

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.760 OF 2018

DISTRICT : SOLAPUR

Shri I.M. Mogal.)
R/at 363, Uma CHS Ltd., Old Mill Compound,)
Murarji Peth, District : Solapur - 413 001.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Secretary, Revenue Department)
Mantralaya, Mumbai – 400 032.)
2. The Divisional Commissioner.)
Pune Division, Pune.)
3. The Collector.)
Collector Office, District : Solapur 413004.)...**Respondents**

Mr. R.G. Panchal, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 19.07.2019

JUDGMENT

1. The Applicant has challenged the transfer order dated 07.11.2017 whereby he was transferred from Tahasil Office, Madha to Tahasil Office,

Mangalvedha 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 Clerk-cum-Typist on the establishment of Respondent No.3 – Collector, Solapur. He was posted as Clerk-cum-Typist in Tahasil Office, Madha by order dated 31.05.2017. However, abruptly without completion of normal tenure, he was transferred by impugned order dated 07.11.2017 from Madha to Mangalvedha on vacant post of Clerk-cum-Typist. He was relieved on 14.06.2018. The Applicant has challenged the impugned transfer order dated 07.11.2017 contending that it is not in contravention of Section 4(4)(ii) and 4(5) of ‘Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005’ (hereinafter referred to as the Transfer Act) as no exceptional case for transfer is made out neither there is approval of next preceding Competent Authority as contemplated under ‘Transfer Act 2005’.

3. The Respondent No.3 resisted the application by filing Affidavit-in-reply inter-alia denying the entitlement of the Applicant to the relief claimed. The Respondent contends that the wife of Applicant had made an application for transfer of the Applicant from Madha to Mangalvedha on 19.06.2017. In application, she stated that her husband requires treatment at Solapur, and therefore, requested for his transfer either at Solapur or at Mangalvedha from the point of convenience. The Respondent No.3 sympathetically considered the request made by the Applicant’s wife and transferred the Applicant at Mangalvedha. The Respondent, therefore, contends that the transfer was made on the request of the Applicant and his wife, and therefore, the Applicant cannot raise any grievance for the transfer and prayed to dismiss the O.A.

4. In view of the pleadings, the stand taken by Respondent No.3 that the transfer was on the request of the wife, the Applicant tried to salvage the damage by filing additional Affidavit stating that he had not authorized his wife to make any such application. Thus, according to him, the application made by wife without consulting him ought not to have been considered for transfer.

5. The learned Advocate for the Applicant made two-fold submission. First, he has not authorized his wife for making any such application and secondly, even assuming that it was on the application of his wife, the same being mid-term and mid-tenure transfer, it is invalid in absence of approval of next immediate preceding Competent Authority. According to the learned Advocate for the Applicant, the Applicant being Group-C employee, for such transfer, the next preceding Competent Authority would be the Hon'ble Minister In-charge in consultation with Secretary of the Department.

6. Per contra, the learned Presenting Officer submits that the transfer was effected on the request through his wife and the conduct of the Applicant sufficiently demonstrates that the Applicant was party to it and the same was acceptable to him. She admits that there is no approval of Hon'ble Minister who is next preceding Competent Authority for mid-term and mid-tenure transfer.

7. Thus, what emerges from the record that the impugned transfer order is mid-term and mid-tenure as well as there is no approval of the next preceding Competent Authority as required under Section 6 of 'Transfer Act 2005'.

8. However, the situation in the present case is peculiar as the transfer was made on written application made by the wife of the Applicant. The Respondents have also placed on record the copy of application dated 19.06.2017 made by the wife of the Applicant. On health ground of the Applicant, she requested for transfer either at Solapur or Mangalvedha. Significant to note that it is not the case of the Applicant that his wife did not make any such application. All that, he stated that his wife has made an application without his knowledge. When Tribunal made specific query about the matrimonial life of the Applicant, the learned Advocate for the Applicant fairly stated that the Applicant and his wife are presently living together at Mangalvedha. Be that as it may, there is no denying that the wife of the Applicant has made an application on 19.06.2017 addressed to Deputy Collector. In turn, the Collector considered it sympathetically and accepted the request for transfer of the Applicant at Mangalvedha.

9. Here, important to note that the record clearly demonstrates that the Applicant had not only knowledge of the application made by his wife but the same was also acknowledged by him. In this behalf, the learned C.P.O. has pointed out that the application made by the Applicant on 09.03.2018 addressed to Collector which is at Page 31 of Paper Book. The contents of the application are material, which are as follows :-

“प्रति,
मा. जिल्हाधिकारी,
सोलापूर जिल्हा सोलापूर.

विषय :- लिपिक-टंकलेखक संवर्गातील अनियत कालिक बदल्या व नेमणूका कार्यमुक्त करणेबाबत.

महोदय,

मी कारणे विनंती अर्ज करतो की, आपले कार्यालयाकडील क्र. २०१७/क्र./मह/आस्था/१/प्र.क्र. /६२/आरआर-२०६४/२०१७ दि. ७/११/२०१७ अन्वये माझी बदली तहसिल कार्यालय माढा येथून तहसिल कार्यालय, मंगळवेढा येथे लिपिक पदावर झालेली आहे. परंतु मा. तहसिलदार माढा यांनी मला आजपर्यंत अदयाप कार्यमुक्त केलेले नाही. तरी मला तात्काळ कार्यमुक्त करणेस नम्र विनंती आहे. सोबत संबंधित आदेशाची प्रत जोडली आहे.”

10. Thus, the Applicant himself had requested to relieve him in pursuance of transfer order dated 07.11.2017 as there was delay in relieving him for joining at Mangalvedha. Furthermore, in pursuance of application dated 09.03.2018 made by the Applicant, the Collector, Solapur had issued show cause notice to Tahasildar, Madha for not relieving the Applicant in terms of order dated 07.11.2017 for joining at Mangalvedha. The show cause notice issued by Collector dated 09.04.2019 is at Page No.32. Thereafter, the Applicant was relieved from Madha and accordingly, joined at Mangalvedha. As such, the application dated 09.03.2018 made by none other than Applicant amply shows that the transfer at Mangalvedha was acceptable to him. The Applicant has not denied the filing of application dated 09.03.2018.

11. Had the Applicant was against his transfer at Mangalvedha, he would not have made any such application (application dated 09.03.2018) for relieving him immediately and for joining at Mangalvedha. Furthermore, if the transfer at Mangalvedha was not acceptable, then he would have protested the transfer order within reasonable time. He was aware that he was transferred by order dated 07.11.2017 but did not make any protest and on the contrary, made an application on 09.03.2018 to relieve him from Madha. Significantly, he has filed this O.A. on 20.07.2018 belatedly.

12. As such, the conduct of the Applicant as demonstrated from the record clearly depicts that he was aware of the request made by his wife and gives rise to inference that it was with his consent. This being the position, the Applicant is estopped from challenging the transfer order dated 07.11.2017. Rule of estoppel is clearly attracted.

13. Thus, the Applicant acquiesced and accepted the transfer order. Therefore, now he is estopped from challenging its validity as embodied in

Section 115 of 'Evidence Act'. To invoke the doctrine of estoppel, three conditions are required.

- i) Representation by a person to another,
- ii) The other person has acted upon the said representation,
- iii) Such action shall have been detrimental to the interest of the person to whom the representation has been made.

In the present case, all these conditions are fulfilled.

14. True, there is no approval of next preceding Competent Authority as required for mid-term and mid-tenure transfer. In the present case, the transfer has been approved by Commissioner who is not Competent Authority for mid-term and mid-term transfer. However, the Applicant cannot be allowed to take the benefit of absence of approval of next Competent Authority after taking the advantage of transfer order. As such, having considered the conduct of the Applicant, he is estopped from challenging the legality of transfer order. I, therefore, see no merit in the O.A. and the same deserves to be dismissed. Hence, the following order.

ORDER

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

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

Mumbai

Date : 19.07.2019

Dictation taken by :

S.K. Wamanse.