

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.384 OF 2020

DISTRICT : PUNE

Shri Shaikh A. Khalil A. Gani.)
Age : 49 Years, Working as Talathi, Saza)
Aambethan, Tal.: Khed, District Pune and)
Residing at 7, Audumbar Society,)
Tinhewadi Road, Rajgurunagar, Tal.: Khed,)
District : Pune.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Secretary, Revenue & Forest)
Department, Mantralaya,)
Mumbai - 400 032.)
2. The District Collector, Pune.)
3. The Sub Divisional Officer,)
Khed Sub Division, Khed)
(Rajgurunagar), District : Pune.)
4. Shri M.M. Chormale,)
Talathi, Saza-Kalus, Tal.: Khed,)
District : Pune.)...**Respondents**

Mr. S.B. Thorat with Shri M.B. Gawade, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents 1 to 3.

Mr. Ajinkya Udane, Advocate for Respondent No.4 is absent.

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

DATE : 05.02.2021

JUDGMENT

1. In this Original Application, the Applicant has challenged the transfer order dated 06.08.2020 whereby he was transferred from the post of Talathi, Aambethan, Tal. Khed, District Pune to Village Kaluj, Tal. Khed, District Pune contending that he is transferred in blatant contravention of provisions of Section 4(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).

2. The Applicant is serving in the cadre of Talathi and initially by order dated 08.06.2018, he was transferred from Village Kohinde, Tal. Khed, District Pune to Village Aambethan, Tal. Khed, District Pune. In terms of Section 3 of 'Transfer Act 2005', he is entitled to six years' tenure being Group 'C' employee. However, abruptly, the Respondent No.3 - SDO, Khed by order dated 06.08.2020 transferred him from Aambethan to Village Kaluj under the caption of 'administrative exigency', which is under challenge in the present O.A. The Applicant contends that only to favour Respondent No.4, he is transferred mid-term and mid-tenure.

3. The O.A. was filed on 18.08.2020 and thereafter despite enough chances, the Respondents failed to file reply. Ultimately, the matter was kept for hearing at the stage of admission without reply.

4. Shri A.J. Chougule, learned P.O. submitted that nobody has come from the Department and requested for grant of time. Since already enough time is given and Respondents did not bother to file even reply to the O.A, I am not inclined to adjourn the matter.

5. Since no reply is filed, the leaned P.O. is unable to justify the transfer order and to defend it on the basis of record available, which in fact *ex-facie* shows that the transfer order is in blatant violation of provisions of 'Transfer Act 2005'. Non filing of reply gives rise to adverse inference that Respondents have no case.

6. As stated above, the Applicant was posted at Village Aambethan by order dated 06.08.2018 and was entitled for six years' tenure in terms of Section 3 of 'Transfer Act 2005'. This being the position, for mid-term and mid-tenure transfer, there has to be compliance of Section 4(4)(2) and 4(5) of 'Transfer Act 2005', which is completely missing in the present O.A.

7. Section 4(5) of 'Transfer Act 2005' is as under :-

“(4)(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of immediately superior Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

8. As such, for mid-term and mid-tenure, there has to be approval of next competent transferring authority. Furthermore, it needs to be vetted by Civil Services Board, which is also completely missing in the present matter. The transfer order has been issued by Respondent No.3 – SDO and not approved by next competent transferring authority as contemplated under Section 4(5) read with Section 6 of 'Transfer Act 2005'. Indeed, in terms of Notification dated 19.03.2015 issued by Government, the Head of the Department for Group 'C' employee is Collector, even for general transfer. This being the position, the impugned transfer order passed by SDO is totally bad in law being without jurisdiction. Nothing is on record to make out a case of administrative exigency or special case ever for namesake.

9. Surprisingly, what is stated in impugned transfer order is interesting. It is stated in transfer order that the Applicant is transferred

in terms of Section 4(4) of 'Transfer Act 2005' read with G.R. dated 09.04.2018, which in fact applies for general transfers by counseling. As such, there is absolutely nothing that the matter was placed before the CSB and the same has been approved by next competent transferring authority for legal and valid mid-term and mid-tenure transfer. It is thus *ex-facie* that the Applicant has been transferred only to accommodate Respondent No.4 who had requested for his transfer.

10. For the aforesaid reason, I have no hesitation to sum-up that the impugned transfer order is in blatant violation of 'Transfer Act 2005' and totally unsustainable in law and liable to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 06.08.2020 is quashed and set aside.
- (C) Interim relief granted by the Tribunal on 20.08.2020 is made absolute.
- (D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 05.02.2021
Dictation taken by :
S.K. Wamanse.

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