

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.262 OF 2021  
WITH  
ORIGINAL APPLICATION NO.455 OF 2021**

**DISTRICT : THANE**

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**ORIGINAL APPLICATION NO.262 OF 2021**

Smt. Manjusha Raghunath Kasane. )  
Age : 43 Yrs., Posted in the Office of 137- )  
Bhiwandi (E), Assembly Voters, )  
Tal.: Bhiwandi, District : Thane and )  
Residing at Anna Godbole Wada, Shahapur,) )  
District : Thane. )...**Applicant**

**Versus**

1. The Sub-Divisional Officer. )  
Bhiwandi Division, Bhiwandi, )  
District : Thane. )  
2. The District Collector. )  
District Thane. )...**Respondents**

**WITH**

**ORIGINAL APPLICATION NO.455 OF 2021**

Smt. Manjusha Raghunath Kasane. )  
Age : 43 Yrs., Posted as Awal Karoon )  
[Non-Agriculture] in the Office of Addl. )  
Tahasildar [Non-Agriculture] Kalyan, )

District : Thane and Residing at Anna )  
Godbole Wada, Shahapur, District : Thane. )...**Applicant**

**Versus**

1. The District Collector. )  
District : Thane. )
2. Shri L.Y. Kendre. )  
Aged : Adult, Working as Awal )  
Karkoon [Revenue] in the office of )  
S.D.O. Bhiwandi, District : Thane. )...**Respondents**

**Mr. Arvind V. Bandiwadekar, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents.**

**Mr. D.B. Khaire, Advocate for Respondent No.2 in O.A.455/2021.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 14.12.2021**

**JUDGMENT**

1. In O.A.262 of 2021, the Applicant has challenged the order dated 24.03.2021 issued by Sub-Divisional Officer, Bhiwandi thereby giving posting to the Applicant in the Office of 137-Bhiwandi (E) Assembly Voters and in O.A.455 of 2021, the challenge is to the transfer order dated 23.04.2021 whereby she was transferred and posted as Awal Karkoon in the Office of Upper Tahasildar, Kalyan, Thane invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985. Since both O.As are arising from chain of circumstances and events, those are decided by this common order.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant is serving in the cadre of Awal Karkoon and Collector, Thane is admittedly her appointing authority as well as Head

of the Department. He is the transferring authority for general transfer. She was initially transferred and posted as Senior Clerk in the office of S.D.O, Bhiwandi by order dated 04.09.2017. Accordingly, she joined there. However, she was abruptly transferred by Collector, Thane by order dated 10.08.2020 and posted as Senior Clerk, Tahasil Office, Shahapur. Being aggrieved by it, the Applicant has challenged the transfer order *inter-alia* on the ground that she has not completed normal tenure of three years and transfer being on alleged complaints is punitive and bad in law for want of compliance of Section 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' for brevity).

3. O.A.No.433 of 2020 was heard and decided by the Tribunal on merit by order dated 10.02.2021. The impugned transfer order dated 10.08.2020 was quashed and directions were given to repost the Applicant within two weeks from the date of order. As such, the Applicant was required to be reposted as Senior Clerk, SDO Office, Bhiwandi.

4. In compliance of order passed by the Tribunal, the Collector, Thane by order dated 19.03.2021 reposted the Applicant in the Office of SDO, Bhiwandi i.e. the post from which she was transferred. However, strangely, SDO, Bhiwandi instead of giving posting to the Applicant in the Office of SDO, Bhiwandi posted the Applicant as Awal Karkoon in the Office of 137-Bhiwandi (E) Assembly Voters. The Applicant being aggrieved by it, therefore, filed O.A.262/2021.

5. During the pendency of O.A.262/2021, the SDO, Bhiwandi again changed the posting given to the Applicant and by order dated 06.04.2021 posted her in the Department of Recovery, Rehabilitation, etc. Not only that, the Collector issued fresh order dated 23.04.2021 invoking Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' thereby

transferring and posting the Applicant as Awal Karkoon in the Office of Upper Tahasildar, Kalyan, District : Thane. In view of this development, the Applicant has challenged the order passed by SDO dated 06.04.2021 as well as order dated 23.04.2021 passed by Collector, Thane by filing second O.A.No.455/2021. The Respondent No.2 was posted in place of Applicant by subsequent order dated 18.05.2021, and therefore, he is joined as private Respondent.

6. Shri Bandiwadekar, learned Advocate sought to assail the impugned orders *inter-alia* contending that in compliance of the decision rendered by the Tribunal in earlier litigation i.e. O.A.No.433/2020, the Collector issued the order of reposting of the Applicant on the post from which she was transferred, albeit belatedly, but SDO, Bhiwandi in violation of order passed by Collector ventured to pass different order at his own and posted her in different place namely, the Office of 137-Bhiwandi (E) Assembly Voters. He, therefore, submits that indeed SDO has committed contempt of the order passed by the Tribunal. He has further pointed out that thereafter again, SDO at his own changed the posting given to the Applicant by his order dated 24.03.2021 and has given some other work in the Department of Revenue Recovery, Rehabilitation, etc. on 06.04.2021. He, therefore, challenged both these orders passed by SDO *inter-alia* contending those are totally without jurisdiction and liable to be quashed. As regard subsequent order dated 23.04.2021 by Collector, Thane, he submits that it is also unsustainable in law since those orders are passed only to circumvent the judicial order passed by the Tribunal in O.A.433/2020. He has further pointed out that the Applicant has not completed 3 years' tenure as Senior Clerk, Bhiwandi and for such mid-tenure transfer, there has to be approval of next competent authority in terms of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'. He has pointed out that in terms of Section 6, the Minister Incharge is the only next competent transferring authority. Whereas, in the present case, the Divisional Commissioner has approved the transfer

but in absence of delegation of powers to him, the impugned transfer order is bad in law.

7. The learned P.O. sought to justify the orders inter-alia contending that in view of complaints of subordinates, the transfer of the Applicant to different office place was necessitated. According to learned P.O, the subsequent transfer order 23.04.2021 being vetted by Civil Services Board (CSB) and approved by Commissioner does not require any interference.

8. Whereas, Shri Khaire, learned Advocate sought to contend that the Office of SDO, Bhiwandi in which the Applicant was posted has to be construed as one Unit and even if at the time of earlier transfer order dated 10.08.2020, the Applicant has not completed normal tenure of three years at Bhiwandi, now by virtue of order passed by the Tribunal as well as by SDO, the Applicant was reposted in the Office under the control of SDO, and therefore, the Applicant has to be construed completed 3 years' tenure in one Office on 23.04.2021 and became due in general transfer. Accordingly, it being general transfer, requires no approval of next higher competent transferring authority in terms of Section 4(5) of 'Transfer Act 2005'.

9. Indeed, in view of decision rendered by the Tribunal in O.A.No.433/2020 by Judgment dated 10.02.2021, the Collector was under obligation and bound to repost the Applicant on the same post i.e. Senior Clerk, SDO Office, Bhiwandi and accordingly, he issued posting order on 19.03.2021. However, it is Sub-Division Officer, Bhiwandi who had audacity to post the Applicant at different post. Initially, he posted the Applicant as Awal Karkoon in the Office of 137-Bhiwandi (E) Assembly Voters which he again changed by order dated 06.04.2021 posting in another Department of revenue recovery, land acquisition, etc. Notably, as per Section 2(g) of 'Transfer Act 2005', 'post' means job or seat of duty to which a Government servant is assigned or posted. The

Applicant being Group 'C' employee from non-secretariat post, his normal tenure is 3 years. Whereas, as per 1<sup>st</sup> proviso, such employee shall be transferred from the post held on his completion of two full tenures at Office or Department to another Office or Department.

10. In the present case, the Applicant was posted as Senior Clerk, SDO Office, Bhiwandi by order dated 04.09.2017 and had not completed 3 years, when she was transferred by order dated 10.08.2020 to Shahapur. As mentioned above, as per Section 2(g) of 'Transfer Act 2005', post means job or seat of duty to which Government servant is assigned or posted. It being so, the Applicant was legally entitled for three years' tenure as Senior Clerk in the Office of SDO i.e. the post or seat of duty which was assigned to the Applicant. However, she was displaced in violation of provisions of 'Transfer Act 2005' by transferring her mid-tenure to Shahapur, which is different post as well as different place than the post initially held by her in the Office of SDO, Bhiwandi. Since it was found in contravention of provisions of 'Transfer Act 2005', the said transfer order dated 10.08.2020 was quashed and specific directions were given to repost the Applicant from where she was transferred. Therefore, the act of SDO giving different posting is indeed contempt of order passed by the Tribunal. He tried to play with the orders passed by the Tribunal. If such course of action is allowed, it would amount to override and disobey the orders passed by the Tribunal and such misadventure should not be countenanced. Ultimately, it is rule of law which prevails and orders passed by the Tribunal having attained finality were required to be implemented without there being any such attempt to thinker with. Suffice to say, both the orders dated 24.03.2021 and 06.04.2021 are liable to be quashed.

11. The submission advanced by learned Advocate Shri Khaire that since after the decision of Tribunal in O.A.433/2020 even if Applicant was posted by SDO at different posts, those posts being under the control of SDO, the Applicant deemed to have completed three years'

tenure in general transfers of April or May, 2020-2021, and therefore, it does not require approval of next higher authority in terms of Section 4(5) of 'Transfer Act 2005' is totally misconceived. In other words, according to him, the tenure spent by the Applicant on the post assigned to the Applicant by SDO has to be clubbed with her initial posting in the Office of Sub-Divisional Officer and by this analogy, the Applicant is said to have completed three years' tenure. Indeed, this submission is totally fallacious for the simple reason that transfer order dated 24.03.2021 transferring the Applicant from Sub-Divisional Office, Bhiwandi to Shahapur itself was mid-tenure transfer and she was required to be reposted in same post in view of order passed by the Tribunal. Therefore, the question of giving some different posting and then adding subsequent tenure to earlier tenure does not survive.

12. Furthermore, the stand taken by Shri Khaire run counter to the stand taken by Respondent No.2 – Collector, Thane since Collector itself invoked Section 4(5) of 'Transfer Act 2005' for transferring the Applicant to the Office of Upper Tahasildar, Kalyan by order dated 23.04.2021.

13. Now let us see whether there is compliance of 'Transfer Act 2005' to render transfer order dated 23.04.2021 legal and valid. As mentioned above, while Applicant was working as Awal Karkoon in the Office of SDO, Bhiwandi, she was transferred mid-tenure by order dated 10.08.2020 which was challenged in earlier O.A. and it was quashed. Specific directions were given to repost her in same post, but she was not posted in same post. Therefore, consequences relate back to the transfer order dated 10.08.2020 which was mid-tenure, and therefore, the order dated 23.04.2021 has to be construed mid-tenure, since she has not completed three years' tenure in the said post. Had she was posted in same post and on completion of normal tenure, she was transferred in general transfer situation perhaps would have been different but it is not so. Resultantly, the transfer order dated 23.04.2021 will have to be held mid-tenure in law.

14. The perusal of record reveals that in view of certain complaints of subordinates against the Applicant, he again sent proposal for transfer of the Applicant to Commissioner, who in turn approved same, and thereafter, matter was placed before CSB. The Collector is admittedly head of the Department and competent for general transfers. As per Section 6 of 'Transfer Act 2005', for mid-tenure transfer, there has to be approval of immediate preceding competent transferring authority and Minister Incharge in consultation with Secretary of the concerned Department is the next immediately preceding competent transferring authority. True, as per 2<sup>nd</sup> proviso to Section 6, the competent transferring authority specified in Table may by general or special order delegates its power under Section to any of its subordinate authority. As such, there has to be delegation empowering subordinate authority for approval of mid-tenure transfer. In the present case, admittedly, there is no such delegation of power in favour of Commissioner. This being the position, the impugned transfer order dated 23.04.2021 is *ex-facis* in contravention of provisions of 'Transfer Act 2005'.

15. The issue of wrong composition of CSB was also raised by the learned Advocate for the Applicant that the Civil Services Board which recommended the transfer of the Applicant was headed by Collector and not be different independent authority. True, when Collector is the Head of the Department and competent authority for general transfer, he should not have acted as Head of CSB. However, this itself would not vitiate transfer order and it can be termed irregularity only.

16. The totality of aforesaid discussion leads me to conclude that the orders dated 24.03.2021 as well as 06.04.2021 issued by SDO, Bhiwandi and order dated 23.04.2021 passed by Collector which in contravention of express provisions of 'Transfer Act 2005' and liable to be quashed. Hence, the following order.



**ORDER**

- (A) The Original Application is allowed partly.
- (B) The orders dated 24.03.2021, 06.04.2021 issued by SDO, Bhiwandi as well as order dated 23.04.2021 issued by Collector, Thane are quashed and set aside.
- (C) Consequently, the posting order of Respondent No.2 in place of Applicant by order dated 18.05.2021 is also quashed and set aside.
- (D) The Respondent No.1 - Collector is at liberty to give appropriate posting to Respondent No.2.
- (E) The Respondent No.1 is directed to repost the Applicant as Awal Karkoon in the Office of SDO, Bhiwandi from which she was transferred from within two weeks from today and compliance report be submitted with Registrar of this Tribunal.
- (F) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 14.12.2021

Dictation taken by :

S.K. Wamanse.

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