

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 63 OF 2020

DIST. : JALNA

Ganesh s/o Vyankatesh Polas,)
Age. 46 years, Occ. Service,)
As Nayab Tahsildar, Jalna.)
On deputation to Bhokardan,)
Dist. Jalna.) -- **APPLICANT**

V E R S U S

(1) The State of Maharashtra,)
Through : Secretary,)
Revenue Department, Mantralaya,)
Mumbai - 32.)

(2) The Collector, Jalna.)

(3) The Divisional Commissioner,)
Aurangabad.) -- **RESPONDENTS**

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

: Smt. Sanjivani Deshmukh Ghate, learned
Presenting Officer for the respondents.

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

DATE : 11th June, 2021

O R D E R

1. Challenge in this Original Application is made to the impugned order dated 11.2.2019 (Annex. A-1 page 9 of paper book) issued by the respondent No. 2 – the Collector, Jalna – deputing the applicant from Jalna to Bhokardan.

2. Since July, 2018, the applicant was working as a Naib Tahsildar at Jalna. In July, 2018 he joined at Jalna in view of his transfer from Ghansawangi. Thereafter by the impugned order dated 11.12.2019 (Annex. A-1 page 9 of paper book) the applicant came to be deputed from Jalna to Bhokardan in the office of Sub Divisional Officer. The said deputation order said to have been issued on the basis of the alleged requisition and necessity urged by the Sub Divisional Officer, Bhokardan as the post of Naib Tahsildar was vacant at Bhokardan due to retirement of earlier Naib Tahsildar Shri V.L. Dalvi on 31.12.2018. The applicant hardly had completed one year at Jalna. Hence the impugned deputation order is mid tenure order.

3. It is the contention of the applicant that though the impugned order is nomenclatured as deputation order, however, it is akin to the transfer order. The rules and regulations applicable for the transfer of the Government employees are also applicable for the deputation order. The impugned order of deputation, according to the applicant, is based in total disregard to 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) as well as the relevant Government Resolutions issued by the Government in that regard.

It is passed by the respondent no. 2 without application of mind. The personal difficulties of the applicant are totally ignored.

4. It is further submitted that from the communication dated 7.1.2020 (Annex. A-3 page 17 of paper book) issued by the respondent no. 3 – the Divisional Commissioner, Aurangabad – to the Additional Chief Secretary, Revenue & Forest Department, Mantralaya, Mumbai it is evident that powers to transfer the Naib Tahsildars are to be delegated by the Government to the authorities. In case of the applicant no such permission / powers are delegated to the authority by the Government before deputing the applicant from Jalna to Bhokardan. In view of the same, the impugned deputation order dated 11.12.2019 issued by the respondent no. 2 thereby deputing the applicant from Jalna to Bhokardan is liable to be quashed and set aside.

5. Affidavit in reply is filed by Dr. Prashant K. Padghan, Tahsildar (Revenue), Collector Office, Jalna on behalf of respondent no. 2 – the Collector, Jalna. It is denied that the impugned deputation order is issued by the respondent no. 2 in contravention of the provisions of the Transfer Act, 2005 and the relevant G.Rs. It is submitted that the Sub Divisional Officer, Bhokardan by the communication dated 9.8.2019 (Exh. R-1 page 38 of paper book) communicated administrative difficulties in

respect of the post of Naib Tahsildar after retirement of earlier Naib Tahsildar viz. Shri V.S. Dalvi on 31.12.2018. Considering the administrative difficulty of the post of Naib Tahsildar in the office of S.D.O., Bhokardan, the impugned order of deputation in respect of the applicant came to be passed immediately. Thereafter the respondent no. 2 – the Collector, Jalna – wrote a letter dated 3.3.2020 to the respondent no. 3 – the Divisional Commissioner, Aurangabad – seeking ex-post-facto permission / approval to the impugned deputation order of the applicant. In view of the same the impugned deputation order dated 11.2.2019 is issued due to administrative exigency and exercising the executive powers in its proper perspective.

6. I have heard the arguments advanced by Shri S.D. Dhongde, learned Advocate for the applicant and Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for the respondents, at length.

7. Learned Advocate for the applicant submitted that the impugned deputation order is to be considered at par with the transfer order as in effect the deputation amounts to transfer. He submitted that the impugned deputation order is passed in total disregard of the relevant Govt. Notification dated 23.6.2016 and G.R. dated 9.4.2018. He specifically invited my attention to the communication dated 7.1.2020 made by the respondent no. 3 –

the Divisional Commissioner, Aurangabad to the Revenue & Forest Department, Mantralaya, Mumbai seeking permission for transfers / deputation of various Naib Tahsildars posted in Aurangabad Division. The said procedure, however, is not applied in the case of the present applicant. Even ex post facto permission said to have been obtained by the respondent no. 2 – the Collector, Jalna - in respect of the impugned deputation order of the applicant by sending communication dated 3.3.2020 to the respondent no. 3 – the Divisional Commissioner, Aurangabad, is after thought. The power to transfer / deputation of the Naib Tahsildars are vested with the Government and the respondent no. 3 – the Divisional Commissioner, Aurangabad – cannot be the proper authority for giving sanction for transfer / deputation of the Naib Tahsildar in terms of the Government Notification dated 23.6.20216 and Government Resolution dated 9.4.2018.

8. On the other hand, the learned Presenting Officer for the respondents strenuously urged before me that the documents on record would show that the deputation order dated 11.2.2019 (Annex. A-1 page 9 of paper book) by which the applicant is deputed from Jalna to Bhokardan is issued by the respondent No. 2 – the Collector, Jalna - in view of the administrative exigency demonstrated by the S.D.O., Bhokardan by his letter dated 9.8.2019 (Exh. R-1 page 38 of paper book), and therefore, it

cannot be said that the impugned deputation order of the applicant is passed without jurisdiction and is passed under colorable exercise of powers or in contravention of the Government Resolutions.

9. In view of the rival submissions as above, the controversy voice down to the fact as to whether the respondent no. 2 – the Collector, Jalna – has passed the impugned order by exercising the jurisdiction conferred upon him.

10. From the facts as discussed hereinabove it is evident that the impugned order dated 11.12.2019 whereby the applicant has been deputed from Jalna to Bhokardan is mid tenure order as the applicant had hardly completed the tenure of about only 17 months at Jalna. Nothing is shown on behalf of the respondents to demonstrate that the criteria for deputation is different than the criteria for transfer. Perusal of the impugned deputation order dated 11.12.2019 would show that it does not specify the specific period.

11. The applicant has relied upon the Government Notification dated 23.6.2016 issued by the Revenue & Forest Department i.e. the respondent no. 1. He thrust upon the competent authority for effecting the transfer midterm and mid tenure under section 4(4)

& 4(5) read with section 6 of the Transfer Act, 2005 and the delegation of such powers. Clause (III) of the Government Notification dated 23.6.2016 relied upon by the applicant would be relevant, which reads as under :-

“(III) नायब तहसीलदार संवर्गातील अधिका-यांच्या प्रतिनियुक्ती तसेच आंतरविभागीय बदली करण्याचे अधिकार शासनाकडून प्रत्यायोजित करण्यात आलेले नसून अशा प्रकरणी शासनस्तरावर प्रकरणपरत्वे गुणवत्तेनुसार निर्णय घेण्यात येईल.”

12. The applicant also relies upon the communication dated 7.1.2020 (Annex. A-3 page 17 of paper book) addressed by the respondent no. 3 – the Divisional Commissioner, Aurangabad – to the respondent no. 1 putting the proposal of transfers of various Naib Tahsildars working in Aurangabad Region. In the said communication it is admitted by the respondent no. 3 – the Divisional Commissioner, Aurangabad – that as per clause (III) of Government Notification dated 23.6.2016, the powers to transfer the Naib Tahsildars vest in the Government i.e. the respondent and those powers are not yet delegated even to the respondent no. 3 i.e. the Divisional Commissioner, Aurangabad.

13. In the light of above, perusal of the said Government Notification dated 23.6.2016 in it's entirety would show that the powers to transfer the Officers in the category of Naib Tahsildars

vest with the Government. Even in case of the midterm transfer, if such powers are delegated, that can be delegated to the respondent no. 3 i.e. the Divisional Commissioner, Aurangabad and not to respondent no. 2 i.e. the Collector, Jalna.

14. In view of above, the impugned order of deputation of the applicant dated 11.12.2019 issued by the respondent no. 2 is not in accordance with law as it is directly in contravention of the provisions of Government Notification dated 23.6.2016. The respondent no. 2 otherwise would have stated that the impugned deputation order is passed due to administrative exigency. However, in this case it can be seen that the respondent no. 2 has no power or authority to pass such transfer or deputation order under administrative exigency or otherwise. No doubt, the respondent No. 2 has placed on record the copy of communication dated 3.3.2020 (Exh. R-2 page 39 of paper book) seeking ex post facto permission for the impugned deputation order of the applicant from the respondent no. 3 i.e. the Divisional Commissioner, Aurangabad. However, no provision is shown on behalf of the respondents that the respondent no. 3 is having such power to grant ex post facto sanction / approval for such transfer / deputation order.

15. In view of the discussion in foregoing paragraphs, the impugned order dated 11.2.2019 issued by the respondent No. 2 thereby the applicant is deputed from Jalna to Bhokardan, in my considered opinion, is not legal and proper and, as such, is not sustainable in the eyes of law and therefore, it is required to be quashed and set aside. Hence, I proceed to pass the following order :-

ORDER

- (i) Original Application No. 63/2020 is allowed and disposed of.
- (ii) The impugned order dated 11.2.2019 (Annex. A-1 page 9 of paper book) issued by the respondent No. 2 – the Collector, Jalna – deputing the applicant from Jalna to Bhokardan is hereby quashed and set aside.
- (iii) The respondent No. 2 – the Collector, Jalna – is hereby directed to re-post the applicant at the place where he was working before issuance of the impugned deputation order i.e. at Jalna, 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 : 11th June, 2021