

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NOS 1065 & 1066 OF 2012**

DISTRICT :NASIK

1) ORIGINAL APPLICATION NO. 1065 OF 2012

Shri Prashant Devidas Jadhav,)
W/a Agriculture Supervisor, Vadali-Bhoi)
In the office of Taluka Agriculture Officer)
Chandwad, Dist-Nasik.)
R/o : Sairam Apartment,)
Ganesh Baba Nagar,)
Behind Siddharth Hotel, Nasik Pune Rd,)
Nasik)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Animal Husbandry, Dairy Development)
& Fisheries Department, Mantralaya,)
Mumbai 400 032.)

2. The Commissioner for Agriculture,)
 Maharashtra State, Central Bldg,)
 Pune – 5.)
3. The Divisional Joint Director,)
 Agriculture, Nasik Divison, Nasik)
4. Shri Raju Bhikan Biraris,)
 Agriculture Supervisor,)
 Under transfer from Dindori, Dist-Nasik)..Respondents

2) ORIGINAL APPLICATION NO. 1066 OF 2012

Shri Anil Bansi Bhor,)
 W/a Agriculture Supervisor, Dugaon)
 In the office of Taluka Agriculture Officer)
 Chandwad, Dist-Nasik.)
 R/o : 9, Shriraj Apartment,)
 Bhagwati Chowk, Rajeev Nagar,)
 Nasik)..Applicant

Versus

1. The State of Maharashtra,)
 Through the Secretary,)
 Animal Husbandry, Dairy Development)
 & Fisheries Department, Mantralaya,)
 Mumbai 400 032.)

2. The Commissioner for Agriculture,)
Maharashtra State, Central Bldg,)
Pune – 5.)
3. The Divisional Joint Director,)
Agriculture, Nasik Divison, Nasik)
4. Shri Dilip Shankar Deshmukh,)
Under transfer from Niphad, Dist-Nasik)..Respondents

Ms Swati Manchekar, learned advocate for the Applicants

Shri N.K. Rajpurohit, learned Presenting Officer for the Respondents No 1 to 3 in O.A 1065/2012

Shri A.J. Chougule, learned Presenting Officer for the Respondents No 1 to 3 in O.A 1066/2012.

Shri M.D. Lonkar, learned advocate for Respondent No. 4 in both the Original Applications.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 14.06.2013

ORDER

1. Heard Ms Swati Manchekar, learned advocate for the Applicants, Shri N.K. Rajpurohit, learned Presenting Officer for the Respondents No 1 to 3 in O.A 1065/2012, Shri A.J. Chougule, learned Presenting Officer for the Respondents No 1

to 3 in O.A 1066/2012 and Shri M.D. Lonkar, learned advocate for Respondent No. 4 in both the Original Applications.

2. The two Original Applications have been heard together and disposed of by a common order as both challenge the cancellation of transfers which were effected by the same order and later cancelled on similar grounds.

3. The facts of these two cases are summarized below:-

The Applicant in O.A No. 1065/2012 was working as Agriculture Supervisor at Trymbak in Nasik District in the office of Taluka Agriculture Officer. The Applicant in O.A No. 1066/2012 was working as Agriculture Supervisor at Kalwan in Nasik District. Both of them along with other colleagues applied for transfer to a place of choice and gave three preferences. Their request was not considered and transfer orders were issued in September, 2012. Both the Applicants then applied for transfers to post which remained vacant after the transfer orders issued in September, 2012 were effected. The Applicant in O.A 1065/2012 made an application to the Respondent No. 3 that he may be posted at Vadali Bhoi in Chandwad Taluka in a vacant post. Similarly, the Applicant in O.A No. 1066/2012 requested for a posting in Dugaon in Chandwad Taluka. Respondent No. 3 by order dated 27.9.2012 posted both the Applicants as per their choices and they joined on 28.9.2012 at their respective places of posting. The Respondent No. 3

cancelled the order dated 27.9.2012 by order dated 2.11.2012 in respect of both the Applicants and they were reposted at their original post which they were occupying before the order dated 27.9.2012 was issued. Respondent No. 4 in O.A No. 1065/2012 Shri Raju Bhikan Biraris was posted to Vadali Bhoi, while the Respondent No. 4 in O.A No. 1066/2012 Shri Dilip Shankar Deshmukh was posted at Dugaon. Both the Applicants have challenged the cancellation of their transfers barely after a month which are claimed to be in violation of the provisions of the Maharashtra Government Servants (Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act,2005) (hereinafter referred to as the Transfer Act).

4. Learned Counsel for both the Applicants argued that the order dated 2.11.2012 issued by the Respondent No. 3 cancelling transfer effected by earlier order dated 27.9.2012 is a fresh transfer order. As it is issued in the month of November (and not in April or May), it is a mid term transfer. Also, as the Applicants did not complete their respective tenures, the transfers are mid-tenure transfers. The Respondent No. 3 could not pass this transfer order in violation of Sections 4(4)(iii) and 4(5) of the Transfer Act. Learned Counsel for the Applicants contended that the order dated 2.11.2011 has been passed only to accommodate the Respondents No. 4 in these Original Applications. Both the private Respondents had

approached the Respondent No. 1 and sought postings were the Applicants were already posted. No special case or exceptional circumstances have been made out for the order dated 2.11.2012.

5. Learned Presenting Officer Shri N.K. Rajpurohit, in O.A 1065/2012 argued that the order issued by the Respondent No. 3 dated 28.9.2012 was stayed by the Minister and it was communicated by the Minister's Officer on Special Duty (O.S.D) by letter dated 1.10.2012, as the Applicant's name was not approved for transfer by the Respondent No. 1 for general transfer orders issued in pursuance of letter dated 11.9.2012 of the Respondent No. 1. The Respondent No. 3 has submitted on 25.7.2012 names of Group 'C' employees for transfers during 2012 for approval of Competent Authority under Section 4(5). The name of the Applicant was there as he has requested for a transfer. However, there was no recommendation from the Respondent No. 3 in respect of the Applicant. Meaning thereby, that no case under Section 4(5) was made out in respect of the Applicant and he was therefore not to be transferred. The Respondent No. 3 exceeded his powers and transferred the Applicant by order dated 27.9.2012 in violation of Section 4(5) of the Transfer Act. The order was stayed by the Competent Authority and cancelled by the Respondent No. 3 by order dated 2.11.2012. The order in

respect of the Respondent No. 4 on the other hand has the requisite approval under the Transfer Act.

6. Learned Presenting Officer Shri A.J. Chougule, in O.A No 1066/2012 argued on exactly similar lines.

7. Learned Advocate Shri M.D. Lonkar, on behalf of Respondents No. 4 in both the Original Applications argued that the Applicants were not due for transfer. They had occupied their posts before order dated 27.9.2012 were issued, for less than a year. This was the reason that despite their request for transfer, their names were not recommended by the Respondents No 2 & 3 to the Respondent No. 1 for transfers. The approval granted by the Respondent No. 1 by letter dated 11.9.2012 did not contain names of the Applicants in both the Original Applications. However, the Respondent No. 3 transferred the Applicants to their places of choice, misinterpreting Government letter dated 11.9.2012 when they were not due for transfer and in violation of Section 4(5) of the Act. Learned Advocate Shri Lonkar, argued that even if it is held that Government letter dated 11.9.2012 delegated powers of transfer to Joint Director, no delegation in violation of law is possible. The orders dated 27.9.2012 are utterly and completely without any legal authority. These orders were rightly stayed by the Hon. Minister of the Respondent No. 1 Department. Learned Counsel for the Applicant has tried to cast aspirations

on the Officer on Special Duty of the Hon. Minister, but O.S.D has merely communicated the legal order of the Hon. Minister. As the order dated 27.9.2012 was itself illegal, no rights had accrued to the Applicants and they cannot challenge the order dated 2.11.2012 by which the Respondent No. 3 merely withdrew his earlier illegal order.

8. I have carefully perused the case papers and also considered the arguments on behalf of the parties. It is an admitted fact that the names of both the Applicants though included in the list sent by the Respondent No. 3 by his letter dated 25.7.2012 to the Respondent No. 2 for approval of the Respondent No. 1 under Section 4(5) of the Transfer Act, they were neither recommended nor approved. Approval under Section 4(5) has to be given by Hon. Minister and it cannot be assumed on the basis of approval given by the Respondent No. 1 for those whose cases were not recommended. The clause 5 in the letter of Respondent No. 1 dated 11.9.2012 that if the posts requested by an employee was not vacant, he would be posted to nearby vacant post on request, was for those whose transfers were approved by the Competent Authority. However, the Respondent No. 3 misinterpreted to mean license to transfer any employee on request to a vacant post. This obviously is in total violation of letter and spirit of the Transfer Act and cannot be allowed. The Applicants cannot be allowed to take advantage of illegal order passed by the Respondent No. 3. They were not

due for transfer and there cases for pre mature transfers were not recommended to the Competent Authority nor any approval obtained from the said authority. There is nothing wrong if such order was stated by the highest authority i.e. Respondent No. 1.

9. I do not find any reason to interfere with the impugned order dated 2.11.2012 issued by the Respondent No. 3. Both the Original Applications stand dismissed. There will be no order as to costs.

Place : Mumbai.
Date : 14.6.2013
Dictation taken by: A.K Nair.

(Rajiv Agarwal)
Vice-Chairman