

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.569 of 2019

District : PUNE

Shri S. B. Khade)
Age 52 years, Occ : Jr. Admin. Officer,)
R/at : Sr. No.209, Bhagirathi Nagar, 17 ½ Nali)
Road, Hadapsar, Pune 411 026.)...**Applicant**

Versus

1. State of Maharashtra, through)
Secretary, Tribal Development,)
Mantralaya, Mumbai 32.)
2. The Commissioner, Tribal Research)
And Training Centre, M.S. 28, Queens)
Garden, Pune 411 001.)
3. The Additional Commissioner, Tribal)
Development, Konkan Division, Thane.)
4. Deputy Director and Member Secretary,)
Schedule Tribe Certificate Verification)
Committee, Pune Division, Pune.)...**Respondent**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 15.01.2021

J U D G M E N T

The Applicant has challenged the impugned transfer order dated 12.08.2020 whereby he was transferred from the post of Jr. Administrative Officer (Group-C) Caste Scrutiny Committee office, Pune to Jr. Administration Officer, Cast Scrutiny Committee, Nashik on non

executive post invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. The Applicant had joined at Caste Scrutiny Committee, Pune by order dated 28.12.2018. he being Group-C employee is entitled for six years tenure under the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005'). However, by impugned order dated 12.08.2020, the Respondent No.2 –Commissioner Tribal Research Training Centre, Pune transferred him from Pune to Nashik on non executive post by order dated 12.08.2020 on the ground of complaints against him. The Applicant has challenged the transfer order dated 12.08.2020 inter-alia contending that it is mid-term and mid-tenure transfer without following provisions of 'Act 2005' and importantly the Respondent No.2 – Commissioner, Tribal Research Training Centre, M.S. Pune has no power or competency to transfer the Applicant.

3. The sum and substance of the Applicant's case is that transfer is punitive and is in total defiance of provisions of 'Act 2005'.

4. Smt. Punam Mahajan, learned Counsel for the Applicant sought to assail the impugned order on the following grounds :-

(a) The Applicant having not completed normal tenure of six years, the impugned transfer order is mid-term and mid-tenure and in absence of compliance of Section 4(5) of 'Act 2005', the same is unsustainable in law.

(b) The issue of transfer of the Applicant was not placed before the Civil Services Board (CSB) as mandated by the Hon'ble Supreme Court in ***T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732.***

(c) Respondent No.2 – Commissioner, Tribal Research Training Centre, Pune is not empowered to effect such mid-term and mid-tenure transfer of the Applicant.

5. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents sought to defend the impugned order dated 12.08.2020 contending that it is not transfer order but deputation necessitated in view of various complaints received against the Applicant and for fair inquiry he was shifted temporarily from Pune to Nashik. However, she fairly concedes that the Respondent No.2 is not competent for mid-term transfer of the Applicant. Her entire emphasis was that the impugned order is temporary deputation from one place to another and not transfer in the eye of law, and therefore, the compliance of the provisions of 'Act 2005' is immaterial.

6. In view of submission advanced at bar, the question posed for consideration whether the impugned order dated 12.08.2020 is deputation necessitated for some administrative discipline or it is transfer order attracting provision of 'Act 2005'.

7. The contents of impugned order dated 12.08.2020 are as follows :-

“ उपरोक्त विषयांकीत प्रकरणी श्री.सुभाष खाडे, कनिष्ठ प्रशासकीय अधिकारी यांच्या विरोधात प्राप्त तक्रार अर्जाबाबत सखोल चौकशी करणेकामी नियुक्ती समितीच्या कामकाजात अडथळा निर्माण होऊ नये या करीता श्री.खाडे, कनिष्ठ प्रशासकीय अधिकारी यांची अकार्यकारी पदावर बदली करण्यात येत आहे.

श्री.सुभाष खाडे, क.प्र.अ. यांनी या आदेशाच्या दिनांकापासून अनुसूचित जमाती प्रमाणपत्र तपासणी समिती नाशिक या कार्यालयात अकार्यकारी पदावर तात्काळ रुजू व्हावे.”

8. Thus, it is explicit from the wording and language used in the order that it is transfer and not deputation. There is absolutely nothing in the order which suggest that it is deputation. As such, the contention raised by learned P.O. that impugned order is deputation for short period is totally misconceived contrary to record and totally

unacceptable. This theory of deputation is after thought and nothing but an attempt circumvents the 'Act 2005'.

9. Interesting to note that there is nothing in the impugned order that it will be operative for limited or stipulated period. Had it been, the case of deputation for temporary period, it would have mentioned so in the impugned order. However, it is not so, on the contrary from wording and language used in the order explicitly it is of transfer from Pune to Nashik on non executive post.

10. As regard competency of Respondent No.2, indeed, in Para No.3 of reply what is stated is as under:-

“ 3. I say and submit that the present Original Application is not maintainable for the reason that the applicant is not transferred but he is temporarily deputed by the impugned order date signed on 06.08.2020 and dispatched on 12.08.2020. The applicant has filed the present application assuming that, the applicant is transferred by the impugned order. From perusal of the impugned order dated 12.08.2020, it is clear that the applicant is deputed temporarily for alternate arrangement and his salary and other allowances will be disbursed from his original place of working, which is mentioned in the impugned order dated 12.08.2020. I say and submit that, the applicant is not transferred by way of impugned order dated 12.08.2020. Infact, the Commissioner, T.R.T.I. Pune is very well aware that the authority to transfer is ATC, Thane and therefore, a letter to ATC, Thane has been written on 06.08.2020.”

11. As such, it is explicit that the Respondent No.2 himself was aware that he is not transferring authority and had also made reference for transfer of the Applicant to Additional Commissioner, Tribal Development, Thane by letter dated 06.08.2020. This being the position, there is no escape from the conclusion that the Respondent No.2 is not transferring authority of the Applicant.

12. True, as per G.R. dated 06.09.2000, the Applicant No.2 seems to be appointed as a controlling officer for the staff of Schedule Tribe Caste

Scrutiny Committee established at various places in State of Maharashtra, Clause 3 of G.R. dated 06.09.2000 is as under:-

“ हा सर्व कर्मचारी वृंद संचालक, आदिवासी संशोधन व प्रशिक्षण संस्था, पुणे यांच्या नियंत्रणाखाली राहिल. संचालक, आदिवासी संशोधन व प्रशिक्षण संस्था, पुणे हे या समित्यांचे व दक्षता पथकांचे मुख्य समन्वयक म्हणून (Chief Co-ordinator) राहतील आणि समित्या व दक्षता पथके यांच्या कामकाजात सुसूत्रता साधण्याच्या दृष्टीने त्यांना वेळोवेळी मार्गदर्शन करतील. ”

13. Thus, the position of Respondent No.2 seems to be of controlling authority and not transferring authority in the eye of law.

14. Indisputably, the Applicant has not completed his normal tenure even of three years at Pune and before completion of normal tenure, he is displaced by order dated 12.08.2020 which is nothing but mid-term and mid-tenure transfer. There is no denying that the matter was not placed before Civil Services Board nor there is compliance of Section 4(5) of 'Act 2005' which empowers the Competent Authority to transfer a Government servant mid-term and mid-tenure in public interest or on administrative exigency after recording reasons with the approval of preceding competent transferring authority.

15. Learned P.O. though sought to contend that there were serious complaints against the Applicant and to facilitate fair inquiry, the Applicant was shifted to Nashik in absence of compliance of provisions of 'Act 2005', such course of action is not permissible. The impugned order dated 12.08.2020 is of transfer and not deputation. Indeed, it is punitive action and secondly the transfer without compliance of Section 4(5) of 'Act 2005'. If there are serious complaints against a Government servant that has to be inquired with by holding preliminary inquiry and thereafter only transfer order can be issued with prior approval of next preceding competent authority as mandated under Section 4(5) of 'Act 2005'.

16. In so far as veracity of complaints and alleged misconduct is concerned, I refrain myself by making any comment on this issue, since the O.A. deserves to be allowed on the ground of competency of Respondent No.2 as concluded above. Suffice to say, the impugned order dated 12.08.2020 is totally indefensible in law and liable to be quashed. Hence, the following order :-

ORDER

- (A) Original Application is allowed.
- (B) Impugned order dated 12.08.2020 is quashed and set aside.
- (C) Respondent No.2 is directed to reinstate the Applicant within seven days from today.
- (D) It is clarified that this order should not be construed as any hurdle in taking further appropriate action or departmental action against the Applicant in accordance to law.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

Date : 15.01.2021
Place : Mumbai
Dictation taken by :
Vaishali Santosh Mane
Uploaded on :