

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.97 OF 2019  
(Subject : Posting)**

**DISTRICT : THANE**

Aman Haridas Chandekar, )  
Add : Sumeru Tower, E-3 Building, )  
Flat No.802, Lokdhara, Kalyan (East) 421 306. )

**..... Applicant**

**Versus**

1. The Commissioner, )  
Tribal Development Commissionerate, )  
Adiwasi Vikas Bhavan, 1<sup>st</sup> floor, )  
Old Agra Road, Gadkari Chowk, )  
Nashik 422 002. )

2. The Additional Commissioner, )  
Tribal Development Commissionerate, )  
Vardan Sankul, 9<sup>th</sup> floor, Opp. MIDC Office, )  
Wagale Estate Road No.16, )  
Thane (W) 400 604 )

3. The Deputy Commissioner, )  
Tribal Development Commissionerate, )  
Vardan Sankul, 9<sup>th</sup> floor, Opp. MIDC Office, )  
Wagale Estate Road No.16, )  
Thane (W) 400 604 )

4. State of Maharashtra, )  
Through Secretary, )  
Tribal Development Department, )  
Mantralaya, Mumbai. )

**.... Respondents**

Shri M.B. Kadam, learned Advocate holding for Shri P.V. Patil, learned Advocate for the Applicant for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

**CORAM** : **SHRI A.P. KURHEKAR, MEMBER (JUDICIAL).**

**DATE** : 05.10.2019.

### **J U D G M E N T**

1. Heard Shri M.B. Kadam, learned Advocate holding for Shri P.V. Patil, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. In the present Original Application, Applicant has initially challenged the impugned order dated 27.06.2019 whereby he was at once relieved by the Deputy Commissioner, Tribal Development Commissionerate, Thane with directions to him to contact Commissioner, Tribal Development, Nashik for further posting.

Facts giving rise to the Original Application are as under :-

3. Applicant was working as Stenographer (Higher Grade) in the office of Respondent No.2 (Additional Commissioner Tribal Development, Commissionerate, Thane). By the order dated 27.06.2018 he was abruptly relieved on the allegation that he is guilty of breach of Rule 3 of the Maharashtra Civil Services (Conduct) Rules, 1979 and therefore immediately relieved and was directed to report to the Commissioner Tribal Development, Nashik. As such, because of habitual absence he seems to have been abruptly relieved by order dated 27.06.2018. Then he made representation on 27.06.2018 requesting Respondent No.2 not to relieve him and allow him to continue on the same post. Thereafter no further consequent order of his

posting was issued and he was left without any posting, despite of representations dated 04.07.2018, 21.07.2018, 21.07.2018, 28.08.2018 and the order of the Government dated 25.09.2018 directing Respondent No.1, Commissioner Tribal Development to look into the matter for posting order of the Applicant. Respondents failed to issue posting order consequent to his relieving order dated 27.06.2018. After waiting for six months, Applicant has filed the present Original Application challenging that he was relieved abruptly without issuing appropriate transfer order in consonance with law.

4. When the matter was taken up for admission having noticed that the Applicant was left without posting for about 6 months this Tribunal has passed interim order for issuing appropriate posting order. Ultimately, Respondent No.1 issued order dated 28.01.2019 thereby posting the Applicant at Pune. Accordingly, he joined there. In view of this subsequent development, the Applicant amended the O.A. and also challenged the posting order dated 28.01.2019.

5. Shri M.B. Kadam, learned Advocate holding for Shri P.V. Patil, learned Advocate for the Applicant vehemently urged that the impugned order dated 27.06.2018 is *ex-facie* illegal as it amount to punishment without holding appropriate Departmental Enquiry and also amount to transfer in contravention of the provisions of Transfer Act 2005. He has further pointed out that the majority of the leave applied for has been already sanctioned by the Department and therefore the reasons of absence shown in the impugned order dated 27.06.2018 is not sustainable in law. He, therefore, prayed to quash the impugned order dated 27.06.2018 as well as order dated 28.01.2019 and for direction to repost the Applicant.

6. Par contra, Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents sought to justify the impugned action contending that the

Applicant was habitually absent from duty and it was noticed by the Department that he was in habit of seeking leave on false ground. Learned C.P.O. for the Respondents further submits that the Department has issued charge-sheet on 28.02.2019 for misconduct i.e. habitual absence on duty which amounts to breach of Rule 3 of Maharashtra Civil Services (Conduct) Rules, 1979.

7. Perusal of impugned order dated 27.06.2018 reveals that the Applicant was relieved abruptly because of frequent / habitual absence on duty and he was asked to contact the Commissioner, Tribal Development, Nashik for further posting. Pertinent to note that simultaneously show cause notice dated 27.06.2018 was also issued to him stating that he is in habit of remaining absence and he was directed to submit the explanation for habitual absence within 24 hours, failing which administrative action will be taken against him. Surprisingly, without waiting for his reply he was simultaneously relieved at once directing him to contact Commissioner Tribal Development, Nashik for further posting orders. This is very strange course of action adopted by the office of Respondent No.2 which is totally unsustainable in law.

8. Indeed by show cause notice dated 27.06.2018 he was asked to submit the explanation for habitual absence within 24 hours and failing which necessary administrative action would follow. However, without waiting for his reply as mentioned in show cause notice, at once and simultaneously he was relieved by order dated 27.06.2018, that too, without giving him any further posting which resulted in situation of relieving the Applicant without posting for the period of 7 months. Despite various representations made by the Applicant, Respondents did not pay any heed and ultimately the Applicant had filed the present O.A. It is only after interim directions given by the Tribunal Respondents realized the mistake of keeping the Applicant without posting for 7 months and then issued posting order dated 28.01.2019 whereby

the Applicant was posted at Pune. As such course of action adopted by the Respondents is high handed and totally unsustainable in law and in contravention of settled principals of law.

9. Ms. S.P. Manchekar, learned C.P.O. for the Respondents sought to contend that the Applicant was in habit of remaining absence frequently and at time on false ground and therefore it hampered the administration of the Department and having noticed it he was relieved by the impugned order dated 27.06.2018. Indeed perusal of reply reveals that the majority of the leave applications have been sanctioned by the Department though he seems to have availed leave frequently on one or other reasons. But the fact remains that except last 4 leave applications, earlier leave applications were already sanctioned as Earned Leave or Medical Leave. As such, the fact remains that except following leaves as mentioned in the show cause notice dated 27.06.2018 all his earlier leaves were already sanctioned.

अ.क्र	अनुपस्थिति कालावधि	एकूण दिवस
१	दि.२०.१.२०१८ ते २३.०१.२०१८	४ दिवस
२	दि.३.४.२०१८ ते १०.४.२०१८	४ दिवस
३	दि.२५.४.२०१८ ते २७.०५.२०१८	३३ दिवस
४	दि.०१.०६.२०१८ ते ०२.०६.२०१८	०२ दिवस
५	दि.४.०६.२०१८ ते ११.०६.२०१८	४ दिवस
६.	दि.१८.०६.२०१८ ते आज अखेर पर्यंत	

10. There is nothing on record to show that at any point of time any warning or memo was given to the Applicant about his frequent absence or tendency to remain absent without sufficient reason. Indeed if the Applicant was in habit of availing leave without valid reasons then Department ought to have issued memo or show cause notice to the Applicant giving warning to mend his ways. However, admittedly no such show cause notice or memo was issued till issuance of relieving order dated 27.06.2018.

11. Apart, even assuming for a moment that the Applicant was in habit of availing leave frequently without valid reasons the impugned action of relieving the Applicant at once is not at all sustainable in law as it amounts to punitive action. It is more so, when the Applicant is kept without posting for seven months and it is only on the intervention of this Tribunal the posting order was issued.

12. In the present situation the Applicant was abruptly relieved and after six months posted has at Pune. This amount to transfer without following due procedure of law. It has trapping of the transfer and it is being done without holding the Departmental Enquiry for alleged mis-conduct, is definitely punitive and not sustainable in law. It is in contravention of basic principles of law and principles of natural justice. Respondents No.1 to 3 seems ignorant about basic tenet of service law.

13. Material to note that though the Department has issued charge-sheet on 28.02.2019 it is not progressing, except appointment of Enquiry Officer. Respondent ought to have ensured expeditious conclusion of Departmental Enquiry but on that count also there is lethargy on the part of the Respondents.

14. For the aforesaid reasons, I have no hesitation to conclude that the impugned action of abruptly relieving the Applicant, without giving any opportunity of hearing and keeping him in abeyance for six months is high handed and punitive action and liable to be quashed. The impugned order dated 27.06.2018 as well as posting order dated 28.01.2019 is liable to be quashed. Applicant is required to be reposted on the post he was relieved from by order dated 27.06.2018. It is expected that Respondents shall expedite the conclusion of D.E. so that the matter is taken to the logical conclusion.

**ORDER**

- (a) Impugned order dated 27.06.2018 and 28.01.2019 are hereby quashed and set aside.
- (b) Applicant be reposted on the post he was relieved from, within a month from today.
- (c) Respondents are further directed to complete the Departmental Enquiry within three months from today in accordance to Rules and shall communicate the decision to the Applicant.

Sd/-

**(A.P. Kurhekar)**  
**Member(J)**

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