

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.649/2016.

Sanjay Yadavrao Polewar,
Aged about 52 years,
Occ:- Service,
R/o At and Post Patanbori, Teh. Kelapur,
District Yavatmal.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-440 032.
- 2) The Collector,
Yavatmal.

Respondents

ORIGINAL APPLICATION NO.650/2016.

Satish Wasudeo Raut,
Aged about 54 years,
Occ:- Service,
R/o 24, Om Society, Wadgaon Road,
Yavatmal.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-440 032.
- 2) The Collector,
Yavatmal.

Respondents

ORIGINAL APPLICATION NO.651/2016.

Pramod Govindrao Gulhane,
Aged about 46 years,
Occ:- Service,
R/o Suyog Nagar, Behind Ekvira Hostel, Lohara,
Tq. & Dist. Yavatmal.

Applicant**-Versus-**

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-440 032.
- 2) The Collector,
Yavatmal.

Respondents

ORIGINAL APPLICATION NO.652/2016.

Gajanan Baburao Parate,
Aged about 46 years,
Occ:- Service,
R/o Yadav Nagar, Babu Patil Area, Umarkhed,
Distt. Yavatmal.

Applicant**-Versus-**

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-440 032.
- 2) The Collector,
Yavatmal.

Respondents

ORIGINAL APPLICATION NO.653/2016.

Vijay Bhimrao Shinde,
Aged about 56 years,
Occ:- Service,
R/o Mahasul Colony, Gokul Road, Pusad Road,
Umardhed, Distt. Yavatmal.

Applicant**-Versus-**

1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-440 032.

2) The Collector,
Yavatmal.

Respondents

Shri Anand Deshpande, the Ld. Counsel for the applicants.
Smt. S.V. Kolhe, learned P.O. for the respondents.

Coram:- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT

(Delivered on this 10th day of April 2017.)

Heard Shri Anand Deshpande, the learned counsel
for the applicants and Smt. S.V. Kolhe, the learned P.O. for the
respondents.

2. All these applications are being disposed of by this
common judgment.

3. Vide separate impugned order dated 14.5.2016, the applicants in these O.As have been transferred from the places as under :-

Sr. No.	O.A. No	Name of the applicant.	Place of transfer		Post
			From	To	
1	649/2016	Sanjay Yadavrao Polewar.	Kelapur	to Yavatmal	Circle Officer.
2	650/2016	Satish Wasudeo Raut	Kapra	to Kelapur	Circle Officer.
3	651/2016	Pramod Govindrao Gulhane.	Sawargadh	to Ralegaon	Circle Officer.
4	652/2016	Gajanan Baburao Parate.	Vidul	to Yavatmal	Circle Officer
5	653/2016	Vijay Bhimrao Shinde	Umarkhed	to Yavatmal.	Circle Officer

4. According to the applicants, these transfer orders are illegal in the sense that they have been issued against the provisions of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as, "Transfer Act"). The applicants have not completed their normal tenure and, therefore, the applicants have claimed that the said orders be quashed and set aside and they be retained at their original office prior to transfer.

5. The applicants were initially appointed as Junior Clerk with the establishment of respondent No.2. Vide separate order of promotion, they have been promoted as Senior Clerk. The impugned

orders of transfer have been issued in total non-compliance of the Transfer Act and, therefore, the applicants have challenged their orders of transfer by filing O.A. Nos. 341 to 346 of 2016 respectively. A common order came to be passed in the said O.As by this Tribunal on 1.8.2016 and this Tribunal was pleased to direct the respondent authorities as under:-

The learned counsel for the applicants submits that some of the applicants have already made the representations and some of the applicants want to make the representations. The Collector, Yavatmal (R.2) to decide the said representations within two weeks from the date of receipt of this order.

On submission made by the learned counsel for the applicants, the O.As are disposed of in the light of the above directions with a liberty to approach before the Tribunal if they are adversely affected.+

6. It is submitted that in view of aforesaid directions, the respondent Collector, Yavatmal has refused to consider the applicants' claim and observed that the impugned orders of transfer are legal and issued as per Government policy. Being aggrieved by the said communication, the applicants have again challenged their impugned orders of transfer dated 24.5.2016.

7. The respondent No.2 Collector, Yavatmal has filed his reply affidavit in all these O.As and justified the transfers of respective applicants. It is stated that the respondent No.2 has acted legally and in accordance with the G.R. in deputing the applicants to the post of Circle Officer / Aval Karkun for enabling them to get the experience of the post of Circle Officer / Aval Karkun. It is stated that as per G.R. dated 21.11.1995, the Divisional Commissioner, Amravati Division, Amravati has issued directions vide communication dated 16.12.2013 to all Collectors in the Division for making arrangement to fill the posts of Sr. Clerk and the Circle Officer and in compliance with the said order, vide communication dated 31.5.2014, the applicants were posted as Circle Officers / Sr. Clerks for a period of two years and after getting experience in the respective posts for two years, they were taken back on the original posts of Sr. Clerk. The said deputation is as per Govt. policy and the provisions of Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 are not applicable to the cases of the applicants. There was a need to repatriate the applicants on their original cadre as per the availability of the posts in original cadre.

8. It seems that as per the directions of this Tribunal in O.A. Nos. 341 to 346 of 2016, the respondent No.2 has considered the

representations filed by various applicants and after giving thoughtful consideration to the claim of the applicants, respondent No.2 came to the conclusion that the repatriation of the applicants in their respective posts was necessary and, therefore, representations were rejected.

9. I have perused the communication dated 17.12.2016 whereby the respondent No.2 Collector, Yavatmal has rejected the representation of the applicants. The said rejection of the representation is self explanatory and, therefore, it needs to be reproduced as under:-

परिचित मा. महाराष्ट्र शासक अथवा अधीक्षक नागपूर यांचे संदर्भात आदेश क्र मांक ३ व क्र मांक ११ यास अनुसरून कळविण्यात येते की महसूल विभागातील अवल कारकून संवगाळून मंडळ अधिकारी संवगाळ व मंडळ अधिकारी संवगाळून अवल कारकून संवगाळ कायदात कमळायाच्या यांचे मूल संवगाळ पदास्थापना देण्याचे अनुषंगाने सावकास बदला २०१६ चे वेळी ७ अवल कारकून संवगाळ कायदात मंडळ अधिकारी यांना यांचे मूल संवगाळ तसेच २२ मंडळ अधिकारी संवगाळ कायदात अवल कारकून यांना या कायद्याचे आदेश क्र मांक २ नुसार पदास्थापना देण्यात आलेले आहे.

सदर कालावधीत १६ अवल कारकून व १४ मंडळ अधिकारी संवगाळी पदे रूत होती. या अनुषंगाने संबंधित अवल कारकून यांना द. १६.५.२०१६ रोजी महसूल भवन जि. का. यवतमाळ येथे समुपदेशनाकरिता उपस्थित राहणेबाबत या कायद्याचे प. द. ११.५.२०१६ नुसार कळविण्यात आले होते.

या अनुषंगाने मंडळ अधिकारी संवगाळ कायदात अवल कारकून यांना व अवल कारकून संवगाळ मंडळ अधिकारी यांना रूत पदाची स्थिती विचारात घेऊन यांचे विधानुसार समुपदेशना दरम्यान पदास्थापना देण्यात आलेले आहे. तसेच काही कमळायांना रूत पदानुसार पदास्थापना देण्यात आलेले आहे.

करता महसूल विभागातील अवल कारकून संवगासन मंडळ अधिकार संवगास कायदा व मंडळ अधिकार संवगासन अवल कारकून संवगास कमखायाला यांचे मुळ संवगास देण्याचे अनुषंगाने सावक बदला २०१६ चे वेळी या कायद्यामाफस करण्यात आलेल कायदाह योय असयामुळे वषयांकृत ंकरणातील संबधत अवल कारकुनांनी यांचे बदलाबाबत सादर केलेले लेखी अजखारज करण्यात येत आहे.”

10. I have also perused the letter dated 16th December 2013 issued by the Divisional Commissioner, Amravati Division, Amravati to all Collector under his jurisdiction wherein it has been clearly stated that it is necessary that the Senior Clerk shall be alternatively posted in the post of Aval Karkun / Circle Officer and intention behind such posting is to gain experience of different posts. It is clear that the applicants were posted for a period of two years only and after completion of the said period of two years, they have been re-posted in their original posts. If the action is taken in order to comply the provisions of policy decision taken by the Government, I do not find any illegality in it. Since repatriation to the original post is not a transfer, provisions of the Transfer Act, 2005 are not applicable and, therefore, I absolutely find no reason to interfere in the policy decision of the Government and also by respondent No.2 who acted upon such decision.

11. The learned counsel for the applicants placed reliance on the judgment of the Honble Apex Court in case of **Umapati Choudhary V/s State of Bihar and another reported in (1999) 4 SCC 659**. The facts of the said case are different and not analogous to the present set of facts and, therefore, the said judgment is not applicable in the present case. In view thereof, I proceed to pass the following order:-

ORDER

The O.A. Nos. 649, 650, 651, 652 & 653 of 2016
are dismissed with no order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)

pdg