

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.286 OF 2016

DISTRICT : PUNE


Mr. Suryakant G. Yewale.)

Age : 46 Yrs, Occu.: Working as Tahasildar)

R/at : At Post Indapur, Dist : Pune.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Revenue & Forest Department,)
32nd Floor, Centre-1 Building, World)
Trade Centre, Cuff Parade,)
Mumbai - 400 005.)
2. The Divisional Commissioner)
(Revenue), Pune Division, Vidhan)
Bhavan, Pune 411 001.)
3. The District Collector.)
Central Building, Sadhu Vaswani)
Chowk, Pune.)
4. Smt. Varsha Bhimrao Landge,).. No.4 is deleted as per
Probationer District Collector, Pune.) order dated 21.10.2016
Through District Collector, Pune,) passed in MA 408/16
Central Building, Sadhu Vaswani) in OA 286/16.
Chowk, Pune.)
5. Mr. Shrikant K. Patil.)
Working as Tahasildar, Indapur)



Tahsil Office, Kasaba Road,)
Tal.: Indapur, District Pune.)

6. The Divisional Commissioner)
(Revenue), Nagpur Division, Nagpur.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 31.03.2017

JUDGMENT

1. The Applicant currently a Tahasildar calls into question the order dated 22.8.2016 whereby the private party Respondent No.5 also a Tahasildar came to be transferred and posted as Tahasildar, Indapur in District Pune by the 3rd Respondent – District Collector, Pune. Before that, there had been developments which shall be discussed in the body hereof. The Respondent No.1 is the State of Maharashtra in Revenue & Forest Department, the 2nd Respondent is the Divisional Commissioner (Revenue), Pune Division, the original 4th Respondent was a Probationer Deputy Collector, Pune who functioned as a Trainee Deputy Collector in Indapur on the post of the

Tahasildar held by the Applicant. The 5th Respondent is a Tahasildar who has been appointed at Indapur which was the post held by the Applicant. The 6th Respondent is the Divisional Commissioner (Revenue), Nagpur.

2. The Applicant as a MPSC appointed to the post of Naib Tahsildar came to be appointed on 31.8.2004. He was promoted to the post of Tahasildar on 28.2.2013. Till 4.9.2014, he was posted at various places in Nagpur Division most of which fell within the naxal affected Chandrapur and Gadchiroli Districts. His daughter now aged 9 suffers from what has been described as Reflectory Epilepsy which affects her development. Therefore, on the request of the Applicant, he was transferred from Nagpur Division to Pune Division as and by way of inter-district transfer. A copy thereof is at Exh. 'B' (Page 16 of the Paper Book (PB)). Incidentally, Exh. 'A' Page 13 of the PB has now become a little inconsequential but it was Applicant's intimation of having taken over the charge at Shioncha on 17th December, 2013. He came to be transferred to Indapur in Pune District which is his native place by an order of 12.6.2015 (Exh. 'D' collectively, Page 19 of the PB). The joining report is at Page 20. It is the case of the Applicant that this particular transfer answered all the requirements of the provisions of the Maharashtra



Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act). The Hon'ble Chief Minister was pleased to accord approval thereto.

3. The Applicant had hardly completed nine months at Indapur when by an order dated 19.3.2016 which was impugned in the pre-amended OA original Respondent No.4 was posted at his place as a Probationary Deputy Collector for the purposes of training. At this stage itself, it needs to be noted that the 3rd Respondent Shri Saurabh A. Rao, Collector, Pune in his Affidavit-in-reply (Pages 27 and thereafter) in Para 4, admitted that the transfer of the Applicant was not as per the Transfer Act. He admitted that the Applicant was transferred on 19.3.2016. He pleaded that the original 4th Respondent being a Probationary Deputy Collector was posted as a part of her training at Indapur in place of the Applicant. It was not a case of transfer but posting. According to him, it was not necessary to pass and issue separate orders in that behalf. In Para 15 of the said Affidavit-in-reply, the 3rd Respondent again admitted that the Applicant was transferred on 19.3.2016 and then he pleaded by way of clarification that the Applicant was not transferred out of his posting place but was relieved only to train a Probationary Deputy



Collector and on completion of the said training, the charge would go back to the Applicant. The period of the training of the 4th Respondent was from 21.3.2016 to 21.8.2016. In Para 18 of the said Affidavit-in-reply, the 3rd Respondent again admitted quite categorically and pleaded that, "on completion of Deputy Collector's training, incumbent take the charge back, if there is no other order to the contrary in between.

4. Another Affidavit was filed by the 3rd Respondent on 12.1.2017 wherein it was disclosed that the Applicant was directed to join the establishment of the Divisional Commissioner (Revenue), Pune being the Respondent No.2. The Applicant, however, came to be suspended by the 1st Respondent - State of Maharashtra on account of the irregularities allegedly committed by him on 28.3.2016 and there was, therefore, no question of reposting him as per the provisions of the letter of Respondent No.1 mentioned therein. Therefore, he denied the adverse allegations of having posted the 5th Respondent at Indapur.

5. By the order of the Government of Maharashtra, dated 3.10.2016, the Applicant came to be reinstated which order is annexed to the Affidavit-in-reply of the 3rd Respondent. I had by my order of 3rd March, 2017 clearly

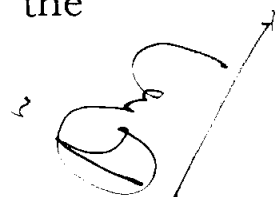
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expressed displeasure at the conduct of the 3rd Respondent and he filed an Affidavit on 17.3.2017 tendering apology and explaining the facts. At this stage itself, I may mention that the Respondent No.3 having filed the above referred Affidavit, the said matter is now closed and no further action is required to be taken against the Respondent No.3 – Mr. S.A. Rao.

6. By the orders of 22.8.2016 and 3.10.2016, the Respondent No.5 is directed to be posted at Indapur, the place where the Applicant was last transferred from and the Applicant came to be transferred to Nagpur and by consequential order of 4.10.2016 made by the 5th Respondent – Divisional Commissioner (Revenue), Nagpur Division, he came to be posted as Purchase Officer, Bhandara. These are the orders that the Applicant places under challenge in this OA.

7. I have perused the record and proceedings and heard Mr. K.R. Jagdale, the learned Advocate for the Applicant and Mrs. A.B. Kololgi, the learned Presenting Officer for the Respondents.

8. The above discussion must have made it quite clear that all said and done and thought about it, the

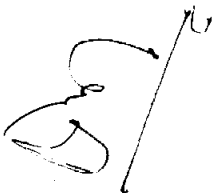


Applicant came to be transferred and posted at Indapur and after a period of nine months, by an order of 19.3.2016, the original 4th Respondent was brought there, who was under training as a Probationary Deputy Collector which facts are admitted quite clearly even by the 3rd Respondent. It is not disputed as indeed, it could not be that the transfer and posting of the Applicant at Indapur fully accorded with the provisions of the Transfer Act which governs the service condition of transfers of the employees like the Applicant. Once this fact is quite clearly established, then in my opinion, it goes without saying that, if the Applicant was to be transferred out of Indapur, the procedure under the Transfer Act ought to have been complied with. It must have been, therefore, that the 3rd Respondent was at pains to repeatedly mention that the order in respect of Respondent No.4 was not of transfer but of posting whatever it means. He perhaps wanted to indicate that, for the purposes of training, the Respondent No.4 was brought at Indapur. There is a Government directive in an instrument, a copy of which is at Exh. 'H' (Page 24-a of the PB). It is in Marathi. It was in respect of the 22 week training to the Probationary Deputy Collectors. It was quite clearly mentioned there that the regularly working Tahasildar of the said place like in the present matter Indapur, would not be disturbed, which



means the Applicant was not to be disturbed. It was clearly stated therein in effect that the Probationary Deputy Collector would not be given full and independent charge of the said post of Tahasildar but the charge of a couple of Circles as Trainee be given to him (her). Now, it is very clear, therefore, that the manner in which the 3rd Respondent conducted the whole affairs was in stark contravention of the governmental directions. The observations of this Tribunal presided over by the Hon'ble Vice-Chairman in Applicant's earlier **OA 303/2016 (S.G. Yewale Vs. State of Maharashtra, dated 4.4.2016 (Exh. 'J', Page 24-c)** are illustrative in this behalf.

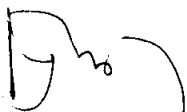
9. In whatever way, the 3rd Respondent may have performed his functions vis-à-vis the post of Tahasildar at Indapur legally, the displacement of the Applicant from Indapur in the facts and circumstances such as they were, clearly falls within the ambit of the word, "transfer" under Section 2 (1)(i) of the Transfer Act. It is nobody's case least of all of the Respondents that the movement out of Indapur of the Applicant preceded the procedural requirements of the Transfer Act. When nothing was done, it is not really necessary to mention as to what all was required to be done. The provisions of the Transfer Act are clearly violated and the event of the suspension and the so called



posting and movement, etc. would hardly make any difference. If any other approach is adopted, it would be violative of the provisions of the Transfer Act and that in my opinion, settles the whole matter and it obviates the necessity to discuss the reasons for the transfer of the Applicant to Indapur. In Indapur, he had put in hardly nine months, and therefore, he was not due for transfer and I must repeat that no procedural requirement of a mid-term and mid-tenure transfer was followed or complied with.

10. Mr. Jagdale, the learned Advocate for the Applicant relied upon a common Judgment rendered by the then Chairman in **OAs 749/2011 and 765/2011 (Arun N. Deshpande Vs. Superintendent of Police, Solapur (Rural) and one another OA, dated 18th June, 2012)**. That was a case of a Police Personnel and in the circumstances, more or less like the present one, the Hon'ble Chairman was pleased to hold in favour of the Applicant thereby quashing the orders impugned therein which were like the present impugned orders for all practical purposes.

11. Mr. Jagdale referred me to two Judgments of the Hon'ble High Court of Madhya Pradesh. The first one



being a Division Bench Judgment in the matter of **Kendriya Vidyalaya Sanghatan Vs. Dr. R.K. Shahstri : (2005) 4 MPHT 352** and the other one being a Single Bench Judgment in **D.K. Nema Vs. The State of M.P. : (2011) 2 MPHT 194**. It will be in my view advantageous to fully reproduce the order of the Hon'ble Single Bench so that the whole matter becomes quite clear.

"ORDER

1. Petitioner was suspended and after revocation of suspension, his place of posting has been changed.
2. Records indicate that while Petitioner was under suspension, he was posted under the office of Senior Agriculture Development Office, Patan. However, while revoking his suspension vide order dated 25-11-2010 (Annexure P-8), his place of posting has been changed and he is reinstated in a different office at Singrouli, instead of reinstating him in the place from which he has suspended.
3. Division Bench of this Court in the case of Kendriya Vidyalaya Sangthan and Ors. v. Dr. R.K. Shahstri and Anr. : 2005 (4) M.P.H.T. 352, had laid down the principle that on revocation of suspension, the employee cannot be transferred. It is held by the Division Bench that the employee has to be reinstated after revocation of suspension at the same place from which he was suspension. In the present case, Petitioner was suspended while working in Patan and now after revocation of suspension, he is posted in Singrouli, which is not



permissible in view of law laid down by Division Bench of this Court in the case of Kendriya Vidyalaya Sangthan (supra).

4. Keeping in view the aforesaid, this petition is allowed. Impugned order (Annexure P-8), dated 25-11-2010, so far as it relates to posting of Petitioner at Singrouli on revocation of suspension is quashed and Respondents are directed to reinstate the Petitioner in the same place from which he was suspended.

Petition stands allowed and disposed of with the aforesaid."

12. Mr. Jagdale also relied upon the Judgment of the Hon'ble Allahabad High Court in **Govind Chandra Gupta Vs. State of U.P.: (2010) 4 ADJ 1** where it was held that a malafide transfer is not entitled to claim immunity from judicial interference and further, it was held that a suspended employee post reinstatement would have to be posted at the place, he was suspended at. In fact, the Division Bench of the Hon'ble M.P. High Court in **Kendriya Vidyalaya** (supra) in Para 11 held that in such circumstances, the employee holds a lien over the post concerned.

13. The legal position, therefore, becomes very clear that both, under the Transfer Act as well as under the general principles, the Applicant would have to be reposted



at Indapur and in order to give this direction, whatever steps are necessary to be taken would have to be taken and in all fairness to the Applicant, he had impleaded the original Respondent No.4 and by way of amendment, even the Respondent No.5. If they had anything to say, it was open to them to do so.

14. The learned PO relied upon an order made by the Hon'ble Chairman of this Tribunal in **OA 1069/2015 (Shri Birbal L. Valvi Vs. Government of Maharashtra and one another, dated 13.1.2016)**. On facts, it was found that the order which the Applicant therein wanted to take support of, made by the Government was not such as to necessarily post him at a particular place named therein. Further, there was no statutory obligation in that matter for that posting. It may be recalled that here, the provisions of the Transfer Act are clearly violated which is discussed hereinabove. It was further held that, therefore, there was no violation of any provision of warranting the exercise of jurisdiction as mentioned in Para 11 thereof.

15. The upshot, therefore, is that in this matter, all the orders herein impugned will have to be quashed and set aside and the Applicant will have to be reposted at Indapur as Tahasildar which was the post he had been



removed from to accommodate the original Respondent No.4. They are accordingly quashed and set aside and the Respondents are directed to repost the Applicant at Indapur and let him function as Tahasildar, Indapur till such time as he becomes due for transfer in accordance with the relevant law and rules. This order is no verdict on the issue of the DE against the Applicant that may proceed in accordance with the law. No further action will be taken against the 3rd Respondent – the present Collector of Pune Mr. Saurabh A. Rao. The compliance herewith to be made within four weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
31.03.2017

Mumbai

Date : 31.03.2017

Dictation taken by :

S.K. Wamanse.

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