

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 518 OF 2019

DIST. : NANDURBAR

Santosh s/o Ananda Jadhav,)
Age. 34 years, Occu. Service as Clerk,)
in the office of Deputy Superintendent)
of Land Records, Taloda,)
Dist. Nandurbar,)
R/o Plot no. 17, Akash-Mogra Colony,)
Nalwa Road, Nandurbar.) -- APPLICANT

VERSUS

1. The State of Maharashtra,)
Through the Secretary,)
Revenue & Forest, Mantralaya,)
Mumbai - 32.)
2. The Settlement Commissioner &)
Director of Land Records,)
Maharashtra State, Pune.)
3. The Collector, Nandurbar,)
Dist. Nandurbar.)
4. The Dy. Director of Land Records,)
Nashik Region, Nashik.)
5. The Dy. Director of Land Records,)
Opp. S.P. Office, Tokar Talao Road,)
Nandurbar.)
6. The District Superintendent of)
Land Records,)
Central Administrative Building,)
Room No. 201, Tokar Talao Road,)
Nandurbar.) -- RESPONDENTS

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

: Smt. Priya R. Bharaswadkar, learned
Presenting Officer for the respondents.

CORAM : **Hon'ble Shri B.P. Patil, Vice Chairman**
DATE : **2nd June, 2020**

O R A L - O R D E R

1. The applicant has challenged the order dated 31.5.2019 passed by the respondent no. 3 the Collector, Nandurbar, Dist. Nandurbar thereby transferring him from the office of the Deputy Director of Land Records, Nandurbar to the office of the Deputy Director of Land Records, Taloda, by filing the present O.A.

2. The applicant entered in the Government service on 23.5.2007 as a Group-D employee on the post of Peon and thereafter he was posted in the office of Land Records, Taloda, Dist. Nandurbar. Thereafter at the time of general transfers in May, 2012 the applicant has been transferred to the office of the District Superintendent of Land Records, Nandurbar and accordingly he joined at Nandurbar on 1.6.2012. In the year 2015 he was promoted on the post of Clerk i.e. Group-C post and posted in the office of the Deputy Superintendent of Land Records, Nandurbar and accordingly he joined on the said post on 6.5.2015. It is his contention that since then he is working in the office of Deputy Superintendent of Land Records, Nandurbar as a Clerk.

3. It is contention of the applicant that his wife is working as a Sub-staff in the Central Bank of India, Chiplun Branch. On the request made by her she has been transferred at Sindhkheda Branch in the month of October, 2016 and since then she is working there. It is contention of the applicant that the post of Clerk is a Group-C post. He has not completed 6 years' tenure on the same post at Nandurbar. He was not due for transfer at the time of general transfers of 2019. Though he was not due for transfer the respondent no. 4 has called options from him at the time of general transfers of 2019. Accordingly the applicant has given option as directed by the respondent no. 4, though he was not due for transfer. He has requested the respondents to retain him at Nandurbar as he has not completed two tenures of 3 years. He has given option for his transfer alternatively. It is his contention that the respondents has not considered his request for retention at Nandurbar and transferred him to Taloda by the impugned transfer order dtd. 31.5.2019. It is his contention that the impugned transfer order is against the provisions 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). Therefore, he has prayed to quash the impugned order of transfer dtd. 31.5.2019 by allowing the O.A.

4. Respondent nos. 3 and 6 have filed their affidavit in reply and resisted the contentions of the applicant. They have denied that the applicant was not due for transfer at the time of general transfers of the year 2019 and his transfer has been made before completion of his normal tenure of posting. It is contention of the respondents that the transfer of the applicant has been made in view of the directions given in the G.R. dtd. 9.4.2018 as he has completed 3 years' tenure on the said post. Applicant has been transferred within the same District after completion of tenure of 3 years and there is no illegality therein. It is their contention that the applicant has given option for his transfer in the prescribed form in view of the guidelines given in the G.R. dtd. 9.4.2018. Applicant has given one of option for transfer at Taloda and the competent authority considered his request and accordingly transferred him to Taloda. It is their contention that the applicant has completed 4 years' in the office of the Dy. Superintendent of Land Records, Nandurbar. He was due for transfer as he has completed 3 years' on the said post and therefore his transfer has been made in view of the provisions of the Transfer Act, 2005. It is their contention that the distance between Nandurbar and Taloda is 20 kms. and therefore it does not cause any hardship to the applicant. It is their contention that there is no breach of any

guidelines given in the G.R. dtd. 9.4.2018. Therefore, they justified the impugned transfer order and prayed to reject the O.A.

5. Applicant has filed the affidavit in rejoinder to the affidavit in reply filed by the respondents. It is his contention that he has not completed 6 years' tenure as provided in the provisions of the Transfer Act, 2005. It is his contention that his transfer from Nandurbar to Taloda is in contravention of the provisions of the Transfer Act, 2005 and therefore he prayed to allow the O.A.

6. I have heard the arguments advanced by Shri S.D. Joshi, learned Advocate for the applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

7. Admittedly the applicant was initially appointed as a Peon i.e. Group-D post and was posted in the office of Land Records, Taloda, Dist. Nandurbar and accordingly he joined on the said post on 23.5.2007. Admittedly, at the time of general transfers in May, 2012 he has been transferred to the office of the District Superintendent of Land Records, Nandurbar and accordingly he joined at Nandurbar on 1.6.2012. Admittedly by the order dtd. 6.5.2015 he has been promoted on the post of Clerk i.e. Group-C post and posted in the office of the Deputy Superintendent of

Land Records, Nandurbar and since then he was working in the office of the Deputy Superintendent of Land Records, Nandurbar on the post of Clerk. Admittedly the applicant has not completed the tenure of 6 years' on the post of Clerk in the office of the Deputy Superintendent of Land Records, Nandurbar as provided under section 3 of the Transfer Act, 2005. Admittedly the applicant was not due for transfer at the time of general transfers of the year 2019. Admittedly the applicant has submitted his option form regarding the places of his choice for transfer in pursuance of the directions given by the respondent no. 3, though he was not due for transfer. He has requested the respondents to retain him at Nandurbar till the year 2021 as he has not completed his normal tenure of posting at Nandurbar. But he has been transferred by the impugned order from the office of Deputy Director of Land Records, Nandurbar to the office of the Deputy Director of Land Records, Taloda in the general transfers of the year 2019.

8. Learned Advocate for the applicant has submitted that the applicant has not completed his normal tenure of posting on the post of Clerk at Nandurbar at the time of general transfers of 2019. It is his submission that the applicant has completed only 4 years' on the said post. He has submitted that the respondents

without considering the provisions of the Transfer Act, 2005 illegally transferred the applicant from the office of the Deputy Director of Land Records, Nandurbar to the office of the Deputy Director of Land Records, Taloda by the impugned order. The impugned order is against the provisions of the Transfer Act, 2005 and therefore he prayed to quash the impugned order. He has submitted that the minutes of the meeting of the Civil Services Board shows that the transfer of the applicant has been made as he has completed his normal tenure on the post. The impugned transfer of the applicant is not made in view of the provisions of section 4(4) and 4(5) of the Transfer Act, 2005 and it is against the provisions of Section 3 of the Transfer Act, 2005. Therefore he prayed to quash the impugned order by allowing the O.A.

9. Learned Presenting Officer has submitted that the applicant is serving in the office of the Deputy Superintendent of Land Records, Nandurbar since May, 2012. She has submitted that the applicant was working there on the post of Clerk from the year 2015. There were several complaints regarding function of the applicant and therefore the Civil Services Board after considering the said complaints decided to transfer the applicant. They considered the choices given by the applicant. The applicant has given choice for transfer at Taloda and therefore the Civil Services

Board decided to recommend the transfer of the applicant at Taloda and therefore the respondent no. 3 the Collector, Nandurbar, Dist. Nandurbar, who is competent transferring authority, has issued the impugned order. It is her contention that the impugned order has been issued by the competent transferring authority i.e. the Collector, Dist. Nandurbar in view of the guidelines given in the G.R. dtd. 22.8.2017, as well as, G.R. dtd. 9.4.2018 and there is no illegality therein and therefore she has supported the impugned transfer order.

10. Learned Presenting Officer has further submitted that the impugned order has not been made in view of the provisions of section 4(4) and 4(5) of the Transfer Act, 2005 and applicant has been transferred as he was due for transfer in the general transfers of 2019 and the said transfer order is in accordance with the provisions of the Transfer Act, 2005. Therefore she justified the impugned transfer order and prayed to reject the O.A.

11. On perusal of documents it reveals that the applicant has been promoted on the post of Clerk in the year 2015 and thereafter has been posted in the office of Deputy Superintendent of Land Records, Nandurbar and prior to that he was serving there in the office of Superintendent of Land Records at Nadurbar on the post of Peon i.e. Group-D post since 1.6.2012. Section 3 of

the Transfer Act, 2005 provides tenure of posting of Government servant. It provides that Group-C employee working in non-secretarial services shall be transferred from the post on his completion of 2 full tenures at that office or department to another office or department. The applicant is working on the Group-C post in the office Deputy Superintendent of Land Records at Nandurbar from 2015 and he has hardly completed 4 years' service there. He has not completed 2 full tenures of posting i.e. 6 years in the office at Nandurbar on the Group 'C' post at the time of general transfers of the year 2019. Admittedly transfer of the applicant was not made in view of the provisions of section 4(4) and 4(5) of the Transfer Act, 2005. The impugned order is in violation of the provisions of section 3 of the Transfer Act, 2005. The respondent No. 3 has wrongly held that the applicant completed his normal tenure of posting in the office of Deputy Superintendent of Land Records at Nandurbar and effected the transfer of the applicant in violation of provisions of Section 3 of the Transfer Act, 2005. Therefore, the impugned order is illegal and against the provisions of Transfer Act, 2005.

12. On perusal of minutes of the Civil Services Board it reveals that the applicant's transfer has been made on the ground that he was due for transfer and he was posted on the basis of choice of posting given by him. There was no reference regarding alleged

complaints against the applicant. Therefore, I find no substance in the submissions made by the learned Presenting Officer that the applicant has been transferred on the basis of complaints. The impugned transfer order is in contravention of the provisions of section 3 of the Transfer Act, 2005 and therefore it deserves to be quashed by allowing the O.A.

13. In view of the discussion in foregoing paragraphs, the present O.A. is allowed. The impugned transfer order dtd. 31.5.2019 passed by the respondent no. 3 is hereby quashed and set aside. The respondent no. 3 the Collector, Nandurbar, Dist. Nandurbar is directed to repost the applicant in the office of Deputy Director of Land Records, Nandurbar immediately. There shall be no order as to costs.

(B.P. PATIL)
VICE CHAIRMAN

Place : Aurangabad
Date : 2nd June, 2020