

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1094 OF 2017

DISTRICT : PALGHAR

Shri Shushil Trimbakrao Morale.)
Soliter Building No.13, Room No.305,)
Poonam Garden, Near Shivsena Office,)
Mira Road (W), District : Thane 421 103.)...**Applicant**

Versus

1. The District Collector.)
Palghar, District : Palghar.)
2. The Sub-Divisional Officer,)
Old Government Auditorium, Killa)
Bander Road, Malonde, Tal. Vasai,)
District : Palghar.)...**Respondents**

Mr. S.S. Dere, Advocate for the Applicant.

Ms. S.T. Suryawanshi, Presenting Officer for Respondents.

CORAM : SHRI P.N. DIXIT (MEMBER-A)

DATE : 27.07.2018

J U D G M E N T

1. Heard Mr. S.S. Dere, learned Advocate for the Applicant and Ms. S.T. Suryawanshi, learned Presenting Officer for the Respondents.

2. The facts of the case are as follows :

(a) The Applicant was trapped on 2nd February, 2016 by the Anti-Corruption Bureau (ACB). He remained in custody for more than 48 hours. Subsequently, the ACB filed a report under Section 169 of Criminal Procedure Code (Cr.P.C.), as the appointing authority did not provide the necessary sanction for prosecution. As a result, the Applicant was discharged by the Judicial Officer on 03.03.2017. The Sub Divisional Officer (SDO), Vasai, therefore, reinstated the Applicant on 23rd May, 2017 (Page No.12 of the O.A.). He was reinstated and posted at Sopara.

(b) Before this, the Respondent No.1 had posted one Mr. K.D. Kadam at Khanivade, Tal. Vasai where the Applicant was working before suspension. The Respondent had further ordered posting of Mr. Shailendra Tikde at Shirsad on 12th February, 2016. The Applicant was reinstated on 4th March, 2017 (Page 19 of the O.A.).

- (c) The Applicant had submitted representation for posting him at his original place or at Shirsad (Exh. 'D', Page 19 of the O.A.). He further made a representation dated 31st July, 2017 stating that he may be posted at Khanivade or at Sirsad (Exh. 'F', Page 21 of the O.A.). The Applicant was posted by S.D.O. at Sopara on 23rd May, 2017.

3. The learned Advocate for the Applicant has challenged the order dated 31st July, 2017 on the following grounds :-

6.4 The Applicant states that the Dy. S.P, Anti-Corruption Bureau filed report u/s 169 of Cr.P.C. thereby requesting to release the Applicant as discharged from Cr.No.5/2016 by order dated 03.03.2017 in Cr.No.II/5/2016;

6.7 The Applicant states that since the aforesaid place of posting on reinstatement was bound to cause a serious hardship to the Applicant on family front and the education of his children, that the Applicant has made application to the Respondent No.2 on 31.07.2017 thereby requesting him to issue modification order of posting to any the places as mentioned herein such as Khanivade, Shirsad, Tal. Vasai, District Palghar;

4. The learned Advocate for the Applicant relies on Government Circular dated 14.10.2011. The learned Advocate in his pleading states as under :-

“7.4 That from what is stated above, it is clear that the posting of the Applicant by the Respondent No.2 vide order dated 23.05.2017 was on account of reinstatement of the Applicant from suspension because of discharge of Applicant from Criminal Case. Thus, such was the temporary posting of the Applicant. This may be consistent with para 7-A of the Government Circular dated 14.10.2011.”

5. According to the learned Advocate for the Applicant, as the case against the Applicant was withdrawn / discharged, his transfer to other place may not remain effected. The learned Advocate further contends that, his request for a particular post is still not replied to the Applicant.

6. The learned Presenting Officer has filed the Affidavit-in-reply which mentions :

“11. With reference to contents of paragraph No.6.7, I say as follows: It is for the first time in O.A, in a afterthought manner, the Applicant stated that there is serious hardship to the applicant on family front and the education of his children and

therefore requested to modify order for Saza Khanivade at Vasai or Shirsad.

(i) Whereas in the earlier two representations, the Applicant requested for modification of posting order, wherein stated as under :

- (a) सोपारा हे ठिकाण गैरसोयीचे आहे.
- (b) मला एका पदावर ३ वर्षे पूर्ण झालेली नाहीत.
- (c) माझ्या सोईनुसार तलाठी सजा "खानिवडे" किंवा तलाठी सजा "शिरसाड" या पदावर नियुक्ती द्यावी.

(ii) I say that on administration ground, it is not possible to give posting on original place Khanivade at Vasai or Shirsad as forestated in Reply to para 6.5 of the O.A, there is no vacancy for post of Talathi at Khanivade or Shirsad.

12. With reference to contents of paragraph No.6.8, I say as follows : As per the Govt. rule, it is binding on public servant to work anywhere as per the appointment given by authority.

13. With reference to contents of paragraph No.6.9, I say as follows : The distance between Saza Khanivade and Sopara is merely 20 K.M. and thus it cannot be said that Applicant will suffer a lot due to new posting place i.e. Sopara.

14. With reference to contents of paragraph No.6.10, I say as follows : Considering all above facts and circumstances, it is clear that Applicant has already reinstated at Saza Sopara and he has not taken charge and denied to take charge. Therefore, it is clear that his behaviour is improper as the public servant and on this ground alone, the Applicant's O.A. deserves to be dismissed, as there is no merits in the case.

16. With reference to contents of paragraph Nos.7.2 to 7.6, I say that the Applicant is discharged from Criminal Case on 03.03.2017 and from date of his discharge till reinstatement to Saza Sopara i.e. on 23.05.2017, there was no vacant post of Talathi at Saza Khanivade or at Shirsad. By order dtd. 06.02.2016 of Collector, one Mr. K.D. Kadam was appointed as Talathi at Khanivade, Vasai. By order dtd. 12.02.2016 of SDO, Vasai, one Mr. Shailendra Tikade was appointed as Talathi at Shirsad. Therefore, the Applicant was appointed at Saza Sopara, since Talathi's post at Khanivade and Shirsad was not vacant."

7. According to the Respondents, the places where the Applicant had requested are already filled-in by other orders. The Respondents are, therefore, directed to consider his representation, as and when there is a vacancy and

communicate the same to the Applicant. The Applicant cannot claim that he needs to be posted at the same place.

8. The Original Application is, therefore, disposed of accordingly with no order as to costs.

Sd/-

(P.N. Dixit)
Member-A
27.07.2018

Mumbai

Date : 27.07.2018

Dictation taken by :

S.K. Wamanse.

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