

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH AT NAGPUR.
ORIGINAL APPLICATION NO. 385 of 2016

Miss Pallavi Vilas Tabhane,
Aged about 34 Yrs.,
Naib Tahsildar,
R/o B-1, Godavari Apartment,
Ram Nagar, Hill Top, Nagpur.
Distt. Nagpur.

-----**Applicant.**

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
General Administration Department ,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner, Nagpur
Division, Nagpur.
3. The Collector,
Collectorate, Nagpur.

-----**Respondents.**

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1. Shri N.B. Bargar, Advocate for the Applicant
 2. Shri P.N. Warjurkar, Presenting Officer for
Respondents .
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CORAM: S.S. Hingne : Vice Chairman

DATE : 29th November, 2016

ORDER

The applicant/Naib Tahsildar has challenged the order dtd. 15/6/2016 (Annex.A-1, page-11) by which she is transferred from Nagpur to Nagpur but from Inspecting Officer, Nagpur Rural to Commissioner Office on the vacant post.

2. Heard Shri N.B. Bargat, Id. Counsel for the applicant and Shri P.N. Warjurkar, Id. P.O. for the respondents.

3. The challenge to the transfer is two fold. First, it is mid-term and second it is mid-tenure. So far as the first ground is concerned, the respondents' stand is that there were Z.P. elections and there was code of conduct in force and therefore the order could not be issued before 31st May and therefore two weeks' delay is caused. No doubt, the Maharashtra Govt. Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the Transfer Act) says that the general transfer orders be issued in April/May. However in

genuine cases like the above, if the delay is for a short period, it can be a good ground and if the transfer order is issued 2 weeks or a month late depending upon the reasons, it can be said that it is a general transfer order. Since the Z.P. elections were declared and the code of conduct was in force the respondents could not issue the general transfer orders before the due date and it caused delay of two weeks. However, for the above reasons, the order does not lose its identity as a general transfer order and it can be safely said that though the impugned transfer order is issued on 15/6/2016, it is a general transfer order.

4. The second ground of attack is that it is a mid-tenure transfer. The applicant was posted on the said post vide the order dtd. 30/5/2015 (Annex.R-2-1, page-29) and she joined on 3/6/2015 (Annex.R-2-2, page-30). Thus, she was not due for transfer. She has completed only 1 year on the post.

5. The respondents' stand is that the post in the Commissioner Office was vacant as Shri S.V. Salve was transferred and therefore the employee can be transferred under Section 4 (4) of the Transfer Act. That can be done as per Section 4 (4)(i) of the Transfer Act. However, the respondents cannot absolve of the responsibility to comply the provisions as per Section 4 (4) (ii) issuing the order recording the reasons in writing and taking prior approval of the next higher authority. Here there is nothing on record that the approval of the next higher authority is taken.

6. The respondents' case is that now the G.R. dtd. 23/6/2016 (Annex.R-3, page-33) is issued and the Collector and Commissioner is empowered to issue the mid-term and mid-tenure transfer. This order is not issued by the Collector. It is issued by the Divisional Commissioner . As such the Divisional Commissioner, it being a mid-term transfer should have taken the prior approval of the next higher authority in view of the compliance of the provisions of Section 4 (4) (ii) of the Transfer Act i.e. also not done.

There is an official noting dtd. 15/6/2016 (page-38) but it is prepared by the Commissioner office itself. As such it cannot be said that the Collector has made the proposal and the Commissioner as a next higher authority has approved it. It is the respondents case that since the post in the Commissioner office had become vacant, the applicant is transferred on the vacant post. However, it is well settled that the transfer of the applicant even from one post to another post even without change in the place is a transfer within the meaning of the provisions of the Transfer Act. As such even though the applicant is posted on the vacant post, the respondents cannot issue the order without compliance of the provisions of Section 4(4) (ii) of the Transfer Act.

7. The matter does not end there. The Commissioner gets the right to transfer the employee by virtue of the G.R. dtd. 23/6/2016. However, the impugned order is issued on 15/6/2016. The G.R. dtd. 23/6/2016 has no retrospective effect. Meaning thereby when the order is issued on 15/6/2016 the Commissioner was not vested with the power to transfer.

From this view also the impugned order cannot be said to be legal.

8. It is also the respondents' case that the applicant is the employee of the Revenue Department however exercising the other methods, she succeeded to get the transfer order issued at the Govt. level dtd. 30/5/2015 (Page-29) to post her in the Food and Supplies Department i.e., on the present post. The Govt. has issued the G.R. dtd. 4/4/1984 (Annex.R-2, page 39) separating the two Departments. It also says that the posts of Supply Inspector Officers are to be filled in by promotion from employees directly recruited in the Food and Supplies Department . However ignoring the said G.R. the Govt. has issued the transfer order and posted her in the Food and Supplies Department.

9. The G.R. dtd. 4/4/1984 is issued for the protection of the employees who are recruited in the Food and Supplies Department. However, ignoring their interest and acting in contravention of the said G.R., the applicant is transferred

and posted in that Department by the order dtd. 30/5/2015 which is issued at the Govt. level.

10. In the light of the above facts, the submission of the respondents holds water. However we cannot consider such aspects even though the order is issued on other considerations because the order dtd. 30/5/2015 is not under challenge. However, fact remains that the applicant got the said transfer on request which is not inconsonance with the above legal aspects it is expected that Govt. at Mantralaya level should not dance at tune of Govt. employee.

11. In the above state of affairs even though the impugned order is not legal and valid, it is necessary to clarify that the respondents are at liberty to issue the fresh transfer order of the applicant if they want complying the legal provisions and this order will not stand as a hurdle in their way.

12. For the forgoing reasons, the impugned order dtd. 15/6/2015 cannot be legal and valid. Hence the transfer of the applicant is quashed. However it is made clear that the

respondents are at liberty to issue the fresh order transferring the applicant complying the legal provisions and this order will not come in their way. No order as to costs.

(S.S. Hingne)
Vice-Chairman.

skt.