

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.924 OF 2019

DIST : PALGHAR

Shri Rajaram P. Navale.)
Aged 52 years, Working as Warden,)
Tribal Girls Government Hostel,)
Mokhada, District : Palghar and R/o.)
A/P Morchundi, Tal. Mokhada,)
District : Palghar.)...**Applicant**

Versus

1. The Additional Commissioner.)
Tribal Development, Thane having)
Office at Vardan Complex, 9th Floor,)
Wagle Estate, Road No.16,)
Thane (W).)

2. The State of Maharashtra.)
Through Principal Secretary,)
Tribal Development Department, having)
Office at Mantralaya, Mumbai – 400 032.)...**Respondents**

Shri A.V. Bandiwadekar, learned Advocate for the Applicant.

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

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

DATE : 15.09.2020

JUDGMENT

1. The Applicant has challenged the transfer order dated 31.05.2019 invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to the O.A. are as follows:-

The Applicant was initially appointed as Primary School Teacher. By order dated 19.07.2014, he was promoted in the cadre of Secondary School Teacher and posted at Government Ashram School, Hirve, Tal. Mokhada, Dist. Thane. Accordingly, the Applicant joined there. Thereafter, the Applicant made an application on 08.09.2014 for his transfer on the post of Warden being equivalent post contending that he is eligible for the transfer on the post of Warden in terms of G.R. dated 03.06.2011 (Page No.17 of Paper Book). Accordingly, the Respondent No.1 – Additional Commissioner, Tribal Development, Thane by order dated 21.10.2014 accepted his request and posted him on the post of Warden, Mokhada, Dist. Palghar on purely temporary basis. The Applicant joined at Modhada. He contends that he is entitled for six years tenure but by impugned order dated 31.05.2019, he was transferred from the post of Warden Mokhada to Government Ashram School, Ghanwal, Tal. Jawhar, Dist. Palghar on the post of Secondary School Teacher. This order is under challenge in the present Original Application.

3. Shri A.V. Bandiwadekar, learned Counsel for the Applicant sought to assail the transfer order on the following grounds:-

(i) The Applicant is entitled for six years tenure, and therefore, the impugned transfer order dated 31.05.2019 is mid-term and mid-tenure and in absence of 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 of 2005 for brevity), it is bad in law.

(ii) Once the Applicant was transferred on equivalent post of Warden by order dated 21.10.2014, he could not be repatriated and transferred in the cadre of Secondary School Teacher as done by impugned transfer order dated 31.05.2019.

4. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents in reference to the contentions raised in Affidavit-in-Reply counters that the Applicant has completed his normal tenure (three years), and therefore, he being due for transfer, the question of applicability of Section 4(5) of 'Act of 2005' does not survive. She further submits that basically the Applicant's transfer in the cadre of Warden was purely temporary which was later revoked by D.P.C. and he was brought back in the cadre of Secondary School Teacher in terms of Minutes of D.P.C. dated 17.12.2018. According to her, it was essential to bring the Applicant back in the cadre of Secondary School Teacher for implementation of Recruitment Rules namely Warden (Male) Group-B (Non-Gazetted) Warden (Female) Group-"B" (Non-Gazetted) of Hostel and Superintendent (Male) Group-"C", Superintendent (Female) Group-"C" of the Ashram School Hostels under the Commissionerate of Tribal Development under the Tribal Development Department (Recruitment) Rules, 2004 (hereinafter referred to as 'Rules of 2004' for brevity). With this submission, she prayed to dismiss the O.A.

5. At the very outset, the foremost question to be answered is whether the Applicant is entitled to six years tenure or three years tenure. As per proviso to Section 3 of 'Act of 2005', the employee from non-secretariat services, in Group 'C' is entitled for two full tenures.

Whereas, in view of Section 3 (1), the normal tenure of All India Service Officers and Group A, B and C shall be of three years.

6. At this juncture, it would be apposite to reproduce Section 3, Section 6 and amendment by 'Amended Act 2007', which are as follows :-

“3.(1) For all India Service Officers and all Groups A, B and C State Government Servants or employees, the normal tenure in a post shall be three years :

Provided that, when such employee is from the non-secretariat services, in Group C, such employee shall be transferred from the post held, on his completion of two full tenures at that office or department, to another office or Department.”

“6. The Government servants specified in column (1) of the table hereunder may be transferred by the Transferring Authority specified against such Government servants in column (2) of the table.

Groups of Government Servants (1)	Competent Transferring Authority (2)
(a) Officers of All India Services, all Officers of State Services in Group “A” having pay-scale of Rs.10,650-15,850 and above.	Chief Minister
(b) All Officers of State Services in Group “A” having pay-scales less than Rs.10,650-15,850 and all Officers in Group “B”.	Minister-in-charge in consultation with Secretaries of the concerned departments.
(c) All employees in Group “C”.	Heads of Departments.
(d) All employees in Group “D”.	Regional Heads of Departments.

7. Whereas following is the amendment in Section 6 of the principal Act by 'Amendment Act 2007'.

“4. In Section 6 of the principal Act, in the TABLE,-

(a) in entry (b), in column (1), for the words “and all Officers” the words “and all Gazetted Officers” shall be substituted;

(b) in entry (c), in column (1), for the words and letter “employees in Group ‘C’”, the words and letters “Non-Gazetted employees in Group ‘B’ and ‘C’” shall be substituted.”

8. Shri A. V. Bandiwadekar, learned Counsel for the Applicant in reference to amendment to ‘Act of 2005’ by Amendment Act 2007 sought to contend that in view of the amendment to Clause ‘C’ of Section 6, the Applicant shall be treated as entitled to six years tenure. Before amendment, competent authority for transfer of Group ‘C’ employees was Head of the Department as per Section 6 of ‘Act of 2005’. As the ‘Act of 2005’ was silent about the competent transferring authority of Group ‘B’ (non-gazetted employee), the amendment was made in 2007 in Section 6, clause ‘c’ and word ‘non-gazetted employee Group ‘B’ is added. Resultantly, for all employees Group ‘B’ non-gazetted and Group ‘C’ employees, Head of the Department shall be competent transferring authority.

9. Here, significant to note that there is no such amendment in Section 3 of ‘Act of 2005’ and it is left as it is, meaning thereby for Group ‘A’, ‘B’ and ‘C’ normal tenure shall be three years. Whereas, as per proviso, only exception is for the employees of non-secretariat services in Group ‘C’ and their normal tenure would be of six years. The legislature in its wisdom did not make any such amendment in Section 3 of ‘Act of 2005’ thereby enhancing the tenure of Group ‘B’ non-gazetted employees as six years. The amendment is restricted to Clause ‘C’ of Table of Section 6 of ‘Act of 2005’. Therefore, in absence of any such specific amendment in Section 3 of ‘Act of 2005’, it cannot be said that tenure of non-gazetted employee of Group ‘B’ has to be treated as six years. The provisions in statutes have to be read as it is and we cannot read something which is not there. Suffice to say, in absence of any such specific amendment to Section 3(1) of ‘Act of 2005’ the tenure of Group ‘B’ non-gazetted employee cannot be

treated as of six years. Therefore, the submission advanced by the learned Counsel for the Applicant that by virtue of amendment to Section 6 years' tenure of Group 'B' non-gazetted employee has to construed as six years' is misconceived and fallacious.

10. Shri A.V. Bandiwadekar, learned Counsel for the Applicant fairly concedes that by virtue of pay scale and Recruitment Rules of 2004, the Applicant falls in the cadre of non-gazetted employee in Group 'B'. Apart, the Recruitment Rules of 2004 also makes it quite clear that the post of Warden is of Group 'B' (non-gazetted). Suffice to say, there is no denying that the Applicant considering his cadre as Secondary School Teacher or Warden is Group 'B' non-gazetted employee. This being the position, for such employee normal tenure is three years only. It is for non-secretariat services in Group 'C' only, the tenure is six years as per proviso to Section 3 of 'Act of 2005'. It is by way of exception for Group 'C' employees for non-secretariat services. Whereas, the Applicant admittedly falls in Group 'B' (non-gazetted employee), and therefore, this normal tenure is three years in accordance to 'Act of 2005'.

11. Shri A.V. Bandiwadekar, learned Counsel made feeble attempt to canvass that department has treated normal tenure of cadre of Warden and Secondary School Teacher as six years in view of Civil Services Board Minutes. True, perusal of Minutes of CSB reveals that at the time of general transfers of 2019, the proposal for transfers of employees in the cadre of Secondary School Teacher as well as Warden was placed before the CSB stating that they have completed six years tenure.

12. Needless to mention that one needs to go by the provisions of 'Act of 2005' and not by the words or assumptions of CSB. It is the provision of law which will prevail and not the assumption of CSB. The CSB assumes that the normal tenure of Secondary School

Teacher and Warden was six years. It is apparently incorrect in view of the provision of 'Act of 2005'.

13. Thus, what culminates from the aforesaid discussion is that the Applicant admittedly falls in the cadre of Group 'B' non-gazetted and his normal tenure was three years. He was posted as Warden by order dated 21.10.2014 at Government Ashram School, Mokhada and had completed more than three years at the time of general transfers of 2019 in which he was transferred to Government Ashram School, Ghanwal, Tal. Jawhar, Dist. Palghar as he has completed normal tenure of three years. The question of applicability of Section 4(5) of 'Act 2005' did not survive.

14. Another issue sought to be raised by the learned Counsel for the Applicant is about repatriation of the Applicant in the cadre of Secondary School Teacher by transfer order dated 31.05.2019. He sought to contend that once the Applicant fulfills the contentions of G.R. dated 03.06.2011, he was entitled for absorption/transfer in the cadre of Warden, and therefore, he could not have been repatriated in the cadre of Secondary School Teacher. He further sought to contend that there was no such communication to the Applicant while repatriating him in the cadre of Secondary School Teacher and on that account also the transfer order dated 31.05.2019 repatriating him in the cadre of Secondary School Teacher is illegal. The submission advanced by him holds no water.

15. True, by order dated 21.10.2014 (Page 16 of P.B.) Additional Commissioner, Tribal Development, Thane absorbed and appointed the Applicant in the cadre of Warden on his request. It is also equally true that the Applicant fulfills the eligibility for the post of Warden in terms of Recruitment Rules of 2004. However, significant to note that there is specific mention in the order dated 21.10.2014 that the Applicant's cadre was changed temporarily and he was given posting at Government Ashram School, Mokhada, Dist. Palghar purely on

temporary basis. The Applicant had accepted said order of temporary posting as Warden without any demur and worked on that post. There is absolutely nothing on record to show that any point of time the Applicant raised any grievance of temporary posting in the cadre of Warden given to him by order dated 31.10.2014.

16. As rightly pointed out by the learned P.O., D.P.C. in its meeting dated 17.12.2018 (page 40 of P.B.) resolved that in view of Recruitment Rules of 2004, the post of Warden (Male) was required to be filled in by promotion from the cadre of Superintendent. Therefore, D.P.C. repatriated the Applicant and three other persons to whom temporary posting of Warden was given and they were brought in their original cadre of Secondary School Teacher. Assuming that department has not communicated the decision of D.P.C. of 17.12.2018 that hardly matters, as the positing of the Applicant in the cadre of Warden by order dated 21.10.2014 was purely on temporary basis. Consequent to Minutes of D.P.C. repatriating the Applicant in the cadre of Secondary School Teacher, the Applicant was transferred by impugned order dated 31.05.2019 since he had completed his normal tenure of three years of Group 'B' non-gazetted employee.

17. The totality of the aforesaid discussion leads me to conclude that challenge to the impugned order is devoid of merit and O.A. deserves to be dismissed.

ORDER

Original Application stands dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 15.09.2020

Dictation taken by :

S.K. Wamanse.