

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 118 OF 2021

(Subject –Transfer)

DISTRICT : AURANGABAD

Smt. Sunanda d/o Asaram Pagare)
 @ Smt. Sunanda w/o John Sable,)
 Age : 57 years, Occu. : Service,)
 (as Statistics Assistant),)
 R/o : C/o Shri Suryawanshi,)
 Plot No. 34, Builders' Housing Society,)
 Nandanvan Colony, Aurangabad.)

.. APPLICANT

V E R S U S

- 1) **The Commissioner,**)
 Integrated Child Development)
 Services Scheme,)
 Maharashtra State, Raigad Bhavan,)
 Rear Wing, Ist Floor, C.B.D. Belapur,)
 Navi Mumbai – 400614.)
- 2) **The Commissioner,**)
 Women & Child Development,)
 28, Ranicha Baug,)
 Near Old Circuit House,)
 Maharashtra State, Pune-1)
- 3) **The Divisional Deputy Commissioner,)**
 Women & Child Development,)
 Aurangabad Division,)
 H.No. 4-16-123, City Survey No. 2750,)
 Shri Bomble's Building, Kotwalpura,)
 Bhoiwada, Aurangabad.)
- 4) **The Child Development Project Officer,)**
 Town Project, Aurangabad.)

.. RESPONDENTS

APPEARANCE : Ms. Preeti Wankhade, Advocate for the
Applicant.

: Shri D.R. Patil, Presenting Officer for
Respondents.

CORAM : **SHRI BIJAY KUMAR, MEMBER (A).**

DATE : **24.08.2021.**

ORDER

1. The present Original Application bearing No. 118/2021 has been filed by the applicant viz. Smt. Sunanda d/o Asaram Pagare @ Smt. Sunanda w/o John Sable. Upon receipt of the O.A., the registrar of the Tribunal had recorded office objection relating to territorial jurisdiction of this Bench vide an office note dated 17.02.2021 stating that the applicant has already joined at Navi Mumbai and the respondent No. 2, who has issued the transfer order, is also situated at Navi Mumbai, and therefore, the present matter does not fall within the territorial jurisdiction of this Tribunal at Aurangabad Bench. However, matter had been fixed by circulation before this Bench and notices were issued on 18.02.2021.

2. The background fact in this matter is that the applicant started her service as Junior Clerk at Jalna in the year 1987 and in course of time got promotion first as Junior Clerk in the year 2011 and subsequently in the year 2013 as a Senior Clerk and was posted in the office of Child Development Project Officer, Town Project No. I, Aurangabad. Later on, the applicant was posted as Senior Clerk Onwards in the office of Child Development Project Officer No. II, Aurangabad till the date of getting relieved in accordance with the impugned order of transfer. Thus, she was continuously servicing in the District Head Quarter at Aurangabad for the period of 8 years and 6 months. It is undisputed that the applicant was due for transfer according to the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Hereinafter, referred to as the Transfer Act, 2005).

3. In view of the then prevailing pandemic situation of Covid-19, General Transfers in the year 2020 were allowed to be effected as per the G.Rs. dated 07.07.2020 and 23.07.2020 in the month of July, 2020 instead of month of April-May. Respondent Nos. 1 and 2 in pursuant to the said Government resolution, issued orders of general transfers -2020 for different

cadres including the cadre of senior clerk. In this process the applicant was transferred from Aurangabad district to the office of Integrated Child Development Scheme, Raigad Bhavan, Navi Mumbai. Being aggrieved by the impugned transfer order, the applicant challenged said order of transfer on following grounds:

(i) The impugned order of transfer was issued on 31.07.2020, which is against the basic principles of justice, equity and good conscience.

(ii) The impugned order of transfer is bad and untenable in the eye of law and it has been issued by the respondent No. 2 in violation of provisions contained in Section 4(4) and 4(4)(ii) of the Transfer Act, 2005.

(iii) The impugned order of transfer (is) practically amounts to mid-term transfer and that too, when the applicant is due to retire within 17 months from the said order of transfer.

(iv) There was absolutely no administrative reason much less a justifiable one for the respondent No. 2 to disturb and / or dislodge the applicant and seek to transfer her from her present post at this stage of the year.

(vi) The impugned transfer order has been issued without there being any administrative reason.

(vii) The Civil Services Board has absolutely not considered the case of the applicant and her tenure left and also medical emergency of applicant's husband.

(viii) In view of Covid-19 pandemic situation, it is not possible for the applicant to shift her senior citizen husband to Mumbai along with her, who was working in State Transport and therefore, he is not getting pension and from her salary it is not sufficient to survive at a place like Mumbai.

(ix) The respondent No. 2 was subsequently considered the applicant's request for transfer/ deputation at Aurangabad and the same has not been considered by the respondent No. 1.

(x) The impugned order was not as per the provisions of Section 4(2) of the Transfer Act, 2005, as such list was not prepared in the month of January.

4. The applicant sought following reliefs: -

- “(A) This Original Application may kindly be allowed thereby quashing and setting aside the impugned order of transfer of the applicant dated 31.07.2020 (Annexure A-4) issued by the respondent No. 2.
- (B) The Original Application may kindly be allowed thereby directing the respondent No. 2 to extend to the applicant all the consequential benefits to which he would become entitled in view of the grant of Prayer Clause “A” in his favour.
- (C) Costs of this Original Application may kindly be awarded to the applicant.
- (D) Any other appropriate relief as may be deemed fit by this Hon’ble Tribunal may be granted.

The applicant has sought following interim relief:-

- (E) Pending the admission, hearing and final disposal of this Original Application the impugned order of transfer of the applicant dated 31.07.2020 (Annexure A-4) issued by the respondent No. 2 may kindly be stayed and the respondents may kindly be directed to permit the applicant to discharge duties attached to her post of Statistics Assistant on the establishment of Respondent No. 3.”

5. The respondent Nos. 1 to 4 has filed affidavit in reply on 06.05.2021 following which, rejoinder to the affidavit in reply has been filed by the applicant on 13.07.2021 thereto.

6. During hearing on 11.08.2021, learned Advocate for the applicant mentioned that the post from which the applicant had been transferred is getting filled up by the General Transfers of the year-2021 and order of posting one Shri Sandip Ramesh Bankar, has been passed by the respondents. It was further contended that if Shri S.R. Bankar was allowed to join at Aurangabad i.e. on the post on which the applicant was working before issuance of the impugned order, there may be no any vacant post available for her even if the applicant's case is considered by the Tribunal and the impugned order of transfer is cancelled. This aspect was duly considered by the Tribunal and the minutes of meeting of Civil Services Board dated 27.07.2020 on the background facts of transfer of Shri S.R. Bankar, Senior Clerk were called for and the order for maintaining status quo till then was issued.

7. During the final hearing which took place on 20.08.2021, the learned advocate for the applicant resubmitted the facts mentioned in the original application and even pleaded that only

5-6 months are left for superannuation of the applicant who may be allowed to join on the post from where she had been transferred to Navi Mumbai and till then the transfer order of Shri Bankar may be kept on hold. The learned Presenting Officer opposed the pleading for quashing and setting aside impugned transfer order of the applicant made on behalf of the applicant and maintained that as the applicant has joined at Navi Mumbai, the impugned transfer order stands complied. Moreover, the applicant had given choices of postings for consideration by the civil services board, Navi Mumbai is one of her choices which had been accepted by the civil services board. The learned presenting officer produced true copy of the minutes of meeting of Civil Services Board dated 27.07.2020 relating to transfer of the applicant. He also produced application made by Shri Bankar for request transfer to Aurangabad and decision of competent authority to accept the same. The learned presenting officer also submitted that the applicant has her entire service in Aurangabad division and also has been in Aurangabad district continuously for over 8 years before passing of impugned transfer order; as such, there has not been violation of any of the provisions of the Transfer Act, 2005. The learned presenting officer further submitted that status quo order passed in respect

of transfer of Shri Bankar may be vacated and the original application deserves to be dismissed.

8. On analyzing the facts before me and arguments advanced by the learned Advocate for the applicant and the learned Presenting Officer for the respondents, it is evident that the order of transfer of the applicant and the order of transfer of Shri S.R. Bankar are two different matters, the former is under General Transfer-2020 and the latter is under General Transfers-2021. Moreover, Shri Bankar has not been joined as respondent therefore, dealing with his case on his back through the present O.A. will be against principles of natural justice. Therefore, there is no reason and legal basis for continuing status-quo in respect of order of transfer of Shri S. R. Bankar. Moreover, Shri S.R. Bankar has been transferred to Aurangabad on request and on the grounds including medical exigency of his father and the said fact has been considered by the Civil Services Board while accepting his application for request transfer.

9. Further, the transfer of the applicant has been part of General transfers of the year 2020 under the provisions of G.Rs. issued to effect the transfers in the months of July-August, 2020. This was so decided by the state government in view of the Covid-

19 pandemic situation which started in the first quarter of the calendar year 2020 and was at peak in April-May, 2020. Therefore, there is no merit in the arguments of the applicant that the impugned transfer order is violating the provisions of the Transfer Act, 2005 on ground of the same being mid-term or mid-tenure. Further, as the impugned order of transfer of applicant had been issued in the given background as elaborated above, there is no merit in the argument that the impugned orders are violative of provisions of section 4(4) and section 4 (5) of the Transfer Act, 2005.

10. So far as the ground of husband of the applicant suffering from hypertension, diabetes, sleep apnea etc. are concerned, it is also to be appreciated that these are very common diseases among senior citizens and are easily managed by medication under supervision of medical doctors. It is also to be considered that medical facilities available at Navi Mumbai are nowhere inferior to those available to Aurangabad.

11. Therefore, I find no merit in the present Original Application. Hence, I proceed to pass following order :-

ORDER

1. The Original Application No. 118/2021 stands dismissed.

2. The Status quo granted by the Tribunal in respect of transfer of Shri S. R. Bankar vide order dated 11.08.2021 and continued thereafter, is hereby, vacated.
3. However, in the event of the present applicant submitting a fresh application for her transfer to any other vacant post in Aurangabad division, the respondents may consider the same sympathetically keeping in view date of superannuation of the applicant, if doing so be in conformity with the policy of the department.

There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 24.08.2021.

(BIJAY KUMAR)

MEMBER (A)

KPBS.B. O.A. No. 118 of 2021 BK 2021 Transfer