

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.14/2016.

Vanita Shrawanji Perkar,
Aged about 52 years,
Occ- Service,
R/o Plot No.240, Jawahar Nagar,
Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Tribal Development,
Mantralaya, Mumbai-32.
2. The Additional Commissioner
Tribal Development,
Nagpur.
3. The Project Officer,
Integrated Tribal Development Project,
Gondia.
4. Shri Girish Sarode,
Project Officer,
Integrated Tribal Development Project,
Gondia.

Respondents.

Shri N.R..Saboo, Ld. Counsel for the applicant.
Shri A.M. Ghogre, Ld. P.O. for the respondent Nos. 1 to 3.
None for respondent No.4.

Coram:- B. Majumdar, Vice-Chairman and

Dated:- 6th April, 2016.

Order

The applicant is a Group-C employee and working as a Warden in the Tribal Girls' Hostel. She has filed this O.A. as she is aggrieved by an order of transfer to Gadchandur, District Chandrapur.

2. The applicant has been posted as a Warden, Tribal Girls' Hostel, Sadak Arjuni, Gondia since 28.2.2014. Vide order dated 16.11.2015 issued by the Additional Commissioner, Tribal Development, Nagpur (R.2), she is directed to temporarily work at the Tribal Girls' Hostel, Gadchandur, District Chandrapur. She has challenged this order in the O.A. She was relieved from her present charge by the Project Officer, Gondia (R.3) on 17.11.2015. On 23.11.2015, respondent No.2 wrote to the Commissioner, Tribal Development, Nasik for his approval to the above impugned order of transfer, as the applicant had only put in her tenure of 1 year and 1 month at Sadak Arjuni. It may be stated here that there is nothing on record to show that this *ex-post-facto* approval was granted by the Commissioner.

3. The applicant submits that she has crossed the age of 52 years and she has already worked for nearly 10 years as a Warden in a naxalite affected area. She has to look after her aged mother and her son is in the 12th standard. The impugned order

has been issued without complying with the provisions of the Transfer Act, 2005 and she alleges that this was done to harass her. She then submits that, although she has joined at Gadchandur, no other Warden has been posted at her place at the hostel in Sadak Arjuni.

4. The Additional Commissioner, Tribal Development, Nagpur (R.2) in her reply in affidavit submits that there were serious complaints against the applicant of misconduct, dereliction of duty, unauthorizedly absence and using bad language and she was also issued with several show cause notices and she has been proceeded against under rule 8 of the Discipline and Appeal Rules. The order of transfer has been issued in accordance with the provisions of the Transfer Act, 2005 and due to administrative exigencies and in public interest at large. She then further submits as follows:

“The applicant has been transferred in view of the administrative exigency and taking into account the larger public interest, more so ever the prior permission of the competent authority as contemplated under the Transfer Act, 2005 had been sought before transferring the applicant.....”.

5. No reply is filed on behalf of respondent No.4 and none was also present on his behalf.

6. Shri N.R. Saboo, the learned counsel for the applicant submitted that the applicant being a Group-C employee, her normal tenure is of 6 years. However, the impugned order having been issued when she had barely completed 1 year at Sadak Arjuni and the transfer has been done in the month of November, this is clearly a mid-session and mid-term transfer. Hence, in terms of Section 4 (4) 4 (5) of the Transfer Act, 2005, it was obligatory on the part of respondent No.2 to obtain prior approval of her next higher authority, i.e., the Commissioner for Tribal Development, Nasik. However, this has not been done and the impugned order is clearly violative of the provisions of the Transfer Act, 2005. He also submitted that the post of Warden at Sadak Arjuni has remained vacant.

7. Shri A.M. Ghogre, the learned P.O. opposed the O.A. by submitting that there were serious allegations and complaints against the applicant and the nature of such allegations and action taken by respondent No.2 are elaborated in her reply. Respondent No.2 therefore had no option but to transfer her from Sadak Arjuni. He further submitted that on 7.10.2015, the applicant herself had requested respondent No.2 to transfer her, as she does not want to work under respondent No.4.

8. I find that it is undisputed that the impugned order of transfer dated 16.11.2015 is a mid-session and mid-term one. Thus, in terms of the provisions of section 4 (4) and 4 (5) of the Transfer Act, the transferring authority i.e. respondent No.2 was required to obtain prior approval of the next higher authority, i.e., Commissioner for Tribal Development (M.S.), Nasik by recording special reasons and circumstances which warranted for such a transfer. Respondent No.2 does not deny that she had not obtained such an approval from the Commissioner for Tribal Development (M.S.), Nasik prior to issue of transfer order. This can be seen from the fact that she had sought *ex-post-facto* approval to the transfer of the applicant from the said authority on 23.11.2015, 21.12.2015 and 23.2.2016. She should have been aware that there is no provision of seeking such *ex-post-facto* approval in the Transfer Act. Thus, the impugned order having been issued in violation of the provisions of Section 4 of the Transfer Act is clearly bad in law and requires to be quashed. O.A. therefore stands disposed of in the following terms:

(a) The O.A. is allowed.

(b) The impugned order dated 16.11.2015 is quashed and set aside.

- (c) Respondent No.2 is directed to post the applicant back as Warden, Tribal Girls' Hostel, Sadak Arjuni forthwith.
- (d) Respondent No.2 is at liberty to transfer the applicant after strictly following the provisions of the Transfer Act, 2005.
- (e) No order as to costs.

sd/-

(B. Majumdar)
Vice-Chairman

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