

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 723/2024 (S.B.)**

Sanjay S/o Manikrao Barekar,
Aged about 48 years, Occ. Service,
R/o C/o Ramesh Hedau, Kamptee,
Dist. Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Department of Revenue & Forest,
Mantralaya, Mumbai- 400 032.
- 2) The Collector, Nagpur.
- 3) Lucky Jaiswal,
R/o C/o Tahsildar, Bhiwapur,
Dist. Nagpur.

Respondents

Shri G.G.Bade, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 30th Sept., 2024.

Judgment is pronounced on 03rd Oct., 2024.

Heard Shri G.G.Bade, Id. counsel for the applicant and Shri
S.A.Sainis, Id. P.O. for the Respondents.

2. Case of the applicant is as follows. By order dated 29.03.2023 (A-2) the applicant, who is Circle Officer, was transferred to Tahsil Office, Kamptee, he was relieved on 30.03.2023 (A-3) and, joined at Kamptee on 31.03.2023 (A-4). The impugned order of his transfer to Nagpur (A-1) was issued on 13.08.2024. It was opposed to G.Rs. dated 09.04.2018 (A-5) and 11.02.2015. It was passed to accommodate respondent no. 3 who was accordingly transferred and posted by order dated 13.08.2024 (A-6). Hence, this Original Application.

3. Stand of respondent no. 2 is as follows. Sub Sections 4 & 5 of Section 4 of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 empower the competent authority to effect mid-term/mid-tenure transfer in exceptional/ special cases by recording reasons. The impugned order was passed for administrative reasons i.e. to fill vacancy created by superannuation of one Ingle. There were complaints against the applicant. Though, this Tribunal granted stay to the impugned order on 19.08.2024, respondent no. 3 had already joined on the transferred post on 16.08.2024 itself.

4. Though, the impugned order is stated to have been passed under sub sections 4 & 5 of Section 4 of the Transfer Act, there is no

reference to these provisions in it. It simply states that it was passed for administrative reasons. This is not at all sufficient. Though, it is the stand of respondent no. 2 that complaints against the applicant had necessitated passing of the impugned order of transfer, record does not show that the procedure in G.R. dated 11.02.2015 was followed. On both these grounds the impugned order will have to be quashed and set aside.

5. In support of aforesaid conclusion reliance may be placed on the following observations in judgment of this Bench dated 13.12.2023 in **O.A. No. 633/2023 (Vijay Dattatraya Tekale Vs. State of Maharashtra & 4 Ors.)**:-

11. *Sub-Sections (4) and (5) of Section 4 of the Transfer Act provide for transfer under exceptional circumstances or for special reasons or in special cases. These provisions read as under-*

(4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May:

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:-

(i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;

(ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority;

(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior [approval of the immediately superior] Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post.

12. *The applicant has relied on the Judgment of this Bench dated 25.03.2022 in O.A.No.20/2022 wherein it is observed –*

10. *As per the G.R. dated 11/2/2015, the Transferring Authority cannot transfer the employee only on the basis of complaints. While transferring the said employee, specific reasons are to be recorded. Sub para-8 of the G.R. reads as under –*

८. एखाद्या प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचार्याच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधीत अधिकारी/कर्मचार्याची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधीत अधिकारी/कर्मचार्यांच्या तक्रारी संबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारी मधील गांभीर्य विचारात घेऊन, संबंधीत अधिकारी/कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे याबाबत बदली प्राधिकार्याने ठोस निर्णय घ्यावा. संबंधीत अधिकारी/कर्मचार्याच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधीत अधिकारी/कर्मचार्याला त्याच

पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याबाबत बदली प्राधिकाऱ्याने निर्णय घ्यावा. मात्र संबंधीत अधिकारी/कर्मचाऱ्याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिकाऱ्याचे मत झाल्यास त्याबाबतची कारणामिमासा नमूद करून बदली प्राधिकारी संबंधीत अधिकारी/कर्मचाऱ्याची बदली त्याच्या लगतच्या वरिष्ठ प्राधिकाऱ्याकडे प्रस्तावित करू शकतो. लगतच्या वरिष्ठ प्राधिकाऱ्याकडे असा प्रस्ताव प्राप्त झाल्यास बदली प्राधिकाऱ्याने नमूद केलेली कारणे योग्य आहेत किवा कसे याची छाननी करून स्वतःचे मत स्पष्ट करून बदली प्राधिकाऱ्याच्या प्रस्तावाला मान्यता द्यावी किंवा बदली प्राधिकाऱ्याचा प्रस्ताव फेटाळून लावण्यात यावा. ज्या प्रकरणात बदली प्राधिकाऱ्याच्या प्रस्तावानुसार गैरवर्तणुकीच्या अनुषंगाने शासकीय अधिकारी/कर्मचारी यांची बदली करण्यात येते अशा प्रकरणात संबंधीत अधिकारी/कर्मचारी यांची बदली केल्यानंतर त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी.

13. *Applicant has further relied on **Ramakant Baburao***

Kendre Vs. the State of Maharashtra & Another 2012 (1)

Mh.L.J.] 951. *In this case the Hon'ble Bombay High Court has held –*

As already held by us in the aforesaid matters (Writ Petition No. 5198/2011 and Writ Petition No. 5835/2011) that the Government servant cannot normally be transferred prior to completion of his ordinary tenure. It has been further held that such transfers are required to be made only once in a year i.e. in the month of April or May. It is further held that if such a transfer is required to be made in another part of year except in April or May, it has to be done only on account of the eventuality as stipulated in sub-section (4) of section 4 of the Maharashtra

Transfer Act. We have further held that the clause (i) to proviso of sub-section (4), which provides for transfer at any time of the year on the ground of eventualities mentioned therein, will have to be read in a manner that the transfer on the grounds mentioned in clause (i) of proviso to sub-section (4) would be permissible at any time of the year and not necessarily in April or May when a Government servant has completed his tenure of posting. If it is not read in that manner, the very purpose of the protection, which is granted in sub-section (1) of section 4 would become redundant and nugatory. We have further held that when this is being done, the reasons and the circumstances will have to be recorded in writing and the same cannot be done without prior approval of the higher Authority. It has been further held that by taking recourse to sub-section (5), a Government servant can be transferred even prior to completion of his tenure and even at any time of the year and not necessarily in the month of April or May, in special cases. However, while doing so, the competent Authority will be required to record the reasons in writing and would also be required to obtain prior approval of the immediately superior Transferring Authority.

14. In Nagorao Shivaji Chavan Vs. Dr. Sunil Purushottam Bhamre and Others (Judgment of the Hon'ble Bombay High Court dated 05.09.2018 in Writ Petition No.1554/2018) it is held-

7. A bare glance of Section 4 (4) & (5) of the Transfer Act, 2005 makes it clear that unless special reasons are recorded or unless exceptional circumstances are made out and unless after

recording the reasons, prior approval of next Higher Authority is obtained, the Government servant cannot be transferred before completion of his tenure of post. In the case at hand, respondent No.1 was transferred to Jalgaon before completion of his tenure of three years. Though the learned Counsel for the petitioner submits that there were complaints against respondent No.1, it cannot be ignored that mere receipts of some complaints against respondent No.1, exceptional circumstances or special reasons for transfer cannot be made out, as mandated under sub-sections 4 and 5 of Section 4 of the Transfer Act, 2005. Thus, obviously the transfer of respondent No.1 was the absolute breach of mandates imposed under Section 4 (4) & (5) of the Transfer Act, 2005. \ Thus, the impugned order passed by the Tribunal is just, proper and needs no interference.

6. In view of factual and legal position discussed above, the impugned order cannot be sustained. The O.A. is allowed. The impugned order is quashed and set aside. No order as to costs.

Member (J)

Dated :- 03/10/2024

aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 03/10/2024
and pronounced on

Uploaded on : 04/10/2024