

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NOS.620 & 621 OF 2016.

DIST.JALGAON.

(1) ORIGINAL APPLICATION NO.620/2016.

Shri. Balkrishna s/o Ratan Sonawane,
Age 54 years, Occu. Circle Officer,
R/o Shivajinagar, Juna Malegaon Road,
Chalisgaon, Tq. Chalisgaon, Dist.Jalgaon.

-- **APPLICANT**

VERSUS

1. The Divisional Commissioner (Revenue),
Nasik Division, Nasik, District Nasik.
2. The District Collector,
(Revenue) Jalgaon.

-- **RESPONDENTS.**

DIST.JALGAON.

(2) ORIGINAL APPLICATION NO.621/2016.

Shri. Anil s/o Yeshwant Kalokhe,
Age 54 years, Occu. Circle Officer,
R/o Shivajinagar, Juna Malegaon Road,
Chalisgaon, Tq. Chalisgaon, Dist.Jalgaon.

-- **APPLICANT**

VERSUS

1. The Divisional Commissioner (Revenue),
Nasik Division, Nasik, District Nasik.
2. The District Collector,
(Revenue) Jalgaon.

-- **RESPONDENTS.**

APPEARANCE : Shri V. B. Wagh, learned Advocate for the
Applicants in both the matters.

: Shri M.P. Gude, learned P.O. for respondents in
OA No.620/16 and Shri M.S. Mahajan, learned
Chief Presenting Officer for the Respondents in OA
No.621/2016.

CORAM : **Hon'ble Shri JD Kulkarni, Member (J).**

DATE : 09.01.2017.

COMMON JUDGMENT.

(Delivered on this 9th day of January, 2017)

1. The applicant in OA No.620/2016 Balkrishna Ratan Sonawane is transferred from the post of Circle Officer, Khadki (Bk.), tq. Chalisgaon, Dist. Jalgaon to Kurad, Tq. Pachora, Dist. Jalgaon. Whereas the applicant in OA No.621/2016 Anil Yeshwant Kalokhe has been transferred from the post of Circle Officer Bahal, Tq. Chalisgaon, Dist. Jalgaon to Pimpalgaon (Hareshwar), Tq. Pachora, Dist. Jalgaon. Both the applicants have been transferred by the

Collector, Jalgaon vide impugned order dated 24.5.2016. The said impugned order has been challenged by filing both Original Applications by the respective applicants.

2. The applicants are claiming that the said impugned order of transfer be quashed and set aside and the Respondents no.1 & 2 be directed to post the applicant Balkrishna Sonawane at Bahal Tahsil office at Chalisgaon and applicant Anil Kalokhe in the vacant post in Tahsil office, Chalisgaon under the S.D.O. Chalisgaon.

3. According to the applicant Balkrishna Sonawane, options were called from him for transfer. His mother is handicapped and he requested posting in Chalisgaon Taluka on the vacant post. He has also filed representation on 26.6.2016 and stated that he was not due for transfer since he has not completed six years tenure. It is stated that one post at Bahal is vacant and therefore, he requested for transfer at Bahal in Chalisgaon Taluka.

4. According to applicant Anil Kalokhe his father is suffering from old age ailment and his wife was suffering from certain diseases and therefore, requested that he may be transferred in Chalisgaon

Taluka. He has also given options accordingly. He got the knowledge that, post of one Shri S.G. Jadhav was vacant due to retirement and therefore, he requested that he may be transferred there.

5. According to both the applicants, their request for transfer have not been considered though they have given option and they have not completed two tenures of three years each.

6. In both the original applications the reply affidavit has been filed on behalf of Respondents no.1 & 2 and the same has been verified by one Manohar Anil Kulkarni Tahsildar Revenue in the office of Collector, Jalgaon. It is the case of the respondents that, the applicants have completed their three year tenure and were due for transfer. Though they have obtained for particular station that itself will not mean that they can not be given posting at any other place. It is stated that, number of Officers were transferred and considering the administrative difficulties the applicants have been transferred at their respective places.

7. In both the original applications the respective applicant has filed rejoinder and stated that number of persons were adjusted. It is stated that, vide order dated 24.5.2016 the option given by 12

Officers out of 14 have been considered, but the options given by the applicants only are not considered.

8. Heard Shri V.B. Wagh, learned Advocate for the Applicants and M.S. Mahajan, C.P.O. & Shri M.P. Gude, learned Presenting Officer for the Respondents in respective matters. I have perused the application, affidavits, reply affidavits, rejoinder affidavits and various documents placed on record.

9. The only point to be considered is “Whether the impugned order of transfer dated 24.5.2016 in respect of applicants Balkrishna and Anil is legal and proper ?

10. The learned Advocate for the applicants submits that the respective applicants have not completed their tenure of 6 years at their respective places and therefore, they were not in fact due for transfer. The said submission however, can not be accepted for the simple reason that the applicants are an employees of non-secretariat services in Group C and it is the discretion of the employer whether to continue them for two tenures of 3 years each. It is clear that, the applicants have previously filed O.A.

No.511/2016 and 512/2016 respectively before this Tribunal and vide order dated 28.6.2016 passed in those original applications, the said applications were disposed of as withdrawn. The applicants have filed representations and the respondent authorities were directed to take decision of those representations on its own merits in accordance with law without being influenced by the order. It is clear from the documents on record that, the representations filed by both the applicants were considered by the competent authority i.e. competent Board and in the said meeting the request of the respective applicants were considered and the same was rejected. Copy of the said minutes of the meeting are placed on record by the applicants.

11. The learned P.O. submits that, even though the options are called from employees for considering their posts of transfer that itself will not mean that options given by each employee is to be accepted.

12. From the rejoinder affidavit it seems that, out of 14 Officers who have given options of a particular post, options of 12 Officers were considered and they were transferred on the post of option. However, these two applicants were not considered. It itself shows

that, the respondents have tried their level best to give posting on options to almost all the employees except the applicants. There are no mala fides on the part of respondents for not considering the options given by the applicants. In such circumstances, it can not be said that, the respondents have acted against the interest of the applicants intentionally. On the contrary, out of 14 employees, 12 employees were transferred on the posts for which the respective Officers have given option. The applicant can not claim that, they shall be posted on the post for which they have obtained as of right.

13. The learned P. O. has invited my attention to the judgment delivered by this Tribunal in OA No.420/2016 in case of Shivajio Pandurang Nikale Vs. State of Maharashtra and others on 29.11.2016 and also the judgment delivered by Hon'ble Bombay High Court in Santoshkumar Nandlal Dalal Vs. State of Maharashtra and others, reported in 2016 (1) Mh.L.J. page 45. The Hon'ble Bombay High Court has observed that, the transfer is an incident of service and the Court/Tribunal is not expected to act as appellate authority in transfer matters, if there is nothing to infer favouritism or mala fides. In para no.12 of the said judgment the Hon'ble High Court has observed as under :-

“12. The combined reading of provisions of sections 3(1) and 4(1) shows that the normal tenure in a post of a Government servant shall be 3 years. The first proviso to section 3(1) of the Act shows that an employee of Group C from non secretariat service may be retained at that office or department for two full tenures (one full tenure consists of 3 years). The proviso does not give right to the employee to get two full tenures at that office or department but it only allows the employer, competent authority, to continue the Group C, non secretariat employee to continue at the office or department for six years. The second proviso shows that if the employee of Group C is from secretariat service he can not be continued in the same post for more than 3 years and he shall not be continued in the same department for more than two consecutive tenures. The plain reading of section 3(1) and both the provisos shows that Group C employee who is not from secretariat service can be kept at that office or department for six years but if he belongs to secretariat service he cannot be kept in the same post for more than three years though he can be kept in the same department for two consecutive tenures. These restrictions are in public interests. These provisions on one hand, show that the State, competent authority can use these provisions for keeping one employee at the same station for two full tenures but the State is not expected to continue him after completion of two full tenures. Thus, the provision of section 3(1) with the two provisions, does not show that any right is conferred on Group C employee from non secretariat service to work at one station for six years.”

14. Considering all these aspects I do not find any merits in the both the original applications. Hence, the order.

ORDER.

Both O. A. Nos. 620 & 621 of 2016 are dismissed with no order as to costs.

MEMBER (J)

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