

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.455/2016

DISTRICT – JALNA

Namdev s/o Baburao Bhapkar,
Age: 53 years, Occ : Service,
R/o : Balaji Nagar, Watur Road,
Near Ambhore Children Hospital,
Partur.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through Secretary,
Revenue Development,
Mantralaya, Mumbai-32
2. The Revenue Commissioner,
Revenue Office, Aurangabad.
3. The Collector,
Jalna.
4. Mr. Kawale,
(Private Respondent),
Collector Office, Jalna.

...RESPONDENTS

APPEARANCE :Shri S.D.Dhongde, learned Advocate for
the applicant.

Shri N.U.Yadav, learned Presenting Officer
for the respondents.

CORAM : Hon'ble Shri J.D.Kulkarni, Member (J)

J U D G M E N T**[Delivered on 21st September, 2016]**

Vide impugned order dated 31-05-2016, applicant has been transferred from post of Awwal Karkoon in Tahsil Office, Jalna to the post of Awwal Karkoon, Tahsil Office (Revenue), Jalna. It seems that the applicant was working as Awwal Karkoon/Supply Inspector in Tahsil Office, Jalna from 31-08-2013 and has not completed his tenure at Jalna on the said post.

2. During his posting at Tahsil Office, Jalna he was also sent on deputation vide orders dated 31-08-2013, 14-10-2013 and 17-04-2014. He has also filed application for mutual transfer at Bhokardan on 30-05-2016 but it was not considered and vide impugned order he was transferred to Tahsil Office (Revenue), Jalna.

3. According to the applicant, he has not completed 2 tenures of 3 years each. Respondents have not followed guidelines issued by the Government of Maharashtra vide G.R. dated 11-02-2015 before issuing impugned order of transfer of the applicant. In fact, he was served with a show cause notice for remaining absent during inspection

period but his explanation was accepted, and therefore, there was no ground for his transfer. Applicant, has therefore, prayed that the impugned order of his transfer dated 31-05-2016 be quashed and set aside and respondents be directed to consider his representation and not to implement impugned order dated 31-05-2016.

4. Respondents by their reply affidavit have justified the order transferring the applicant. It is stated that the applicant has been transferred on administrative ground from one department to another. Place of posting is not changed. In fact, it is stated impugned order is not an order of transfer but it is an internal arrangement done by the parent department for smooth and proper administration. It is submitted that applicant was in habit of remaining absent without permission and the said attitude on the part of the applicant was causing administrative problems. Therefore, applicant has rightly been transferred.

5. Heard Shri S.D.Dhongde learned Advocate for the applicant and Shri N.U.Yadav learned Presenting Officer for respondents. I have perused memo of O.A., affidavit in

reply as well as various documents placed on record by the parties.

6. Only material point to be considered is whether the impugned order of transfer dated 31-05-2016 in respect of the applicant is legal and proper ?

7. Learned Advocate for the applicant submits that applicant being a Class-III employee, is entitled to be retained at one station for a period of 6 years i.e. 2 terms of 3 years each. In the present case, applicant has been transferred from Tahsil Office, Jalna to Tahsil Office (Revenue Division), Jalna, and therefore, admittedly, his station is not changed. In such circumstances, only point remains is whether the order has been passed in the interest of administration or otherwise ?

8. Learned Advocate for the applicant has placed reliance on the G.R. dated 11-02-2015. As per said G.R. Government of Maharashtra has issued some guidelines in view of the judgment delivered by the Tribunal in O.A.No.703/2014 on 16-09-2014. I have carefully gone through the said G.R. As per guidelines, if there are complaints against an employee, it is necessary to take

sanction of higher authority. It is also mentioned in the said G.R. that if there are complaints as regards behavior of an employee, such complaints shall be investigated into and if the complaints are found to be true then the departmental action can be taken against the employee. In short, mere complaint against an employee cannot be a ground for his transfer. If an employee is transferred only on the basis of complaint, it can be said that such transfer is punitive one. Therefore, in this case, it is necessary to see whether the applicant has been transferred on account of complaint against him or for the administrative convenience.

9. It is the case of the respondents that the applicant was not attending the office in time, he used to remain absent without permission and his non-cooperative attitude was causing administrative hindrances. He remained absent even at the time of inspection.

10. It seems that, no individual has made complaint against the applicant but the District Supply Officer, Jalna who is immediate boss of the applicant was pleased to inform the Collector that behavior of the applicant was not

proper, and that the applicant was not co-operating his colleagues and the general public. He, therefore, recommended transfer of the applicant and to appoint some competent person in his place. This can be seen from the communication dated 30-05-2016 (Exhibit R-2, page 42), relevant portion of the same is reproduced as under:

“उपरोक्त विषयी या कार्यालयातील पुरवठा निरीक्षक—१ श्री.एन.बी.भापकर यांचेकडे जालना विभागाचे कामकाज आहे. परंतु ते क्षेत्रीय काम करण्यास सक्षम नाहीत. तसेच ते विनापरवानगी गैरहजर राहातात. शासकीय राजशिष्टाचाराच्या वेळी त्यांना सोपविण्यात आलेले कोणतेही काम त्यांनी व्यवस्थितपणे केलेले नाही.

तसेच संबंधितास या कार्यालयाकडून नेमून देण्यात आलेल्या इष्टांकानुसार तपासण्या, संबंधित प्रभावीपणे करित नाही. याबरोबरच अन्नधान्य नियतनाचे वितरण या महत्वाच्या बाबींकडे दुर्लक्ष करतात. वेळोवेळी वरीष्ठ कार्यालयातील दैरे व तपासणी करण्यासाठी येणा—या तपासणी पथकास ते सहकार्य करित नाही. संबंधिताचे मुख्यालय जालना असतांना ते बाहेरगावाहून येणे—जाणे करतात. त्याअनुषंगाने श्री. भापकर यांना वारंवार तोंडी सुचना व लेखी नोटीस देण्यात येवून समज देण्यात आलेली आहे. परंतु त्यांचे कामामध्ये सुधारणा न झाल्यामुळे क्षेत्रीय कामकाजामध्ये अडथळा निर्माण होतो. तेव्हा त्यांची बदली इतरत्र करून, या कार्यालयास सक्षम व कार्यक्षम पुरवठा निरीक्षकाची नेमणूक करण्यात यावी, ही विनंती. ”

11. It is clear from the record that the applicant was given an opportunity to submit his say on the grievance of the District Supply Officer (DSO) and his explanation was

rejected. It was also intimated to him that his transfer was in the interest of administration. Communication in this regard is dated 01-08-2016.

12. Learned Advocate for the applicant submits that the applicant was given additional charge and all of a sudden he was transferred. However, merely because some additional charge of the post was given to the applicant that itself will not mean that the respondents were prejudiced against the applicant. In my opinion, if the immediate superior officer writes to the competent authority about non-cooperative attitude of the employee and requests that such employee is required to be transferred in the interest of administration, it cannot be said that such recommendation for transfer is prejudicial or mala fide. There is nothing on the record to show that the District Supply Officer was having any personal grudge against the applicant.

13. Learned Advocate for the applicant submits that transfer of the applicant is in contravention of the guidelines in the G.R. dated 11-02-2015 and it is legal mala fide on the part of the respondents. I am unable to accept

this argument of learned Advocate for the applicant for the simple reason that it is for the administration to consider whether to allow a particular employee on a particular post, in the interest of administration or not. In this case, the applicant has been transferred from one department of the Collectorate to another at the same station. I cannot understand as to why the applicant wants to work in Supply Department only ? I, therefore, do not find any merit in the applicant's claim.

14. Learned Advocate for the applicant placed reliance on the judgment delivered by the Hon'ble Bombay High Court Bench at Aurangabad in **Writ Petition No.5652/2009** in the case of **Shriprakash Maruti Waghmare V/s. State of Maharashtra & Others**. In the said judgment, Hon'ble Division Bench has observed as under:

“Special circumstances should be understood in the concept of service jurisprudence and not in its literal sense. Conditions of service make transfer as a necessary incidence of service. The Rules give protection to an employee to stay at the place of posting for three years but this is subject to the exception that, where in the wisdom of the authority concerned, he

should, for administrative and exceptional circumstances, even be transferred during that period. We do not see any fault in exercise of such power.”

15. In the impugned order of transfer, it has been mentioned that the transfer of the applicant is on administrative ground. Prior to transfer the DSO was already intimated that the applicant did not co-operate the inspection squad. In spite of repeated oral directions and written intimations, there was no progress in his work style and that he was causing hindrance in the administrative work. It seems that on the basis of such recommendation, the applicant was transferred. No prejudice has been caused to the applicant because vide impugned order of transfer only department of the applicant has been changed, and not the station and the competent authority thought it proper to do so. I, therefore, do not find any mala fides in the said decision. Hence, following order:

ORDER

O.A. stands dismissed with no order as to costs.

(J. D. Kulkarni)
MEMBER (J)