

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.433 OF 2020

DISTRICT : THANE

Smt. Manjusha R. Kasane.)
Age : 43 Yrs., Working as Awal Karkun,)
in the office of Tahasildar, Shahapur,)
District : Thane and residing at Anna)
Godbole Wada, Shahapur, District : Thane.)...**Applicant**

Versus

1. The District Collector.)
Thane, having office at Thane.)
2. Shri Ashok Dudhsagare.)
Aged : Adult, Working as Awal)
Karkun [on transfer] in place of)
Applicant viz. in the office of)
Tahasildar, Bhiwandi,)
District : Thane.)...**Respondents**

Mr. Bhushan A. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

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

DATE : 10.02.2021

JUDGMENT

1. The Applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenging transfer order dated 10.08.2020 issued by Respondent No.1 – Collector whereby

she was transferred from Bhiwandi, District Thane to Shahapur, District Thane.

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

The Applicant is serving as Senior Clerk on the establishment of Respondent No.1 – Collector, Thane and she was posted as Senior Clerk in the office of SDO, Bhiwandi on 04.09.2017. She being Group ‘C’ employee claims to have entitled for six years tenure in terms of Section 3 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). However, Respondent No.1 – Collector, Thane abruptly transferred her by order dated 10.08.2020 as Senior Clerk, Talathi Office, Shahapur mainly on the basis of G.R. dated 21.11.1995, which *inter-alia* provides for *inter-se* transfers of Senior Clerk and Circle Officer, who have completed two years’ tenure at one place.

3. Shri Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned transfer order on the following grounds :-

(i) Since the Applicant had joined as Awal Karkun at Bhiwandi on 04.09.2017, she is entitled to six years’ tenure in terms of Section 3 of ‘Transfer Act 2005’, and therefore, the impugned transfer by order dated 10.08.2020 being mid-term and mid-tenure is bad in law for want of compliance of Section 4(5) of ‘Transfer Act 2005’.

(ii) G.R. dated 21.11.1995, which is the only foundation of transfer of the Applicant is declared impliedly repealed by the Tribunal Bench at Aurangabad in **O.A.No.300/2017 (Aurangabad District Talathi Sangh Vs. State of Maharashtra) decided on 04.04.2018**, and therefore, very foundation of impugned order is extinct.

(iii) Applicant is displaced mid-term and mid-tenure only to favour Respondent No.2 who was posted in place of Applicant though he was not due for transfer.

4. Whereas, Shri A.J. Chougule, learned P.O. sought to contend that SDO, Bhiwandi has received various complaints about the functioning of the Applicant and in view of the said complaints, the Civil Services Board (CSB) had recommended for the transfer of the Applicant. He has further canvassed that the D.E. was also proposed against the Applicant under Rule 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity) for several lapses, negligence, dereliction of duties, misbehavior, etc. He has further pointed out that SDO had submitted report to Collector on 23.01.2020 as well as on 15.07.2010, and therefore, the impugned transfer order cannot be faulted with.

5. Per contra, Shri M.D. Lonkar, learned Advocate for Respondent No.2 has adopted the submission advanced by the learned P.O. and in addition to it, submitted that Respondent No.2 is retiring at the end of May, 2021 and on equitable consideration, he be continued at Bhiwandi in terms of his transfer order till the end of May, 2021.

6. Shri Bandiwadekar, learned Advocate for the Applicant strongly opposed the submission made by Shri Lonkar for allowing his client to continue at Bhiwandi at place of Applicant till May, 2021 stating that transfer order itself is totally unsustainable, and therefore, the Applicant is required to be reposted at Bhiwandi.

7. In view of submission advanced at the Bar, the issue posed for consideration is whether the impugned transfer order is sustainable in law on the basis of reasons mentioned in transfer order or any other contemporary record. Needless to mention that the transfer is an incident of service and Tribunal should not interfere in the matter of

transfer unless it is in contravention of express provisions of law or *malafide*.

8. Indisputably, the Applicant had joined at Bhiwandi on 04.09.2017 and was not due for transfer within the meaning of provisions of 'Transfer Act 2005'. Similarly, the Respondent No.2 was also not due for transfer but he was posted in place of Applicant at Bhiwandi. As per scheme of 'Transfer Act 2005', there should not be transfer of a Government servant before completion of their normal tenure, which is of three years for Group 'A', 'B' and 'C' employees. Whereas, if the employee is from non-secretariat services in Group 'C', such employee shall not be transferred unless he completes two full tenures at that office. As per Section 4 (4) of 'Transfer Act 2005', the transfers are required to be made ordinarily once in a year in the month of April or May. At the same time, where the transfer is necessitated on account of administrative exigency or for special circumstances, a Government servant can be transferred mid-tenure with prior approval of next preceding competent transferring authority, after recording reasons in writing for the same in terms of Section 4(5) read with Section 6 of 'Transfer Act 2005'.

9. Now turning to the facts of the case, the perusal of transfer order dated 10.08.2020 reveals that Collector, Thane transferred the Applicant on the basis of G.R. dated 21.11.1995, which *inter-alia* provides for *inter-se* transfer of Awal Karkun and Circle Officer after completion of two years' tenure. There is specific reference of G.R. dated 21.11.1995 and completion of two years in the cadre of Awal Karkun or Circle Officer in impugned order. Indeed, the object behind the G.R. dated 21.11.1995 was to have experience of the working as a Senior Clerk as well as Circle Officer, and therefore, *inter-se* and interchangeable transfers were contemplated in G.R. dated 21.11.1995. However, as rightly pointed out by the learned Advocate for the Applicant that the said G.R. dated 21.11.1995 is declared impliedly repealed by Division Bench of this Tribunal in O.A.No.300/2017. The perusal of Judgment in

O.A.No.300/2017 reveals that the Tribunal had accepted the contentions raised by the Applicants therein that the wake of implementation of 'Transfer Act 2005', which *inter-alia* provides normal tenure of three years and six years, as the case may be, the G.R. issued way back in 1995 has become absolute and impliedly repealed. The Tribunal further observed that legislation in the form of 'Transfer Act 2005' enacted by legislature have primacy and Government instructions or G.R. cannot have override the statutory enactment. Suffice to say, the G.R. dated 22.11.1995 being declared impliedly repealed, it could not have been made foundation for transfer of the Applicant. Indeed, the Applicant has been transferred on same post. She was Senior Clerk at Bhiwandi and by impugned transfer, she was posted as Senior Clerk, Tahasil Office, Shahapur. Whereas, in terms of G.R. dated 21.11.1995, she would have been posted as Circle Officer. Be that as it may, the fact remains that G.R. dated 21.11.1995 being declared repealed, it could not have been acted upon by Respondent No.2 – SDO, Thane for the transfer of the Applicant. This one of the aspect of the matter, which renders the impugned transfer order unsustainable in law.

10. Secondly, there is no compliance of the provisions of Section 4(5) of 'Transfer Act 2005'. The Applicant was transferred on the basis of recommendation of CSB only. The minutes of the meeting of CSB is at Page Nos.59 to 62 of P.B. The name of Applicant figured at Serial No.20. Interestingly, the CSB also referred the G.R. dated 21.11.1995 to effect the transfer of Senior Clerks and Circle Officers who were 20 in number.

11. True, at the end of minutes, there is reference that SDO had forwarded report for transfer of the Applicant in view of complaints against her. Except this vague reference, no details are mentioned in the minutes of CSB about the nature of complaints, its gravity, enquiry into the complaints, etc.

12. No doubt, the Respondent No.2 has annexed some complaints received by him to the reply. The perusal of it reveals that there were several complaints of rude behavior, non-cooperation, etc. There are complaints from Staff also. In case of complaints, if found substantiated by making preliminary enquiry, it being mid-term and mid-tenure transfer, the compliance of Section 4(5) read with Section 6 of 'Transfer Act 2005' is condition precedent, which is admittedly not complied with.

13. Since the Applicant has not completed the normal tenure and she was required to be transferred on complaints, in that situation, it was permissible to do so only with the approval of next preceding competent transferring authority, as mandated in Section 4(5) of 'Transfer Act 2005', which is completely missing. As per Section 6 of 'Transfer Act 2005', for Group 'C' employee, the Head of the Department is competent transferring authority. Whereas, in terms of Section 4(5) read with Section 6, for mid-tenure transfer, it requires prior approval of next preceding competent transferring authority which would be Minister Incharge in consultation with Secretaries of the Department Departments as per Table below Section 6 of 'Transfer Act 2005'. There is nothing to show that the powers of competent transferring authority are delegated to some other authority and it has given approval for such mid-tenure transfer. In other words, the impugned transfer order is in blatant violation of Section 4(5) of 'Transfer Act 2005'.

14. Thus, viewed from both the angles, the impugned transfer order is unsustainable in law.

15. The submission advanced by the learned Advocate for Respondent No.2 that since his client had already joined in place of Applicant and he being retiring within 2/3 months, he be continued at Bhiwandi till retirement, cannot be accepted, since the impugned transfer of the

Applicant itself is bad in law, entailing shifting of Respondent No.2 to some other place.

16. The totality of aforesaid discussion leads me to conclude that the impugned transfer order is totally unsustainable in law and deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned transfer order dated 10.08.2020 is hereby quashed and set aside.
- (C) The Applicant be reposted within two weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 10.02.2021
Dictation taken by :
S.K. Wamanse.

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