

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.796 OF 2019

DISTRICT : Thane

- 1) Shri Sushil Trimbakrao Morale,)
Working as Talati, Saza-Kaman, Tal. Vasai,)
Dist. Palghar, R/o. Flat No.305, Building No.13,)
Poonam Garder, Solitor-3, Mira Road (E),)
Dist. Thane.)... **Applicant**

Versus

- 1) The Sub Divisional Officer)
cum Sub Divisional Magistrate, Vasai,)
Dist. Palghar, Having Office at Old Government)
Rest House, Vasaigaon, Tal. Vasai, Dist. Palghar.)
- 2) The District Collector, Palghar,)
Having Office at Palghar.)
- 3) The State of Maharashtra,)
Through Principal Secretary, Revenue &)
Forest Department, (Revenue), Having Office)
At Mantralaya, Mumbai-400 032.)
- 4) Shri Sachin Bajirao Jadhav,)
Aged Adult, Working as Talathi Saze Palghar,)
Tal. Vasai, Dist. Palghar.)...**Respondents**

Shri Arvind V. Bandiwadekar, Advocate for Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondent Nos.1 to 3.

Shri M.D. Lonkar, learned Advocate for Respondent No.4.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 07.01.2021

JUDGMENT

1. The challenge is to the transfer order dated 30.05.2019 as well as to the order dated 30.05.2019 pertaining to the transfer of

Respondent 4 invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1984.

2. The Applicant was serving as Talathi, at village Saza-Sopara, Tal. Vasai, Dist. Thane. However, while working at Khaniwade, he was arrested by Anti Corruption Bureau in trap and was detained in police custody for more than 48 hours. Consequent to it, he was suspended from the service. However later, the ACB has filed discharge report before the learned Special Judge who discharged the Applicant by order dated 03.03.2017. The ACB had sought discharge under Section 169 of Criminal Procedure Code (CrPC) stating that sanction for prosecution was refused by the appointing authority.

3. After discharge, the Applicant was reinstated in service by order dated 23.05.2017 but instead of posting him at Khaniwade, he was given posting as Talathi of Sopara. The Applicant then made representation dated 31.07.2017 that Sopara is inconvenient to him and requested to post him at Khaniwade or Shirsad but in vain. He, therefore, filed O.A.No.1094/2017 before the Tribunal which has been disposed of by the Tribunal on 27.07.2017 whereby the Respondent No.3 was directed to consider the representation as and when there is a vacancy and communicated the same to the Applicant. The Tribunal however made it clear that the Applicant cannot claim that he needs to be posted at the same place.

4. In view of the order of the Tribunal, the Applicant again made representation on 22.10.2018 stating that the post of Talathi at Pelhar, Khaniwade and Shirsad are vacant and his posting order accordingly be modified. However, the Respondent No.2 – S.D.O. by impugned order dated 30.05.2019 transferred the Applicant from Sopara to Kaman, Tal. Vasai and posted the Respondent No.4 at Pelhar which was sought by the Applicant by his another representation dated 22.10.2018. It is on above background, the

Applicant has challenged his transfer order from Sopara to Kaman as well as also challenged the transfer of the Respondent No.4 by order dated 30.05.2019 which was sought by the Applicant.

5. Heard Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant, Shri A. J. Chougule, learned Presenting Officer for the Respondent Nos.1 to 3 and Shri M.D. Lonkar, learned Counsel for the Respondent No.4.

6. Needless to mention that the transfer is of incident of service and a Government servant cannot claim particular place or posting as of right. However, now the transfers are governed by the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (herein after referred to as 'Act, 2005' for brevity). The Applicant being Group -C employee admittedly entitled for six years tenure. He was posted at Sopara on 23.05.2017. This being the admitted position, he being not completed six years tenure was not due for transfer at the time of impugned transfer order.

7. True, the Applicant had made representation for his transfer but had requested for specific places namely Pelhar, Waliv, Shirsad and Khaniwade. What happened, the Respondent No.2 -S.D.O. had taken shelter of his request application and transferred him from Sopara to Kaman which was not at all sought by the Applicant. His another grievance is that the Respondent No.4 though not due for transfer, he was given posting at Pelhar which was sought by him. True, when the Applicant made a representation, the post of Talathi at Pelhar, Khaniwade were vacant. As the Applicant was trapped by the ACP whiling serving at Khaniwade, the Respondent No.2-S.D.O. thought it inappropriate to repost him at Khaniwade. In so far as Pelhare is concerned, though it was vacant, it was given to the Respondent No.4 who was holding additional charge of Pelhar.

8. Thus, the position now emerges that the places sought by the Applicant were given somebody else. True, the Tribunal in O.A.No.1094/2017 directed the Respondents to consider the representation made by the Applicant as and when there is vacancy but made it clear that the Applicant cannot claim that he needs to be posted at particular place. In other words, there was no such direction of the Tribunal in O.A.No.1094/2017 to post him at particular place. On contrary, the Tribunal has specifically made it clear that the Applicant cannot claim any particular post. As such, it was for the Respondents to consider the representation in accordance to rules and the order passed in O.A.No.1094/2017 does not invest any right in favour of the Applicant to claim the posting at Pelhar or any other particular place.

9. True, the Respondent No.4 was not due for transfer but he was accommodated at Pelhar by order dated 30.05.2019. However, that itself could not invest any right much less legally enforceable right in favour of the Applicant to get posting at Pelhar. Only because the Respondent No.4 was given posting at Pelhar which was sought by the Applicant that does not render transfer of the Respondent No.4 illegal. The Respondent No.1 thought it appropriate to post him at Pelhar being already holding the additional charge of Pelhar.

10. Suffice to say, the challenge to the transfer of Respondent No.4 at Pelhar is devoid of merit.

11. Submission advanced by the learned P.O. that the Applicant made representation for transfer from village Sopara, therefore, his posting at Kaman by order dated 30.05.2019 is legal, is totally misconceived and fallacious. Admittedly, the Applicant did not ask for Kaman. He had asked for other places namely Pelhar, Khaniwade etc. This being the position, admittedly the Applicant being not due

for transfer, he could not have been transferred mid-tenure at the place which he had not sought. The Respondent No.1 had two options either to give posting as per choice of the Applicant if suitable or to reject his representation retaining him at same place i.e. Sopara. However, the Respondent No.1 make out totally different case and transferred the Applicant at totally different place namely Kaman which was not at all sought by the Applicant.

12. No special reasons or administrative requirement is spelt out for posting the Applicant at Kaman. In absence any such special case as contemplated under Section 4(5) of 'Act 2005' such mid-tenure transfer is unsustainable in law. The Applicant had not completed six years, and therefore, if there was any administrative exigency to transfer him mid-tenure at Kaman then it must have been in consonance with Section 4(5) of 'Act 2005' which is as follows :-

“Section 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.”

Admittedly, in present case, there is no compliance of Section 4(5) of 'Act 2005'

13. Thing being the ultimate position, the transfer of the Applicant from Sopara to Kaman by order dated 30.05.2019 deserves to be quashed and set aside and he needs to be reposted at village Sopara, Tal. Vasai.

14. The totality of the aforesaid discussion leads me to sum up that the order dated 30.05.2019 is unsustainable in law and deserves to be quashed. Hence, the following order :-

ORDER

- (A) The Original Application is allowed partly.
- (B) The order dated 30.05.2019 is quashed and set aside.
- (C) The Applicant be reposted at Sopara, Tal. Vasai within a month from today.
- (D) No order as to costs.

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

Place : Mumbai
Date : 07.01.2021
Dictation taken by : VSM
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