

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 392 OF 2015

DISTRICT : THANE

Shri Raviraj Ganpat Ilawe,)
B2/504, Vihang Garden,)
Pokharan Road No. 1, Vartak Nagar)
Thane [W] 400 606.)...**Applicant**

Versus

The Principal Secretary,)
Industries, Energy and Labour)
Department, State of Maharashtra,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Smt Punam Mahajan, learned advocate for the Applicant.
Smt Kranti S. Gaikwad, learned Presenting Officer for the
Respondent.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 28.01.2016

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ORDER

1. Heard Smt Punam Mahajan, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondent.

2. This Original Application has been filed by the Applicant challenging his transfer order dated 28.5.2015 transferring him from Tarapur to Nagpur. In the alternative, the Applicant is seeking transfer to any vacant post of Assistant Labour Commissioner at Kalyan or Thane.

3. Learned Counsel for the Applicant argued that the Applicant was posted as Assistant Commissioner of Labour at Tarapur from 5.6.2012. He was transferred to Nagpur in the same post by order dated 28.5.2015, before he has completed 3 years tenure at Tarapur. The period of 3 years has to be calculated in exact manner and short fall of a few days cannot be ignored. Learned Counsel for the Applicant argued that the Applicant has been working at Tarapur, which is in Palghar Tahsil, which is in the Tribal Sub Plan area. An officer, who has worked in Tribal area for 2 years is given incentives. As per G.R dated 6.8.2002 even Group 'A' & 'B' officers are eligible to be given posting in a district of their choice after completion of 2 years in a Tribal area. Learned Counsel for the Applicant contended that he has given

his choice that he may be posted in any vacant post in Thane/Kalyan. However, the Respondents have ignored his request and posted him to Nagpur.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant had completed his tenure of 3 years at Tarapur. During the general transfer of 2015, he was transferred to Nagpur. Learned Presenting Officer argued that the transfer order dated 28.5.2015 was in full compliance of the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (the Transfer Act). Learned Presenting Officer argued that the Applicant was transferred to Tarapur by order dated 14.5.2012 and completed 3 full years there when he was transferred to Nagpur by order dated 28.5.2015. Learned Presenting Officer further argued that Tarapur is a big Industrial town and no hardship is caused to a officer on being posted there. It is declared as Group 'A' industrially developed area by G.R dated 1.4.2013, by the Government. As such, the facility available to Government servants working in Tribal areas are not available to those posted at Tarapur. Learned Presenting Officer argued that there is no merit in the present Original Application.

5. The Applicant has challenged his transfer by orders dated 28.5.2015 on the ground that he was posted

to Tarapur by order dated 5.6.2012 and has not completed his full tenure of 3 years. The claim of the Respondents is that the Applicant was posted to Tarapur by order dated 14.5.2012 and he has completed his full tenure of 3 years when transfer order dated 28.5.2015 was issued. It is seen that by order dated 14.5.2012, the Applicant was transferred to the office of the Labour Commissioner at Bombay in the post becoming vacant due to transfer of Shri More, who was transferred by order dated 5.6.2012 as Assistant Labour Commissioner, Tarapur by modifying order dated 5.6.2012. The contention of the Applicant that he was transferred to Tarapur by order dated 5.6.2012 has to be accepted. In O.A no 694 of 2009, by order dated 23.6.2009, this Tribunal has held that period of 3 years has to be construed strictly and short fall of a few days cannot be ignored. The Applicant was granted interim relief on this count by order dated 1.6.2015 by this Tribunal. The Applicant has challenged the orders as 'mid tenure' which has been issued without complying with the requirement of section 4(5) of the Transfer Act making out a special case. It is seen that the impugned order dated 28.5.2015 reads:-

“ कामगार आयुक्त, मुंबई यांच्या आस्थापनेवरील सहाय्यक कामगार आयुक्त, गट - अ संवर्गातील खाली नमूद अधिकाऱ्यांची नियतकालिक बदली करण्यात येत आहे.”

It is, therefore, clear that the transfer order of the Applicant is issued as a general transfer order. It is, however, found that he had not completed his tenure of 3 years when this order was issued and it was in fact, a mid-tenure order, which could not be passed without complying with the requirement of section 4(5) of the Transfer Act. In the affidavit in reply dated 12.6.2015 and the affidavit-in-rejoinder dated 19.8.2015, there is no mention that a special case was made out for mid tenure transfer of the Applicant. The impugned transfer order is not sustainable on this count.

6. The Applicant has claimed that he has been working in a Special Component Plan/Tribal Sub Plan area for more than 2 years, as Tarapur is in Palghar Tahsil, which is included in Tribal Sub Plan area. The Applicant claims that he is entitled to be given a posting of his choice, as he has worked in Tribal area for more than 2 years. The Respondents have not denied that Tarapur is in a Tribal Sub Plan area. However, it is stated by the Respondents that a Government servant will be eligible to get benefit of G.R dated 6.8.2002, if he is working for the upliftment of Tribal people. Labour Department does not have any such people oriented scheme, and Tarapur is classified as Group 'A' industrially developed area as per G.R dated 1.4.2013. The Applicant is, therefore, not eligible for any incentive as per G.R dated 6.8.2002. The Applicant has placed on

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record voluminous material in support of his contention that Tarapur is covered by G.R dated 6.8.2002. As per information supplied to one Shri G.B Jondhale, under the Right to Information Act, Tribal Development Department has confirmed that:-

- (i) Tarapur is included in Tribal Sub Plan area as per G.R dated 9.3.1990.
- (ii) All Government servants working in Tarapur are eligible to get benefits of G.R dated 6.8.2002.

~~The~~ The Applicant has been held eligible for benefits of G.R dated 6.8.2002. The contention of the Respondents that officials posted at Tarapur, which is industrially developed area, who are not implementing any development scheme, should not be given benefits of G.R dated 6.8.2002 appears to be logical. However, this matter must be decided by the State Government and unless G.R dated 6.8.2002 is amended, it has to be held that the Applicant is entitled to its benefits. However, this facility of choice posting is not for a particular place as claimed by the Applicant, who is seeking a posting in Kalyan/Thane. In fact, he is required to give choice of 3 'districts' and he may be given posting in any one of the districts as per convenience of the authorities. The Applicant is also required to fulfil the conditions in the aforesaid G.R dated 6.8.2002 to get this benefit.

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7. Having regard to the aforesaid facts and circumstances of the case, transfer order of the Applicant dated 28.5.2015 is quashed and set aside. If the Applicant gives choice of 3 districts for posting in accordance with G.R dated 6.8.2002, the Respondents ~~may~~ ^{shall} take action as provided in the aforesaid G.R. This Original Application is allowed in these terms with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 28.01.2016

Dictation taken by : A.K. Nair.