

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.577 OF 2017

DISTRICT : NASHIK

Shri Dilip Ratan Sor.)
Driver, Residing at Tulsi Chaya, Row House No.2)
Dwarka Nagar, Borade Mala (Farm), Jail Road,)
Nashik Road, Nashik.)...**Applicant**

Versus

1. The District Collector.)
Collectorate Office, Nashik.)
2. Mr. N.S. Shaikh.)
Driver in the office of SDO, Kalwan,)
Tal.: Kalwan, District : Nashik and)
residing at Flat No.103, Ismailvila,)
Old Nagji Hospital, Wadala Road,)
Bawa Nagar, Nashik.)...**Respondents**

Mr. D.B. Khaire, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondent No.1.

Respondent No.2 absent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 27.06.2019

JUDGMENT

1. The Applicant has invoked jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenging the legality of transfer order dated 31.05.2017.

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

The Applicant is serving as Driver on the establishment of Respondent No.1 viz. District Collector, Nashik. In 2010, he was transferred from Nandgaon to Employment Guarantee Scheme (EGS), Collector Office, Nashik. Accordingly, he shifted his family to Nashik and admitted his children in School at Nashik. Thereafter, by order dated 17.11.2016, the Respondent No.1 was deputed to Baglan, District Nashik to accommodate Shri Gaware, who was working as Driver at Baglan and he was brought to Nashik. Thereafter, in April, 2017, the Applicant was recalled from Baglan and posted at his original place in the Office of EGS, Collector Office, Nashik. Then, later within a month, by impugned order dated 31.05.2017, he was transferred to the establishment of SDO, Kalwan, District Nashik. The Applicant has challenged this transfer order contending that after bringing him back from Baglan to Nashik, he had hardly completed one month, and therefore, the impugned transfer order dated 31.05.2017 is mid-tenure and in absence of special reasons and without the approval of next higher authority is hit by Section 4(4)(ii) and 4(5) 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). He contends that he was transferred only to accommodate Respondent No.2 - Shri Shaikh, who was working as Driver at Kalwan was posted in Applicant's place at Nashik. He further contends that the Respondent No.1 has adopted the policy of pick and choose, as his colleagues who have completed more than 10 years at the same place are not subjected to transfer and he is subjected to discrimination. With this pleading, the Applicant contends that the impugned transfer is mala-fide and in contravention of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'.

3. The Respondent No.1 resisted the application by filing Affidavit-in-reply (Page Nos.26 to 34 of Paper Book) *inter-alia* denying the allegation of the Applicant that impugned transfer order suffers from illegality and not in

consonance with the provisions of 'Transfer Act 2005'. The Respondent contends that the Applicant has already completed six years tenure at Nashik and he was due for transfer. Accordingly, in the meeting of Civil Services Board (CSB), it was approved to transfer him at Kalwan. According to Respondent, earlier by order dated 17.11.2016 for the period of five months, he was deputed to Baglan on administrative ground and again brought back to the establishment of EGS, Nashik. As such, his tenure has to be counted from 2010, and therefore, the impugned transfer order cannot be termed 'mid-term or mid-tenure transfer'. The Respondent denied the allegation of discrimination. In this behalf, the Respondent contends that the policy decision was taken in the meeting of CSB not to transfer Drivers who have left with two years' service before retirement and considering the administrative requirement, the Applicant was transferred to Kalwan. The Respondent further contends that the Applicant is cantankerous and incongruous. While he was deputed at Baglan, he did not attend Independence Day Flag Hoisting on 15th August, 2016 and remained absent without prior permission of the authority for which warning was given to him. Besides, while at Baglan, the Applicant has committed fraud in the matter of purchase of Diesel for Government Vehicle and show cause notice for the same has been issued to him and further disciplinary proceeding was initiated. The Respondent thus sought to justify the impugned transfer order date 31.05.2017.

4. Shri D.B. Khaire, learned Advocate for the Applicant sought to assail the impugned order contending that the order dated 17.11.2016 sending the Applicant to Baglan is not deputation but it amounts to transfer in the eye of law. As subsequently, he was again brought back to Nashik in April, 2017, the Applicant is entitled to fresh tenure of six years from April, 2017. On this line of submission, he contends that the impugned transfer order, is therefore, mid-tenure and admittedly, there being no compliance of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005', the transfer is bad in law.

5. Per contra, Smt. A.B. Kololgi, learned Presenting Officer sought to justify the impugned transfer order contending that the Applicant's tenure at Nashik deserves to be counted from 2010 and the order dated 17.11.2016 sending the Applicant to Baglan is the order of deputation and it cannot be termed 'transfer'. She has pointed out that the Applicant was deputed at Baglan hardly for five months and in that period, his pay and allowances were paid from his original establishment of EGS, Nashik. She further urged that the allegation of discrimination is without any substance in view of the policy decision taken in CSB meeting and the challenge to the transfer order is devoid of merit.

6. Needless to mention that the transfer is an incidence of service and ordinarily those are made in exercise of administrative function to meet the exigencies of service and in public interest. Order of transfer can be questioned in the Court or Tribunal only where it is *malafide* or made in violation of statutory provisions. Sufficient to say, unless the order of transfer is in conflict with rules or express legal provisions, the Court should decline to interfere in such transfer. In this behalf, it would be useful to refer the Judgment of Hon'ble Supreme Court in **1993 AIR 2444 (Union of India Vs. S.L. Abbas)** wherein the Hon'ble Apex Court held that the order of transfer can be questioned in the Court or Tribunal only where it is *malafide* or made in violation of statutory provisions. It has been further held that the Tribunal is not an Appellate Authority sitting in Judgment over the orders of transfers and it cannot substitute its own Judgment for that of the authority competent to transfer.

7. In view of submissions advanced at the Bar, the crux of the matter is whether the impugned order dated 31.05.2017 is general transfer passed on completion of normal tenure or it is mid-tenure transfer, so as to attract rigor of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'. Undisputedly, the Applicant was transferred to Nashik from Nandgaon in the year 2010. Thereafter, by order dated 17.11.2016, he was sent to Baglan and again in April, 2017 brought back to

Nashik. These two orders are at Page Nos.22 and 23 of P.B. The issue is whether the period spent at Baglan was on deputation or it was regular transfer. In this behalf, material to note that the perusal of order dated 17.11.2016 have clear mention of deputation, which reads as follows :

“आदेश,

खालील नमूद गट - क वाहनचालक या संवर्गातील कर्मचा-यांची प्रशासकीय कारणास्तव त्यांचे नावेसमोर दर्शविलेल्या पदावर खालीलप्रमाणे पदावर सेवावर्ग करणेत येत आहे.

अ.क्र.	कर्मचा-यांचे नाव	सध्याचे पदनाम व कार्यालय	सेवा वर्ग झाल्याने नियुक्तीचे पद व कार्यालय
१.	श्री. डी.आर. सोर	वाहनचालक उपजिल्हाधिकारी (रोहयो शाखा) जिल्हाधिकारी कार्यालय नाशिक	वाहन चालक, तहसिल कार्यालय बागलाण श्री.गवारी यांची सेवा वर्ग केल्याने झालेल्या रिक्त पदावर
२.	श्री. एल.ए. गवारी	वाहनचालक तहसिल कार्यालय बागलाण	वाहनचालक उपजिल्हाधिकारी (रोहयो शाखा) जिल्हाधिकारी कार्यालय नाशिक श्री. डी.आर. सोर यांची सेवा बागलाण येथे वर्ग केल्याने झालेल्या रिक्त पदावर

वरील प्रमाणे सेवावर्ग केलेल्या वाहन चालक यांची तात्काळ सेवा वर्ग केलेल्या नविन नियुक्तीचे ठिकाणी हजर व्हावे. सेवावर्ग केलेल्या कर्मचा-यारी यांचे वेतन व भत्ते मूळ नियुक्तीचे पदावरच काढण्यात यावे.’’

8. Thus, there is specific averment of deputation in the order dated 17.11.2016. Secondly, though he was sent to Baglan, which is Taluka place in Nashik District, his pay and allowances were drawn from his original establishment of EGS, Nashik.

9. Then, by order of April, 2017, he was again brought back to his original establishment EGS, Nashik. Here, it would be useful to reproduce the order, which is as follows :

“आदेश,

वरील वाचले १ मधील आदेशान्वये श्री. डी.आर.सोर यांची वाहनचालक तहसिल कार्यालय बागलाण व श्री. एल.ए. गवारी वाहनचालक यांची रोहयो शाखा जिल्हाधिकारी कार्यालय नाशिक येथे आपआपसात सेवावर्ग करण्यात आली आहे. परंतु वाचले क्रं.२ नुसार श्री.गवारी यांनी विनंती केलेने तसेच शासकीय कामकाजाचे सोयीसाठी श्री.एल.ए.गवारी यांची वाहनचालक तहसिल कार्यालय बागलाण व श्री.डी.आर. सोर यांची वाहनचालक रोहयो शाखा जिल्हाधिकारी कार्यालय नाशिक या त्यांच्या मूळ पदावर सेवा पूर्ववत करण्यात येत आहे.

वरील प्रमाणे सेवावर्ग केलेल्या वाहन चालक यांना त्यांचे मूळ पदावर रुजू होण्यासाठी कार्यमूक्त करणेत यावे. सदर कर्मचा-यांचे वेतन व भत्ते त्यांचे मूळ नियुक्तीचे पदावरच काढण्यात यावीत. सदर आदेशाची अंमलबजावणी तात्काळ करणेत यावी.’’

10. Thus, the reading of these two orders together makes it quite clear that it was deputation on administrative exigency and not transfer. After five months, he was again brought back to Nashik on his original establishment, which again fortify that he was not regularly transferred to Baglan, but it was temporary deputation, and therefore, again brought back to his original establishment. Needless to mention where the employee's services are required at some other place due to some administrative exigencies and is sent to that place with specific order of deputation and after completion of work is brought back to his original establishment, such order cannot be termed 'transfer' in the eye of law. It is more so when during entire period, his pay and allowances was paid from his original establishment.

11. Here, it would not be out of place to mention that the Applicant has not challenged the order dated 17.11.2016 whereby he was sent to Baglan. Had the Applicant aggrieved by such order having effect of transfer as he now sought to contend, then he would have challenged the same at appropriate time. But admittedly, he accepted the said order without any demur. This fact itself runs counter to his contention that his posting at Baglan was transfer. The Applicant cannot be allowed to approbate and reprobate.

12. Shri D.B. Khaire, learned Advocate for the Applicant sought to place reliance on the decision of this Tribunal rendered in O.A.No.328/2008 (Mahesh Patil Vs. State of Maharashtra) decided on 5th August, 2008 to bolster up his contention that the deputation amounts to transfer. I have gone through the Judgment and the reliance thereon is found misplaced. In that case, the employee was transferred from the post of Assistant Registrar of Cooperative Societies, Mumbai to the post of Assistant Registrar of Cooperative Societies,

Brihan Mumbai Nagri Sahakari Bank Association, Wadala on deputation on 12.04.2007. After one year, he was again subjected to transfer from the post of Assistant Registrar of Cooperastive Societies Brihan Mumbai Nagri Sahakari Bank, Wadala, Mumbai to the post of Registrar of Cooperative Societies under District Deputy Registrar of Cooperative Societies, Mumbai. In that case, the Applicant was kept at Wadala for about a period of one year without specifying the period of deputation in the impugned order. It is in that context, this Tribunal held that the impugned order was transfer and not deputation. Whereas, in the present case, there is specific mention in the order dated 17.11.2016 that the Applicant was deputed on account of administrative exigency and his pay and allowances will be drawn from original establishment of EGS, Collector Office, Nashik. After a period of four months only, he was again brought back to the Office of EGS, Nashik. As such, the Applicant was at Baglan for the period of 4/5 months with specific mention that it is deputation and his pay and allowances will be drawn from original establishment. This being the position, the Judgment referred by the learned Advocate for the Applicant is of no assistance to him in the present situation.

13. Another contention of the learned Advocate for the Applicant that the Applicant is subjected to discrimination also holds no water. It was sought to contend that there are so many Drivers who have completed more than 10 years but not transferred and the Applicant was only chosen for the transfer by impugned order dated 31.05.2017. However, in this behalf, the perusal of minutes of CSB reveals that the decision was taken not to transfer the employees who have left two years' service before retirement considering their difficulties. Therefore, it cannot be said that the Applicant was purposely chosen for transfer or he was subjected to discrimination.

14. As stated above, the Applicant was transferred to Nashik from Nandgaon and had completed normal tenure at Nashik. This being the position, there is no

question of applicability of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'. It being the general transfer, the Collector was competent to transfer the Applicant.

15. In this behalf, it would be apposite to refer the Judgment of Hon'ble High Court in **2008 (2) Mh.L.J. 640 (Shri V.V. Gadekar, Deputy Engineer Vs. MHADA)**, wherein it has been held as follows :

“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power.”

The exposition of law in the aforesaid authority is squarely attracted in the present case, as it was regular transfer and there is nothing to show *malafides* or arbitrary use of powers by the transferring authority.

16. It was pointed out by the learned P.O. that during the pendency of this O.A, the D.E. was initiated against the Applicant on the charge of absenteeism, misappropriation of diesel insubordination while he was in service at Baglan and by order dated 24th June, 2019, the punishment of withholding of one increment for three years without cumulative effect has been passed. Needless to mention that the punishment imposed in the D.E. is a different aspect and it is not relevant in so far as the legality of the impugned transfer order is concerned.

17. The totality of the aforesaid discussion leads me to sum-up that the Applicant has already completed his normal tenure and was due for transfer. Therefore, no exception can be taken to the impugned transfer order, as there is no violation of law. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 27.06.2019

Dictation taken by :

S.K. Wamanse.

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