

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.762 OF 2019

DISTRICT : Palghar

Smt. Sarala S. Tekam,)
Age : 41 years, Working as Talathi, Saza,)
Nirmal, Tal. Vasai, Dist. Palghar)
R/at. 101, Nandkuwar Apt, Krushan)
Township, Diwan-Maan, Tal.Vasai,)
Dist. Palghar.)...**Applicant**

Versus

1. The Sub Divisional Officer cum)
Sub Divisional Magistrate, Vasai,)
Dist. Palghar, O/at Old Govt. Rest)
House, Vasaigaon, Tal.Vasai,)
Dist. Palghar.)
2. The District Collector, Palghar,)
O/at Palghar.)
3. Smt. Janhvi J. More, Talathi,)
Saza-Manikpur, Tal. Vasai, Dist.)
Palghar.)
4. The State of Maharashtra, through)
Principal Secretary, Revenue &)
Forest Deot., (Revenue), Mantralaya,)
Mumbai 400 032.) **...Respondents**

Shri Arvind V. Bandiwadekar, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 06.02.2020

JUDGMENT

1. Heard Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondent Nos.1 and 2. Respondent No.3 though served but absent.

2. The Applicant has challenged the impugned transfer order dated 30.05.2019 whereby she was transferred from the post of Talathi, Manikpur, Tal. Vasai, Dist. Palghar to Talathi, Nirmal, Tal. Vasai invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985. In her place, Respondent No.3-Smt Janhvi More has been posted at Manikpur.

3. Shortly stated facts are as under:-

The Applicant is serving in the cadre of Talathi in Palghar district. By order dated 04.12.2015, Respondent No.1-S.D.O. Vasai transferred the Applicant from Diwan-Maan to Manikpur. Accordingly, she joined at Manikpur and hardly completed three and half years at the time of impugned transfer order. Though she was not due for transfer abruptly by impugned order dated 30.05.2019, she is transferred to Nirmal. She has, therefore, filed the present O.A. contending that the transfer being mid-tenure in absence of special reasons and approval of next higher authority is illegal.

4. Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant sought to assail the impugned order on the following grounds:-

(A) Though the Applicant was not due for transfer, she is transferred without 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 'Act 2005).

(B) Respondent No.1-SDO is not competent to transfer the Applicant.

5. Per contra, Shri A. J. Chougule, learned Presenting Officer for the Respondents made feeble attempt to justify the impugned transfer order contending that the Applicant had completed seven years and two months tenure, and therefore, she was transferred on administrative ground.

6. Admittedly, the Applicant had joined at Manikpur in terms of order dated 04.12.2015. This being the position, she had completed hardly three and half years. In terms of Section 3 of the 'Act 2005', she is entitled for six years tenure being Group-C employee. The reference in Civil Services Board Minutes that Applicant had completed seven years and two months tenure at Manikpur is obviously incorrect. In this behalf, material to note that the statement submitted by Tahsildar before S.D.O. at the time of general transfer of 2019 (Page 23 of PB) itself also makes it clear that Applicant had completed three years and five months only at Manikpur. The Respondents have not tendered any other record to substantiate that Applicant had completed seven years and two months at Manikpur. Suffice to say, the reference of seven years and two months is absolutely erroneous on the face of record.

7. As such, the Applicant was not due for transfer, and therefore, for her mid-tenure transfer there has to be compliance of Section 4(5) of 'Act 2005' which is admittedly missing. Indeed, the Applicant is transferred under misconception that she had completed seven years though in fact she had hardly completed three years and five months at Manikpur. Furthermore, the Applicant being Group-C employee, the head of the department is Collector as seen from the Notification dated 19.03.2015 issued by the Government. This Notification is issued in terms of Section 7 of 'Act 2005' which inter-alia directs for publication of list of the head of the department and for transfer of

group C and D employees respectively. Thus, as per Notification dated 19.03.2015 produced by the Respondents themselves, Collector is Head of the Department of Group-C employee. Whereas, the impugned transfer is admittedly issued by the S.D.O.

8. In view of the aforesaid discussion there is no escape from the conclusion that the impugned order is unsustainable in law for non compliance of Section 4(5) of 'Act 2005' and deserves to be quashed. Hence the following order.

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 30.05.2019 is quashed and set aside qua the Applicant.
- (C) Respondent No.1 is directed to reinstate the Applicant on the post she was transferred from within two weeks from today.
- (D) No order as to cost.

Sd/-

(A.P. KURHEKAR)
Member-J