

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 258 OF 2020

DISTRICT: - AHMEDNAGAR.

Atul S/o. Pralhad Bhange,
Age-46 years, Occu. : Service as
Awwal Karkoon,
R/o. At Khadka, Post Devgad,
Tq. Newasa, Dist. Ahmednagar.

.. APPLICANT.

V E R S U S

- 1. The State of Maharashtra,**
Through : The Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
- 2. The Divisional Commissioner (Revenue),**
Nashik Revenue Division, Nashik.
- 3. The District Collector,**
Ahmednagar.
- 4. Shri V.M. Dhotre,**
Age: Major, Occ: Service as
Awwal Karkoon,
R/o. C/o. Nagarpalika Branch,
Collector Office,
Ahmednagar.

.. RESPONDENT.

APPEARANCE : Shri Kakasaheb B. Jadhav, learned
Advocate for the applicant.

: Shri V.R. Bhumkar – learned
Presenting Officer for the respondent
Nos. 1 to 3.

: None appears for respondent No. 4.

CORAM : **V.D. DONGRE, MEMBER (J)**
DATE : **11.05.2021**

ORDER

This Original Application has been filed by the applicant to quash and set aside the transfer order dated 10.08.2020 (Annexure "A-1", page-11 of paper book of O.A.) issued by the respondent No. 3, thereby transferring him from the post of Awwal Karkoon, Tahsil Office, Newasa To Awwal Karkoon (Supply), Tashil Office, Shrirampur, District Ahmednagar and to allow him to work on the post of Awwal Karkoon in Tahsil Office, Newasa.

2. Since 8.11.2016 the applicant said to have been working on the post of Awwal Karkoon in Tenancy Department at Newasa. As on the date of the impugned transfer order, the applicant had not completed two tenures at Newasa i.e. six years. Therefore, he was not due for transfer. The respondent No. 3 before that had called options from the employees for effecting general transfers. The applicant submitted his 10 options for transfer as per Government Resolution dated 09.04.2018. The option of Shrirampur was not given by him. But by the impugned

order the applicant came to be transferred at Shrirampur. By another transfer order dated 10.08.2020 (Annexure 'A-2', page-12 of the paper book of O.A.) the respondent No. 4 has been transferred at the place of the applicant.

3. It is the contention of the applicant that respondent No. 3 failed to consider Government Resolution dated 09.04.2018 (Annexure 'A-5', page-15 of paper book of the O.A.) while considering the options given by the applicant for his transfer. That apart, the applicant was not due for transfer being not completed two full tenures i.e. three years each as per the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for sort hereinafter called as "the Transfer Act of 2005") and, therefore, the impugned order is bad in law and is liable to be quashed and set aside. Moreover, the son and daughter of the applicant are schooling at Newasa. Their education will be affected because of the impugned transfer order. In view of this, this Original Application is filed.

4. Affidavit in reply at page No. 37 of paper book of O.A. is filed by Shri Girish Rameshwar Wakhare, Tahsildar (Revenue)

in the office of Collector, Ahmednagar, on behalf of respondent No. 3. Thereby it is stated that usual tenure of the Government servant in terms of Section 3 of the Transfer Act of 2005 is three years and the applicant as a matter of right cannot claim two tenures i.e. six years together. In view of the same, it is denied that the impugned transfer order is bad in law.

5. The applicant has filed affidavit in rejoinder, which is at page-52 of the paper book of the O.A. and has denied the contentions raised in the reply of the respondent No. 3 and reiterated that the impugned order is midterm and mid-tenure transfer and no special reasons are recorded for transferring the applicant before completion of normal tenure of six years and no prior approval is obtained from the next higher authority.

6. Sur-rejoinder is filed on behalf of the respondent No. 3, which is at page-135 of the paper book of O.A. contending that Sections 4 (4) and 4 (5) of the Transfer Act of 2005 are not applicable to the present matter as the transfer of the applicant is general transfer, and not exceptional or midterm transfer.

7. Heard Shri Kakasaheb B. Jadhav, learned Advocate for the applicant and Shri V.R Bhumkar, learned Presenting Officer for the respondent Nos. 1 to 3. Nobody remained present on behalf of private respondent i.e. respondent No. 4.

8. The record would show that notice of this Original Application was duly served upon the respondent No. 4. However, the said respondent No. 4 has not defended himself either by filing affidavit in reply or by advancing any arguments. In view of the same, it is to be irresistibly inferred that he has nothing to say in the matter.

9. The applicant strenuously urged before me that as per proviso 1 of Section 3 of the Transfer Act of 2005, the applicant being the Government servant falling under group 'C' and from the non-secretariat services, his normal period is of two full tenures of three years each i.e. six years together. If the applicant is to be transferred midterm and/or mid-tenure, the authority has to take recourse of Section 4 (4) and 4 (5) of the Transfer Act of 2005. Compliance of the said provisions of Section 4 (4) and 4 (5) of the Transfer Act of 2005 is not reflected in the impugned order of transfer dated

10.08.2020. In view of the same the impugned order of transfer is liable to be quashed and set aside.

10. He further submitted that the impugned order of transfer dated 10.08.2020 is issued by the Resident Deputy Collector, Ahmednagar. He has issued the impugned order of transfer without any authority. It is, however, pertinent to note that the said authority is not joined as one of the respondents. Moreover, perusal of the said impugned order of transfer dated 10.08.2020 would show that the said Resident Deputy Collector has issued the order on behalf of respondent No. 3 – the District Collector, Ahmednagar. Hence, there is no substance in the said submissions made on behalf of the applicant.

11. In order to support his submissions, the learned Advocate for the applicant has placed reliance on the following decisions : -

- (i) Common decision dated 01.09.2017 passed by the learned Member (Judicial) of this Tribunal at Aurangabad Bench in O.A. Nos. 467, 468, 469 & 479 all of 2017;
- (ii) Decision dated 22.12.2020 passed in O.A. No. 457/2020 by the Hon'ble Chairperson of this Tribunal at Principal Bench, Mumbai;

(iii) Decision dated 24.11.2020 passed in O.A. Nos. 352, 387, 436 & 448 all of 2020 by the Hon'ble Chairperson of this Tribunal at Principal Bench, Mumbai;

(iv) Decision dated 19.11.2020 passed in O.A. No. 485/2020 by Hon'ble Member (Judicial) of this Tribunal at Nagpur;

(v) Decision dated 10.02.2021 passed in O.A. No. 433/2020 by Hon'ble Member (Judicial) of this Tribunal at Principal Bench at Mumbai; and

(vi) Common decision dated 17.12.2020 passed in O.A. Nos. 299 & 313 both of 2020 by Hon'ble Member (Judicial) of this Tribunal at Aurangabad Bench.

12. On the other hand, learned Presenting Officer appearing for the respondent Nos. 1 to 3 vehemently opposed the submissions made on behalf of the applicant. He has submitted that plain reading of provisions of Sub-section 1 of Section 3 of the Transfer Act of 2005 would show that the normal tenure of Government servants of Group A, B & C is of three years. According to him, the applicant is falling under the category of Group 'C'. The applicant cannot avail that benefit of first proviso of Section 3 of the Transfer Act of 2005 as a matter of right. In view of the same, according to him, the provisions of Section 4 (4) & 4 (5) of the Transfer Act of 2005 would not come into play. He accordingly, justified the impugned order of transfer.

13. Facts of this case as stated above would show that Section 3 of Transfer Act of 2005 is most relevant and its interpretation and its applicability or inapplicability would be required to be determined. I, therefore, reproduce the said provision of Section 3 & 4 of the Transfer Act of 2005, which are as under: -

“3. Tenure of posting.

(1) For all India Service Officers and all Group 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:

Provided further that, when such employee belongs to secretariat services, such employee shall not be continued in the same post for more than three years and shall not be continued in the same Department for more than two consecutive tenures.

(2) Employees in Group D shall normally not be subjected to fixed tenure. They shall not be transferred out from the station where they are serving except on request when a clear vacancy exists at the station where posting is sought, or on mutual transfer, or when a substantiated complaint of serious nature is received against them.

4. Tenure of transfer.

(1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.

(2) *The competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year.*

(3) *Transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalized by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be:*

Provided that, any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.

(4) *The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May:*

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:-

(i) *to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;*

(ii) *where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority;*

(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 the immediately superior] Transferring Authority mentioned in the table of*

section 6, transfer a Government Servant before completion of his tenure of post.

+ The words "permission of the immediately preceding competent" substituted by Mah. Act 13 of 2007, Sec. 3."

14. In the background of the aforesaid Section 3 of the Transfer Act of 2005, if the facts of this case are considered, it is evident that admittedly, the applicant, who was working on the post of Awwal Karkoon in the Tahsil office at Newasa, District Ahmednagar, is falling in the category of group 'C' and further admittedly it is non-secretariat service post in Group 'C'.

15. It is true that as per Sub-Section 1 of Section 3 of the Transfer Act of 2005, the normal tenure of all the Government servants falling in Group 'A', 'B' & 'C' is of three years. But first proviso of the said section carve out non-secretariat service employee in group 'C' and thereby it is provided that 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.

16. No doubt that the arguments are advanced on behalf of the respondents that the service of the applicant falls under

Sub-section 1 of Section 3 of the Transfer Act of 2005 and normal tenure of the employees of the category mentioned therein is of three years. It is also stated on behalf of the respondents that proviso 1 of the said Sub-Section 1 cannot be invoked by the applicant as a matter of right. However, plain reading of proviso 1 of Section 3 would show that two full tenures of employees falling under the said category is of mandatory nature. In view of the same, the arguments canvassed by the respondents are not acceptable. I, therefore, hold that the applicant is entitled to seek the provision of first proviso of Sub-section 1 of Section 3 of the Transfer Act of 2005.

17. Considering further facts of the case, it is evident that the impugned transfer order is midterm, as well as, mid-tenure in nature. In such circumstances, it was incumbent upon the respondent Nos. 1 to 3 and more particularly respondent No. 3 to invoke the proviso 1 of Section 3 of the Transfer Act of 2005, as they wanted to transfer services of the applicant midterm and mid-tenure and consequently Section 4 (4) & 4 (5) of the said Act. Perusal of the impugned transfer order dated 10.08.2020 pertaining to the applicant would show that there is no compliance of Section 4 (4) and 4

(5) of the Transfer Act of 2005. In these circumstances, all various decisions of the Benches of this Tribunal relied upon by the applicant would be applicable.

18. In view of the discussions as above, I find that the impugned order of transfer of the applicant dated 10.08.2020 is bad in law and is liable to be quashed and set aside. The impugned order does not suggest any exceptional circumstances or special reasons. It also shows that prior approval of the immediate superior transferring authority as mentioned in Section 4 (4) & 4 (5) of the Transfer Act of 2005 is not obtained. The impugned order consequently is totally unsustainable in law and deserves to be quashed and set aside. Hence, the following order: -

ORDER

- (i) The present Original Application is allowed.
- (ii) The impugned transfer order dated 10.08.2020 is hereby quashed and set aside.
- (iii) The applicant be reposted in place of respondent No. 4 within a period of one month from today.

There shall be no order as to costs.

MEMBER (J)

PLACE : AURANGABAD.

DATE : 11.05.2021

O.A.NO.258-2020(SB-Transfer)-HDD-2021