

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 508 of 2020 (S.B.)**

Baburao S/o Durgadas Aasankar,
Aged about 56 yrs., Occ. Service,
R/o Ramdut Complex, Nandura Road,
Khamgaon, District Buldana.

Applicant.

Versus

- 1) Sub Divisional Officer, Khamgaon.
- 2) Collector, Buldana.
- 3) Tahsildar, Khamgaon.
- 4) R.M. Rathod,
Aged about Adult, Occ. Service,
R/o Hansaraj Nagar, Khamgaon, District Buldana.
- 5) State of Maharashtra,
through Secretary, Land Revenue & Forest Department,
Mantralaya, Mumbai.

Respondents.

**S.V. & Mrs. R.S. Sirpurkar, Nazia Pathan, D.V. Sapkal, learned
Advocates for the applicant.**

**Shri M.I. Khan, learned P.O. for respondent nos.1 to 3 & 5.
None for respondent no.4.**

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Member (J).**

Dated :- 30/11/2021.

JUDGMENT

Heard Mrs. Sirpurkar, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for respondent nos.1 to 3 & 5. None for respondent no.4.

2. The applicant was appointed as Talathi on 30/12/1996. He was posted at Khiroda, Tah. Sangrampur, District Buldana and since then he is continued in service with respondent no.1. The entire service record of applicant is unblemished. After entering into the Government service, the applicant was transferred at various places.

3. On 31/5/2019, the applicant was transferred from Januna to Khamgaon Part-1, where the applicant is presently working. On 10/8/2020, the respondent no.1 in spite of the pandemic situation, issued the transfer order in mid-session without any valid reason. In short, it is contention of the applicant that without following the provisions of Section 3,4 (4) & 4 (5) of the Transfers Act, 2005, passed the impugned order, therefore, prayed to quash and set aside the impugned transfer order dated 10/8/2020.

4. The respondents have filed their reply and submitted that there were various complaints against the applicant. Such as demanding illegal gratification and extra amount for issuing copies of Government papers etc. and therefore he is transferred on administrative ground from Khamgaon Part-1 to Mauza, Temburna,

Tq. Khamgaon. The respondent no.3, the Tahsildar, Khamgaon submitted detailed report to respondent no.1, SDO, Khamgaon on 23/7/2020. After going through the report, the respondent no.1, i.e., SDO, Khamgaon transferred the applicant from Khamgaon Part-1 to Mauza Temburna. It is submitted that village Temburna is about 5 Kms. from the residence place of the applicant and therefore no inconvenience is caused to the applicant. The applicant is relieved from Khamgaon-1 and he has joined at the transferred post.

5. The learned counsel for the applicant has pointed out the Section 3&4 of the Transfers Act, 2005. She has submitted that the respondent no.1, is the Transferring Authority and the impugned transfer order does not show any special reason for transfer of the applicant on administrative ground. There is nothing on record to show that there was any complaint against the applicant. The report of Tahsildar about the misconduct of the applicant is not filed on record by the respondent nos.1 to 3. Prior approval of the District Collector was not obtained by the respondent no.1, SDO as per Section 4 (5) of the Transfers Act,2005. There was no any departmental enquiry against the applicant.. The learned counsel for applicant submitted that the transfer order is illegal in view of the specific provisions of Section 3&4 of the Transfers Act,2005. Hence, it is liable to be quashed and set aside.

6. Heard learned P.O. He has submitted that there were various complaints against the applicant and report was submitted by the Tahsildar, Khamgaon (R/3) to the SDO, Khamgaon (R/1). The respondent no.1 informed the District Collector while issuing the transfer order and due to the administrative ground, the applicant is transferred from Khamgaon Part-1 to Mauza Temburna.

7. The Id. P.O. submitted that respondents have followed the Govt. G.Rs. dated 11/2/2015 and 7/7/2020. The applicant has been transferred on administrative ground. The transferred place i.e. Temburna is at the distance of 5 Kms. from the residence of the applicant. The applicant has no any inconvenience due to the transfer. The Civil Services Board in its meeting recommended to transfer the applicant from Khamgaon Part-1 to Mauza Temburna. The applicant is relieved and started working at Temburna, Tah. Khamgaon Hence, the transfer order is legal and proper. In support of his submission, he has pointed out the decision of this Tribunal in O.A. No. 410/2019.

8. There is no dispute that the applicant was transferred to Khamgaon Part-1 on 31/05/2019. The applicant had joined on the said posting at Khamgaon Part-1. He was continuously working there before transfer. Before completion of three years period, he is transferred from Khamgaon-1 to Mauza Temburna by transfer order

dated 10/8/2020. As per Section 3&4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "Transfers Act,2005"), the Government servant shall not be transferred before the completion of three years of service.

9. The procedure of transfer is provided in Section 4 of the Transfers Act,2005. Only exception is given in Section 4 (5) of the Transfers Act,2005. As per the Section 4 (5) of the Transfers Act,2005, the Competent Authority / Transferring Authority can transfer the Govt. servant even before completion of three years service, but for that the Transferring Authority shall record special reasons in writing and shall also obtain prior approval of immediately Superior Authority.

10. There is no dispute that the respondent no.1, the SDO, Khamgaon is the Transferring Authority. The immediate superior authority is the Collector, Buldhana. There is nothing on record to show that prior approval of the Collector was taken by the respondent no.1 while transferring the applicant from Khamgaon Part-1 to Mauza Temburna. No special reason is recorded in the transfer order. Therefore, there is no compliance of Section 4 (5) of the Transfers Act,2005.

11. The Id. P.O. has submitted that there were several complaints against the applicant, but not a single complaint is filed on record. The Id. P.O. has submitted that the respondent no.3 Tahsildar, Khamgaon (R/3) submitted detailed report to the SDO, Khamgaon (R/1) about the allegations against the applicant. But copy of report is not placed on record. The Id. P.O. has cited decision in O.A. No.410/2019, but in the cited decision, the fact is very much different. In para-7 of the cited decision, it is observed that disciplinary proceeding against the employee is in progress on the basis of serious allegations, it justify the transfer of the applicant. In the present matter, nothing on record to show that disciplinary proceeding is in progress and therefore cited decision is not helpful to the respondents.

12. Prima facie, the respondents have not followed the mandatory provisions given in the Section 3&4 of the Transfers Act, 2005. There is no special reason for transfer of the applicant from Khamgaon Part-1 to Mauza Temburna. The prior approval as contemplated under Section 4 (5) of the Transfers Act,2005 is not obtained. Without any reason, the impugned transfer order cannot be said to be legal one. In that view of the matter, the following order is passed –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned transfer order dated 10/08/2020 is hereby quashed and set aside.
- (iii) The respondents may take necessary action for posting of the applicant.
- (iv) No order as to costs.

Dated :- 30/11/2021.

(Justice M.G. Giratkar)
Member (J).

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 30/11/2021.

Uploaded on : 02/12/2021.