

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.844 OF 2019

DISTRICT: - Hingoli.

Raviraj Ramgopal Darak)
Age 35 years; Occ.: Service)
r/o Biyaninagar, Hingoli)
Tq. and Dist. Hingoli)..**APPLICANT**

V E R S U S

- 1. The State of Maharashtra**)
Through Secretary, Urban)
Development Department,)
Mantralaya, Mumbai.)
- 2. Director of Municipal Administration,**)
office of Directorate of Municipal)
Administration, 3rdFoor,)
Sir Pochkhanwala Road,)
Warli, Mumbai – 400 030.)
- 3. Dy. Director of Municipal Administration,**)
office of Directorate of Municipal)
Administration, 3rd floor,)
Sir Pochkhanwala Road,)
Worli, Mumbai – 400 030.)
- 4. Municipal Council, Hingoli,**)
Through its Chief Officer)
Tq. & Dist. Hingoli.)..**RESPONDENTS**

APPEARANCE : Shri S.S. Shinde, learned Advocate
holding for Shri Vivek Bhavthankar,
learned Advocate for the applicant.

: Shri N.U. Yadav, learned Presenting
Officer for the respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **05.09.2022**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the impugned order of transfer of the applicant dated 31.08.2019 (Annex. 'A-2') issued by the respondent No.3 i.e. the Deputy Director of Municipal Administration, Mumbai, thereby transferring the applicant from Municipal Council, Hingoli to Municipal Council, Sengaon, Ta. Sengaon, Dist. Hingoli.

2. The facts in brief giving rise to this Original Application can be stated as follows:-

(i) The applicant was initially appointed as Junior Engineer, Grade 'C' on 22.07.2013 by the then District Selection Committee/Collector, Hingoli which is a state cadre post. Thereby the applicant was posted as Junior Engineer, Grade 'C' in the Municipal Council, Hingoli Dist. Hingoli. Thereafter the applicant by order dated 31.05.2017 was transferred from Municipal Council, Hingoli to Municipal Council, Kalamnuri on the post of Junior Engineer, Grade 'C'. The applicant joined on the said post and worked there. During the said posting the applicant was considered for

promotion and by order dated 28.11.2018 (Annex. 'A-1') amongst others was promoted and posted in the cadre of Junior Engineer, Grade 'B' at Municipal Council, Hingoli by transferring him from Municipal Council, Kalamnuri, Dist. Hingoli.

(ii) It is further submitted that within nine months of his posting at Municipal Council, Hingoli, the respondent No.3 by impugned order dated 31.08.2019 transferred the applicant from Municipal Council, Hingoli to Municipal Council, Sengaon, Tq. Sengaon Dist. Hingoli. The applicant made representation immediately on 03.09.2019 (Annex. 'A-3') to the respondent No.2 seeking to cancel it as the order was going to cause hardship to him and his family members. The impugned order of transfer of the applicant is not in accordance with law. It is not issued by observing the requisite provisions of Section 4(4) (ii) and 4(5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act, 2005') applicable to midterm and mid-tenure transfer orders. Hence, this application.

3. The application is resisted by the respondent Nos.2 and 3 by filing affidavit-in-reply of one Tanaji Maruti Naraleworking as Assistant Regional Director (Municipal Administration), in the office of the Divisional Commissioner, Aurangabad Division, Aurangabad. Thereby he denied the adverse contentions raised in the application and specifically contended that the normal tenure of the posting of the Group A,B and C of State Government Servants shall be of three years. However, as per Section 4 4(ii) of the Transfer Act, 2005, transfers can be effected for special reasons or under exceptional circumstances with the prior approval of higher authority. Moreover, the provision of Section 4(4) (i) of the Transfer Act, 2005, empowers the competent transferring authority to issue transfer order of the government servants on vacant post. The applicant has been transferred within the same district. In view of same, no hardship is being caused on account of transfer order to the applicant. Hence this application is liable to be dismissed.

4. The applicant has filed affidavit-in-rejoinder denying the adverse contention raised by the respondents in the affidavit-in-reply and reiterating the contentions raised in the Original Application and additionally submitting that the document

dated 08.12.2020 annexed with the affidavit-in-rejoinder issued by the In-Charge Deputy Director, Directorate of Municipal Administration, Mumbai would show that one Avinash Chavan, who is working in Municipal Council, Aundha Nagnath has given his consent for his transfer in Municipal Council, Sengaon. Moreover, the post from which the applicant is transferred is still vacant. Therefore, no any prejudice will be caused to the respondents, if the impugned order of transfer of the applicant is quashed and set aside.

5. I have heard at length the arguments advanced by Shri S.S. Shinde, learned Advocate holding for Shri VivekBhavthankar, learned Advocate for the applicant on one hand and Shri N.U. Yadav, learned Presenting Officer representing the respondents on other hand.

6. Considering the rival pleadings and documents on record, it is evident that the applicant was promoted as Junior Engineer, Grade 'B' and was transferred from Municipal Council, Kalamnuri to Municipal Council, Hingoli by order dated 28.11.2018 (Annex. 'A-1').The applicant is further transferred from his said post at Municipal Council, Hingoli, Dist. Hingoli to Municipal Council, Sengaon, Tq. Sengaon Dist. Hingol by impugned order of transfer dated

31.08.2019 (Annex. 'A-2'). Hence the transfer is effected within the period of nine months. It is also not issued either in the month of April or May of the year. Hence it is midterm as well as mid-tenure transfer order hit by the provisions of Section 4(4) (ii) and 4(5) of Transfer Act, 2005.

7. It is the contention of the respondents in their affidavit-in-reply that the applicant has been transferred on administrative ground under Section 4(4) (i) of Transfer Act, 2005 on vacant post as the applicant was holding the charge of the post of Junior Engineer, Grade 'B' of Municipal Council, SengaonTq. Sengaon Dist. Hingoli while working on the present post at Municipal Council, Hingoli Dist. Hingoli. To support the said submissions, the document is placed on record by the respondents which is dated 01.11.2019 (page Nos.25 & 26 of P.B.) issued by the respondent No.3 i.e. the Deputy Director of Municipal Administration, Mumbai.

8. The relevant provision of Section 4 of Transfer Act, 2005 is as follows:-

“4. Tenure of transfer. –

- (1)
- (2)
- (3)

(4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May:

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:-

(i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;

(ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.”

9. Considering the abovesaid provisions, the case of the applicant definitely falls within the purview of Section 4(4) (ii) and 4(5) of Transfer Act, 2005 as it is midterm as well as mid-tenure order. In view of same, it was incumbent upon the respondents to show that impugned transfer of the applicant is issued strictly in compliance of provisions of Section 4(4) (ii) and 4(5) of Transfer Act, 2005. Admittedly, in the case in hand, there is no compliance of provision of Section 4(4) (ii) and 4(5) of Transfer Act making out transfer for special reasons or under exceptional circumstances. It appears that the transfer order of the applicant is issued only for administrative convenience and on vacant post at Municipal

Council, Sengaon, of which post the applicant was holding additional charge while working at Municipal Council, Hingoli.

10. In fact the applicant has placed on record the proposal dated 05.09.2019 (Annex. 'A-4') submitted by the Chief Officer, Municipal Council, Hingoli to the respondent No.2 i.e. the Director of Municipal Administration, Mumbai, thereby continuing the posting of the applicant at Municipal Council, Hingoli keeping additional charge of Municipal Council, Sengaon as earlier with the applicant.

11. In the facts and circumstances of the case, the provisions of Section 4(4) (i) refers to the annual general transfer of the Government servants once in the year which contemplated compliance of normal tenure of three years as per Section 3 of the Transfer Act, 2005. In view of the same, invoking the provisions of Section 4(4) (i) of Transfer Act, 2005 for issuing transfer order is totally misconceived and is not in accordance with law. In fact the impugned order of transfer of the applicant is issued in contravention of Section 4(4) (ii) and 4(5) of Transfer Act, 2005. Hence it is not

sustainable in the eyes of law and is liable to be quashed and set aside. Hence I proceed to pass the following order:-

ORDER

The Original Application is allowed in following terms:-

- (A) The impugned order of transfer of the applicant dated 31.08.2019 is quashed as set aside.
- (B) The respondents are directed to repost the applicant on his earlier place of posting at Municipal Council, Hingoli within a period of one month from the date of this order.
- (C) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date :-05.09.2022
SAS O.A.844/2019