued by the Election Commission of India dated 31.07.2024. Thus, the Government by its order has admitted that the transfer of the applicant is only under the provisions of Sections 4(4) and 4(5) of the ROTA 2005 and not transferred under the Guidelines of the Election Commission. Secondly, it is a factual position that he is not performing the duty connected with the Elections. If it is so then a specific procedure laid down under these two Sections of the ROTA 2005 is to be mandatorily followed.

8. For any mid-term or mid-tenure transfer the proposal of the transfer of the Government servant is required to be mooted by the authority and that is to be placed before the C.S.B. meeting. In the present case, on such proposal was ever placed before the C.S.B. meeting held on 30.08.2024. Thus, in the C.S.B. meeting which

was held on 30.08.2024 had no occasion to consider the case of the applicant or to recommend the transfer of the applicant.

9. On query, the Respondent-State placed the noting of the C.S.B. meeting dated 30.08.2024 before the Tribunal as it was necessary to go through it, to find out whether the State has legally justified in passing the impugned order of transfer of the applicant. The said noting revealed that there is no whisper of the transfer of the applicant in the said meeting of the Civil Services Board. There is a separate sheet attached to the minutes where the Hon'ble Cabinet Minister (Revenue and Forest Department) and the Hon'ble Chief Minister have passed the order of acceptance the minutes with additional order of the transfer of the applicant and of the Private Respondent No.2 bringing him in the place of the applicant.

10. At this stage, I rely and quote the ratio laid down by the Hon'ble Supreme Court in **T.S.R. Subramanian & Ors. Vs. Union of India & Ors reported in (2013) 15 SCC 732.**

"29. We, therefore, direct the Centre, State Governments and the Union Territories to constitute such Boards with high ranking serving officers, who are specialists in their respective fields, within a period of three months, if not already constituted, till the Parliament brings in a proper legislation in setting up CSB.

30. We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. The necessity of minimum tenure has been endorsed and implemented by the Union Government. In fact, we notice, almost 13 States have accepted the necessity of a minimum tenure for civil servants. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They

can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of the society.”

Thus holding of C.S.B. meeting is a law laid down by the Hon'ble Supreme Court and under the ROTA 2005 it is followed in each and every transfer and such case is to be placed before the C.S.B. meeting. The special reasons and exceptional circumstances should be made out for mid-term and mid-tenure transfer of the Government servants. The Competent Authority undoubtedly has power to accept or reject the recommendation of C.S.B. meeting. However, it is binding on the Competent Authority to state the reasons for the same to make out the case under Sections 4(4)(ii) and 4(5) of the ROTA 2005. In the present case the order of transfer is the best example of flagrant breach of the law laid down under the ROTA 2005. No authority including Courts/ Tribunals or the office of the Hon'ble Chief Minister is above the law. It is obligatory for all these authorities to follow and obey the command of law. Thus, there is prima facie, aberration to the law and the Rule of law should prevail.

11. The submissions made by the learned Counsel for the Respondent No.2 that in the case of ***Bedse (supra)*** the Hon'ble Division Bench of Bombay High Court has held that the Tribunal has no powers to pass the mandatory order or order of Status quo ante are incorrect and so not acceptable. It appears that learned Counsel Ms. Mahajan has misunderstood the order of the Hon'ble Division Bench in the case of ***Bedse (supra)*** in respect of the powers of the Tribunal of granting the relief of Status quo ante. The Tribunal under Section 24 of the Administrative Tribunals Act, 1985 has powers to grant the interim relief including perpetual, interlocutory as well as mandatory injunction :

“24. Conditions as to making of interim orders. - Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by

way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an application unless-
(a) copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and
(b) opportunity is given to such party to be heard in the matter.”

The requirement specified under (a) and (b), if fulfilled then the Tribunal has power to grant interim order of injunction, stay or in any other manner.

In the case of **Dorab Cawasji Warden (supra)** it is held by the Hon’ble Supreme Court that,

“16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non- contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or 'serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.

(emphasis placed)

Thus only if special reasons are made out and in the rare case the Courts / Tribunals can invoke the powers of granting interlocutory and mandatory injunction or Statue quo ante.

12. In the present case following are the exceptional circumstances :

- (i) There was no proposal before the C.S.B. meeting for the transfer of applicant or Respondent No.2.
- (ii) No C.S.B. meeting was held so far as the case of the applicant is concerned and his case was not placed before the C.S.B. meeting.
- (iii) The formation of C.S.B. meeting and considering the case of the transfer of the Government Servants by the C.S.B. meeting is mandatory under the law laid down by the Hon'ble Supreme Court in the case of **T.S.R. Subramanian (supra)**. It is duty of the Tribunal to uphold the law laid down by the Hon'ble Supreme Court. Thus, prima facie, the Respondents have breached the law.
- (iv) The applicant is transferred from Pune to Mumbai, so he is required to change the City and his residence mid-term. So the balance of convenience lies in his favour.
- (v) As per the noting dated 09.10.2024 the C.S.B. meeting was conducted on 30.08.2024 wherein the cases of the other Government servants were considered and not of the present Applicant or the Respondent No.2. However, the separate page was signed by the Hon'ble Deputy Chief Minister, the Cabinet Minister (Revenue and Forest Department) and the Hon'ble Chief Minister on 10.10.2024 and on the same day the applicant was relieved without following the proper procedure under Sections 29 and 31 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981.
- (vi) The case is, prima facie, made out to restore status of the applicant before he was relieved.
- (vii) The case of the present applicant as pointed out by learned Counsel for the Applicant is distinguishable from the case of **Bedse (supra)** on the facts and circumstances.

13. One more point of Rule 31 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 is also to be referred. The said Rule 31 is as follows :

“31. Charge must be handed over at the headquarters, both relieved and relieving Government servants to be present.”

In the light of this Rule the action of taking over charge unilaterally by the Respondent No.2 is also required to be tested at the stage of the Final Hearing.

14. In view of the above reasons, prima facie, the case is made out to grant interlocutory status quo ante :

- (a) Applicant is to be continued at his earlier place of work at Pune forthwith till further orders.
- (b) Respondent No.2 may be allowed to continue at the present place of his earlier posting, if the same is vacant, or he may be accommodated at any other place.
- (c) S.O. to 18.11.2024 to file affidavit-in-reply.

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Dictation taken by : A.K. Nair/ PRK.