

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 411/2016.

Mrs. Sonali Madhukarrao Pullarwar,
Aged about 40 years,
R/o Hudkeshwar Road, Sai Nagar No.2,
Nagpur.

----- **Applicant.**

Versus

The State of Maharashtra,
Through its Secretary,
Revenue Department
Mantralaya, Mumbai

2. The Divisional Commissioner,
Nagpur Division, Civil Lines,
Nagpur.

3. The Collector, Civil Lines,
Nagpur.

4. Shri Sunil V. Salve,
O/o the Divisional Commissioner,
Nagpur Division, Nagpur. ----- **Respondents.**

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1. Shri D.M. Kakani, Advocate for the applicant.
 2. Smt. M.A. Barabde, Presenting Officer for the Respondents 1 to 3.
 3. Shri A.P. Sadavarte, Advocate for R/4.

CORAM : **S.S. Hingne: Member (J)**
DATE : **8th Sept., 2016**

ORDER

With consent of both the parties, the matter is heard and decided finally at the stage of admission itself.

2. The applicant, a Naib Tahsildar has impugned the order dtd. 15/6/2016 (Annexure-A-1, page-11) by which she is transferred from Tahsil Office, Nagpur to Collector Office, Nagpur.

3. Heard Shri D.M. Kakani, Id. Counsel for the applicant, Smt. M.A. Barabde, Id. P.O. for R/1 to 3 and Shri A.P. Sadavarte, Id. Counsel for R/4.

4. According to the applicant, she is transferred to Nagpur from Umrer vide order dtd. 26/3/2015 (Annexure-A-2, page-14). Thus, she has not completed the tenure. The impugned order is issued in June,2016. Thus, it is a mid-term transfer without compliance of the provisions of Section 4 (4) (5) of the Maharashtra Govt. Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.

5. The respondents' case is that the proposal was made and the notes were prepared by the Commissioner Office and after approval the impugned transfer order dtd.15/6/2016 is issued. The notes of the said approval are also made available. In the note-sheet it is observed that some Naib Tahsildars were working as Special Officers with Z.P. on deputation are to be repatriated as the Z.P. is filling up the said posts. Therefore the proposals were called from all the Collectors and considering the same the applicant's transfer is approved on administrative grounds. In the said approval the applicant is transferred.

6. According to the applicant, Sunil V. Salve, R/4 was on deputation but it was not necessary to transfer the her. For that R/4 could have been accommodated elsewhere. The grudge and grievance of the applicant is that R/4 after promotion was transferred to Narkhed on 26/3/2015 but exercising the political pressure, he was transferred to Nagpur. Then again within a short period vide order

dtd. 15/6/2016 he is transferred and to accommodate him the applicant has been transferred.

7. According to the respondents, the Divisional Commissioner is the competent authority to issue the mid-term and mid-tenure transfers and for that reliance is placed on a G.R. dtd. 18/12/2014. This G.R. vests the power to the Collector and Commissioner to effect the general transfers of Naib Tahsildars. This G.R. clearly says that the general transfers are to be done in April/May and on completing tenure, the Collector can issue the order within the District and the Commissioner can issue the orders within the Division. This is not a general transfer order or issued in April/May or on completion of the tenure. Therefore the Divisional Commissioner does not get the right under this G.R. to issue the mid-term and mid-tenure transfer order.

8. In the reply it is stated that the Commissioner is vested with the power now vide G.R. dtd. 23/6/2016 (Annexure-R-1, page-21). By this G.R. the Divisional

Commissioners are vested with the power even to issue the orders mid-term and mid-tenure etc. Earlier these powers were exercised by the Hon'ble Chief Minister. This G.R. is issued on 23/6/2016 whereas the impugned transfer order is issued on 15/6/2016. This G.R. has no retrospective effect. As such the Commissioner has no power under this G.R. dtd. 23/6/2016 to issue the transfer order dtd. 15/6/2016.

9. Viewed from any angle the Revenue Commissioner who has issued the impugned order was not vested with the power to issue the same.

10. The Id. Counsel for the applicant submits that even the transfer from one office to another office without change of place is termed as the transfer. In support of his submissions, he relied on **Sanjeev Bhagwanarao Kokil vs State of Maharashtra [2013 (1) All M.R.40]** cited in O.A. No.218/2016 decided on 16/6/2016 by this Tribunal in **Pratiksha Mahadeorao Damke –vs. State of Maharashtra and two others .** The said view is settled one.

11. The impugned order was issued on 15/6/2016. On 24/6/2016, the Tribunal has directed to maintain the status-quo. However, the R/4 has filed the reply (page-27) that he has taken the charge on 2/7/2016 vide Annexure-R-6, page 41. The Id. P.O. submits that however the applicant was already relieved on 21/6/2016 (Annexure-R-4, page-39). It is well settled that the joining and relieving has no bearing to decide the legality and validity of transfer order by the Court.

12. It is also urged by the applicant that the R/4 is transferred on his request vide order dtd. 15/6/2016 (Annexure-R4-5, page 40) . R/4 was transferred to Nagpur on 26/3/2015 and he was not due for transfer but he is transferred on request. This is reflected in the order dtd. 15/6/2016. It supports the stand of the applicant that to accommodate R/4, the applicant is transferred.

13. The R/4's case is that he has several problems. His son has serious physical problems and he is taking treatment. He has to look after his old parents therefore he

has not been transferred out of Nagpur. The applicant submits that the R/4 has already served at Nagpur, therefore, he cannot make the capital of personal difficulties and the same can be ventilated by the Department which is the competent authority because the entire data of personal problems of the employees can be available before the authorities .

14. In this view of the matter, it is manifest that the impugned transfer order of the applicant is not legal and valid, which renders the transfer of R/4 dtd. 15/6/2016 ineffective. Consequently the O.A. is allowed. The transfer of the applicant dtd. 15/6/2016 is quashed and thereby the transfer of R/4 dtd. 15/6/2016 has become ineffective. It is therefore directed that the applicant be given posting on her original post from which she was transferred. The order be complied within a week.

(S.S. Hingne)
Member (J)

Skt.