

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 305 OF 2020

DIST. : OSMANABAD

Vandana Shrirang Mali,)
Age. 44 years, Occ. Service,)
R/o C/o Pradeep Hangargekar,)
Naldurg Road, Opp. S.B.I. Bank,)
Tuljapur, Tq. Tuljapur,)
Dist. Osmanabad.) -- **APPLICANT**

V E R S U S

(1) The State of Maharashtra,)
Through its Secretary,)
Ministry of Revenue and Forest)
Department, Mantralaya,)
Mumbai.)

(2) The Settlement Commissioner,)
Director of Land Record,)
Central Building,)
Near Raj Bhawan, Pune.)

(3) The Dy. Director of Land Records,)
Aurangabad Region,)
Damadi Mahal,)
Near Panchayat Samiti,)
Aurangabad.)

(4) Superintendent of Land Record,)
Osmanabad,)
Tq. & Dist. Osmanabad.) -- **RESPONDENTS**

APPEARANCE :- Shri Swapnil A. Deshmukh, learned
Advocate for the applicant.
: Shri S.K. Shirse, learned Presenting Officer
for the respondents.

CORAM : **Hon'ble Shri V.D. Dongre, Member (J)**
DATE : **24.05.2021**

ORDER

1. Challenge in this Original Application is made to the impugned purported midterm and mid tenure transfer order dated 10.8.2020 of the applicant issued by the respondent no. 3 i.e. the Deputy Director of Land Records, Aurangabad Region, Aurangabad.

2. The applicant was promoted to the post of Clerk by the order dated 13.11.2014 while working in the office of the Deputy Superintendent of Land Records, Tuljapur. The said order of promotion is Annex. A-2 page 24 of paper book. By the said promotion order the applicant was promoted from the post of Peon to the post of Clerk.

3. While the applicant was working on the post of Clerk in the office of the Deputy Superintendent of Land Records, Tuljapur by earlier midterm and mid tenure order dated 31.5.2019, she was transferred from Tuljapur, Dist. Osmanabad to Bhoom, Dist. Osmanabad. Annex. A-3 at page 26 of paper book is the said transfer order of the applicant dated 31.5.2019. The applicant challenged the said transfer order by filing Original Application No. 468/2019 before this Tribunal. This Tribunal by the order dated 27.6.2019 quashed and set aside the said order of transfer

dated 31.5.2019 on the ground of violations of the provisions of section 4(4) & 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the 'Transfer Act, 2005'). Copy of the judgment and order dated 27.6.2019 passed by this Tribunal in O.A. Nos. 468/2019 and 2 other similar matters is at page 31 of paper book. Pursuant to the said order of this Tribunal, the applicant joined at Tuljapur on 2.7.2019 vide joining letter dated 2.7.2019 (Annex. A-4 page 36 of paper book).

4. Thereafter, by the impugned order dated 10.8.2020 (Annex. A-1 page 15 of paper book) issued by the respondent no. 3, the applicant has been transferred from Tuljapur, Dist. Osmanabad to Kalam, Dist. Osmanabad.

5. The said impugned order of transfer is assailed by the applicant by filing the present O.A. contending that it is midterm and mid tenure transfer and also in violation of the provisions of section 4(4) & 4(5) of the Transfer Act, 2005 for consecutively without any basis. The said impugned order has caused hardship to the applicant in as much as her in-laws are old aged. Her school going son is also suffering by the impugned transfer order. The applicant has been transferred at the place, which is about 100 kms away from Tuljapur and it causes hardship to the

applicant and therefore the impugned order is liable to be quashed and set aside.

6. Affidavit in reply filed on behalf of respondent nos. 1 to 4 by Shri Abhay Anantrao Joshi, District Superintendent of Land Records, Aurangabad is at page 40 of paper book. The respondents denied that the impugned order of transfer is violative of the provisions of section 4(4) & 4(5) of the Transfer Act, 2005. It is the contention of the respondents that the said provisions of the Transfer Act, 2005 are duly complied with by them. Moreover, it is a matter of record that the applicant is working in the office of Deputy Superintendent of Land Records, Tuljapur since 6.6.2011. From 6.6.2011 to 16.11.2014 the applicant has worked in the said office as a Peon and thereafter from 17.11.2014 till July, 2020 she has worked as a Inward and Outward Clerk. Therefore, the applicant has completed her total tenure of 9 years, 1 month & 25 days in the office of the Deputy Superintendent of Land Records, Tuljapur.

7. It is further contention of the respondents that the impugned transfer of the applicant is recommended by the Civil Services Board in its meeting held on 5.8.2020, on account of complaints and pending Departmental Enquiry against the applicant. In view of the Notification dated 3.3.2020 issued by the

respondent no. 1, the respondent no. 3 is the competent authority to transfer Class-III employees within the Aurangabad Region. Annex. R-1 page 53 of paper book is the copy of said Notification issued by the respondent no. 1. The applicant has been relieved from Tuljapur on 12.8.2020. In view of the same he has justified the impugned transfer order and prayed to dismiss the O.A.

8. The applicant by filing rejoinder affidavit, which is at page 70 of paper book, denied the contentions raised by the respondents in the affidavit in reply and reiterated her earlier contentions as raised in the O.A.

9. I have heard the arguments advanced by Shri Swapnil A. Deshmukh, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents, at length.

10. Upon perusal of the facts as revealed in the pleadings of the parties, it is evident that, the applicant is working in the office of the Deputy Superintendent of Land Records, Tuljapur since 6.6.2011. Since 6.6.2011 to 16.11.2014 the applicant was working in the said office as a Peon. She thereafter was promoted to the post of Clerk and posted as such in the office of Deputy Superintendent of Land Records, Tuljapur. Therefore, since 17.11.2014 till the date of issuance of the impugned transfer

order, the applicant has worked in the said office as a Clerk. This will show that the applicant has worked in the said office as a Peon for about 3 years and 5 months and as a Clerk for a period about 5 years and 9 months. Thus, on the post of Clerk, her total period in the said office is about 5 years, 9 months & 25 days.

11. Though the respondents pleaded that tenure of the applicant in the said office is of 9 years, it is admitted by both the sides that the impugned transfer order dated 10.8.2020 is passed in accordance with the provisions of section 4(4) and 4(5) of the Transfer Act, 2005 and not exclusively under proviso (1) of section 3 of the Transfer Act, 2005. For appreciating the facts on record, it would be just to reproduce section 3 of the Transfer Act, 2005, which reads as under :-

“3. Tenure of posting. –

(1) For All India Service Officers and all Groups A, B and C State Government Servants or employees, the normal tenure in a post shall be three years:

Provided that, when such employee is from the non-secretariat services, in Group C, such employee shall be transferred from the post held, on his completion of two full tenures at that office or department, to another office or Department:

Provided further that, when such employee belongs to secretariat services, such employee shall not be continued in the same post for more than three years and shall not be continued in the same Department for more than two consecutive tenures.

(2) Employees in Group D shall normally not be subjected to fixed tenure. They shall not be transferred out from the station where they are serving except on request when a clear vacancy exists at the station where posting is sought, or on mutual transfer, or when a substantiated complaint of serious nature is received against them.”

12. It reveals from section 3 of the Transfer Act., 2005 that non-secretariat Group – C employee shall be transferred from the post held, on his completion of two full tenures at that office or department to another office or department. Thus, the tenure of posting is to be counted on the post and if that be so then in the case of the applicant her tenure in the office of Deputy Superintendent of Land Records, Tuljapur is to be considered on the post of Clerk.

13. As discussed above, on the date on which the impugned transfer order is issued by the respondent no. 3 i.e. on 10.8.2020, the tenure of the applicant on the post of Clerk in the office of the Deputy Superintendent of Land Records, Tuljapur was about 5 years and 9 months and it was short of 3 months of complete 6 years tenure as contemplated in section 3 of the Transfer Act, 2005. Therefore, the present case is to be considered under the provisions of section 4(4) and 4(5) of the Transfer Act, 2005.

14. It is a fact that earlier vide order dated 31.5.2019 (Annex. A-3 page 26 of paper book) the applicant was transferred mid tenure from Tuljapur, Dist. Osmanabad to Bhoom, Dist. Osmanabad. The said transfer of the applicant and other similarly situated employees was on various grounds including administrative ground. The applicant challenged the said transfer order dated 31.5.2019 before this Tribunal by filing O.A. No. 468/2019. The said O.A. along with other 2 O.As. i.e. O.A. Nos. 466 & 467/2019 were disposed of by this Tribunal by a common order dated 27.6.2019. In the said order it is observed by this Tribunal that the applicant in O.A. No. 466/2019 Shri Ajit Ashok Mali has been charge sheeted, while other applicants are suffering similar blame.

15. In view of above, if the impugned transfer order dated 10.8.2020 is scrutinized, it reveals that, this transfer order is based taking into consideration the options / administrative reasons. In the case of the present applicant it cannot be termed that her transfer is a regular transfer upon completing total tenure of 6 years and by seeking option. Her transfer can be termed only for the administrative reasons.

16. In the affidavit in reply the respondents came out with contentions that the transfer of the applicant is effected by virtue of powers conferred upon the respondent no. 3 by virtue of

Government Notification dated 3.3.2020 issued by the respondent no. 1. Even if the said Government Notification is considered in its true spirit it cannot be said that while effecting the transfer of the Government servants, whose tenure is below 6 years as per the first proviso to section 3 of the Transfer Act, 2005, the compliance of section 4(4) and 4(5) thereof can be done away with.

17. Annex. A-2 to the affidavit in reply (page 54 of paper book) is the minutes of the meeting of the Civil Service Board held on 5.8.2020 and in the list annexed therewith the name of the applicant appeared at sr. No. 62. As per the proposal of the respondent no. 3's office, the reason for the impugned transfer of the applicant is pending Departmental Enquiry and complaints.

18. In view of above, the status of the facts of the case of the applicant existing during the pendency of this O.A. and during the pendency of earlier O.A. no. 468/2019 are similar in nature. At that time also Departmental Enquiry was pending against the applicant and there were complaints against her. In such circumstances, it was earlier held that the administrative ground as stated in the order of transfer cannot be termed as exceptional circumstance or special reason as mentioned in section 4(4) and 4(5) of the Transfer Act, 2005. The present impugned transfer order dated 10.8.2020 passed by the respondent no. 3 is based in

similar circumstances. There is no change in circumstances. No additional special reason is mentioned or reflected in the impugned transfer order. In view of the same, in my considered opinion, the impugned transfer order dated 10.8.2020 now also is in violation of section 4(4) and 4(5) of the Transfer Act, 2005 and is liable to be quashed and set aside.

19. For the reasons stated in the foregoing paragraphs, I proceed to pass the following order :-

ORDER

- (i) Original Application No. 305/2020 is allowed and disposed of.
- (ii) The impugned order dated 10.8.2020 (Annex. A-1 page 15 of paper book) issued by the respondent no. 3 thereby transferring the applicant from Tuljapur, Dist. Osmanabad to Kalam, Dist. Osmanabad is hereby quashed and set aside.
- (iii) The respondents are directed to repost the applicant at her earlier place of posting i.e. at Tuljapur, Dist. Osmanabad within a period of one month from the date of this order.

There shall be no order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place : Aurangabad

Date : 24.05.2021

ARJ-O.A. NO. 305-2020 VDD (TRANSFER)