

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 577 OF 2016

DISTRICT :SINDUDURGA

Smt. Jyoti Sanjay Markale,)
Age : 39, Occ.: Govt. Service,)
Address:)
1-A, Pragati Apartment, C-51/19/4,)
CBD, Belapur, Navi Mumbai.)...**Applicant**

VERSUS

1. State of Maharashtra)
Through Secretary,)
Revenue Department,)
Mantralaya, Mumbai – 400 032.)

2. Deputy Director,)
Land Records, Konkan Pradesh,)
DD Building, Old Custom House,)
Fort, Mumbai – 400 023.)

3. Shri Nitin Shivaji Karale,)
Nimtandar,)
Office of Deputy Superintendent,)
Land Records, Panvel.)...**Respondents**

Shri C.T. Chandratre, the learned Advocate for the Applicant.

Shri K. B. Bhise, the learned Presenting Officer for the Respondents no.1 & 2.

Shri D.B. Khaire, the learned Advocate for the Respondent No.3.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 19.01.2017

PER : Shri Rajiv Agarwal, Vice-Chairman

ORDER

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant, and Shri K. B. Bhise, learned Presenting Officer for the Respondents No.1 & 2 and Shri D.B. Khaire, the learned Presenting Officer for the Respondent No.3.

2. This Original Application has been filed by the Applicant challenging the order dated 31.5.2016 transferring one Shri Nitin Shivaji Karale to Panvel, though he was posted on promotion to Alibag, while the Applicant, who is physically handicapped, had requested for posting to Panvel and as per circular dated 15.12.2004, she was eligible to be posted there.

3. Learned Counsel for the Applicant argued that the Applicant is a physically disabled person and it is difficult for her to get into and out of local trains and city buses. Her disability is 60%. The Applicant was posted to Uran on promotion by order dated 21.4.2015. The Applicant resides at Belapur which is 26.7 kms. from Uran. She has been requesting for posting at Panvel, which is 12.4 kms away

from Belapur. Government has issued circular dated 15.12.2004 regarding Government Servant with disabilities. It is specifically ordered that such persons should be given postings near their place of residence. Though the Applicant had made a representation on 15.3.2016 to the Respondents requesting posting at Panvel, her representation was not considering in total disregard to the circular dated 15.12.2004.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant was posted to Uran on promotion by order dated 21.4.2015. The Applicant had made representations for posting her at Panvel. The Respondent No.2 had asked to her to work at Panvel. The Respondent No.2 is the Competent Authority to transfer Class-III employee in general transfers. However, as the Applicant wanted transfer to Pnavel before completion of her tenure at Uran, it was not within his competence to do so. The Respondent No.3 was posted at Panvel considering his personal problems and as it was a case of promotion, the Respondent No.2 could change the posting from Alibag to Panvel. Learned P.O. argued that the Applicant is not eligible for any relief.

5. Learned Advocate Shri D.B. Khaire argued on behalf of the Respondent No.3 that the Applicant was not due for transfer from Uran to Panvel. The Respondent No.3 was posted to Panvel by changing his posting from Alibag, on

promotion, which does not amount to transfer and the Respondent No.2 was fully competent to do so. He argued that there is no merit in this O.A.

6. I find that the Applicant is relying on circular dated 15.12.2004. This circular provides that:-

“ शासकीय सेवेतील अपंग कर्मचा-यांच्या बदल्या प्रशासकीय सोयीनुसार शक्य असल्यास त्यांच्या राहत्या ठिकाणाजवळ कराव्यात.”

It is an admitted fact that the Applicant suffers from 60% disability and is eligible to get benefits as per the aforesaid circular. She is residing at Belapur and on promotion was posted to Uran, which is more than 25 Kms. away from Belapur. The Applicant claims that she faces a lot of difficulties in commuting to Uran. When a vacancy occurred in Panvel, she could easily be accommodated there. I am inclined to accept the contentions of the Applicant in this regard. It appears that the Respondent No.2 has not considered the Government instructions to treat persons with disability with special consideration and totally ignored the provisions of Circular dated 15.12.2004. On the other hand, he had promptly accepted request of the Respondent No.3 to change his posting on promotion from Alibag to Panvel, though the Respondent No.3 was working in Panvel itself before promotion. The claim of the Respondent No.2 that he was competent to change the posting on promotion but was not competent to order mid-tenure transfer may be technically correct, but his actions have resulted in complete

violation of provisions of the Circular dated 15.12.2004. The Applicant was clearly entitled to be posted to Panvel, in terms of the aforesaid Circular. No hardship will be cause to the Applicant, who was already working at Panvel, if he is transferred out. Generally on promotion an employee is posted out.

7. Considering all the facts and circumstances of the case, the Respondent No.1 and 2 are directed to post the Applicant to Panvel, within one month from the date of this order. The order dated 31.5.2016 posting the Respondent No.3 to Panvel is quashed and set aside. This O.A. is allowed accordingly with no order as to costs.

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 19.01.2017

Place : Mumbai

Dictation taken by : SBA

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