

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO.957 OF 2024

Prashant Suryawanshi,)	
Presently working as Competent Authority)	
No.7, SRA (Deputy Collector Cadre),)	
R/o. 204, Tower-1, Auris Serenity,)	
Kachpada, Malad (W), Mumbai 64)	...Applicant

Versus

1)	The State of Maharashtra,)	
	Through its Additional Chief Secretary)	
	Revenue and Forest Department,)	
	Madam Cama Road, Hutatma Rajguru)	
	Chowk, M.S. Mantralaya, Mumbai 32)	
2)	The State of Maharashtra,)	
	Through its Additional Chief Secretary)	
	Housing Department, Madam Cama)	
	Road, Hutatma Rajguru Chowk,)	
	M.S. Mantralaya, Mumbai 32)	
3)	Smt. Sheetal Deshmukh,)	
	Officer on Special Duty,)	
	Urban Land Ceiling, Mumbai)	...Respondents

Mr. A.V. Sakolkar, learned Counsel for the Applicant.
Mr. A.J. Chougule, learned Presenting Officer for the Respondents
Ms. Punam Mahajan, learned Counsel for Respondent No.3.

CORAM : **Justice Mridula Bhatkar, Chairperson**

DATE : **03.10.2024**

J U D G M E N T

1. Heard finally by consent of the parties at interim stage. Admit.
2. None is present from the office of Revenue Department and Housing Department though matter is fixed peremptorily for hearing today.

3. Applicant prays that Respondent be directed to quash and set aside the impugned transfer order dated 03.08.2024 transferring the applicant from the present post of Competent Authority No.7, Slum Rehabilitation Authority (SRA) to the post of Deputy Collector (Land Acquisition) Metro Centre-3, Panvel to the extent of the Applicant. Further Respondents be directed to allow the applicant to work on the present post of Competent Authority No.7, Slum Rehabilitation Authority (SRA).

4. Learned Counsel for the Applicant has submitted that by order dated 01.11.2021 applicant was transferred from the post of Deputy Collector (Land Acquisition), Metro Centre-3, Thane to Competent Authority No.7, SRA. However, the said order was implemented on 01.02.2022. Learned Counsel Mr. Sakolkar has pointed out G.R. dated 22.04.2022, Annexure - R1. The transfer order is challenged on the following grounds :

(i) Applicant's transfer order is in violation of Sections 4(4)(ii) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties, Act, 2005 (hereinafter referred as 'ROTA 2005' for brevity) as the applicant has completed the tenure of two years and six month on the present post.

(ii) There is neither recommendation of the name of the applicant in the CSB meeting for transferring the applicant nor sanction of Hon'ble Chief Minister is obtained.

(iii) Applicant's daughter is studying in 12th Standard.

5. It is submitted that the applicant was not given posting from 02.11.2021 and by order dated 31.01.2022 he was posted on deputation, hence his period to start work and posting is to be counted

from 01.02.2022. Thus, the period of three months i.e., November, 2021, December, 2021 and January, 2022 is to be treated as compulsorily waiting period. In support of his submissions learned Counsel Mr. Sakolkar has relied on the order dated 04.09.2024 passed by this Tribunal in O.A.Nos.1050, 1051, 1057, 1063/2024, A.G. Jagtap & Ors. Vs. The State of Maharashtra & Ors.

6. Learned P.O. for the Respondents has submitted that though the applicant was relieved from Revenue Department on 01.11.2021 and immediately on the next date i.e. on 02.11.2021 the Applicant joined the office of Housing Department. However, the Housing Department did not give him posting.

7. Learned Counsel for the Respondent No.3 has pointed out the guidelines dated 31.07.2024 issued for the ensuing General Elections of Legislative Assembly, 2024 in Maharashtra. She has submitted that the applicant has completed the requisite period of three years in District Mumbai therefore he was liable to be transferred as per these guidelines. Learned Counsel Ms. Mahajan has submitted that Respondent No.3 is without posting. In support of her submissions reliance is placed on the order dated 06.09.2024 passed by this Tribunal in O.A.No.1046/2024, A.B. Gholap Versus The State of Maharashtra & Ors.

8. The issue is short whether the date of the transfer is to be considered from the date when transfer order was issued or the date when the Government servant is given posting. Admitted facts are as follows:

(i) The Applicant was transferred by order dated 01.11.2021 from the post of Deputy Collector (Land Acquisition), Metro Centre-3, Thane to the post of Competent Authority No.7, SRA. He has given his application for joining on 02.11.2021.

(ii) The applicant was not given posting in SRA and by order dated 01.02.2022 he was appointed as Deputy Collector, (Land Acquisition) on deputation for one year.

(iii) By order dated 22.04.2022 the period from 02.11.2021 to 31.01.2022 was considered as compulsory waiting period under.

Sub Rule (f) (i) of Rule 9 of the Maharashtra Civil Services (Pay) Rules, 1981 which reads as below :

“(f) the period for which a Government servant is required to wait compulsorily until receipt of his posting orders in the cases mentioned below :

(i) whose orders of transfer are held in abeyance, cancelled or modified while in transit, or”:

(iv) For the purpose of clarity the extract of transfer order dated 01.11.2021 is reproduced as follows :

क्र	अधिकाऱ्याचे नाव	कार्यरत पदस्थापना	बदलीनंतरची पदस्थापना
(१)	(२)	(३)	(४)
१	श्री. प्रशांत सुर्यवंशी	उप जिल्हाधिकारी (भूसंपादन) मेट्रो सेंटर-३, ठाणे	सक्षम प्राधिकारी-७, झोपडपट्टी पुनर्वसन प्राधिकरण, मुंबई या पदावर

Thus it shows that the applicant was given the posting of Competent Authority-7, SRA Mumbai where he was shown as transferred by order dated 01.11.2021. His transfer order was not kept in abeyance, but for want of completion of the procedure it was in the pipeline. The applicant though was relieved on 02.11.2021 and he made application to the authority of the Housing Department to let him join the post, he could not join and

was kept without posting compulsorily for this administrative reason.

(v) Admittedly, it was not the fault of the applicant. It is to be noted that there was no change in the posting mentioned in the order of transfer dated 02.11.2021 and 01.02.2022.

9. The Applicant remained without posting during the period from 02.11.2021 to 31.01.2022 which is treated as compulsory waiting period but considered as duty period. Thus, the applicant has completed the requisite period of three years.

10. In the order dated 04.09.2024 passed in O.A.Nos.1050, 1051, 1057, 1063/2024 the applicants had joined before 30.11.2021. However, they were not given posting before 1.12.2021 and so it was held that the applicants have not completed three years and were not eligible as per the directions issued by the Election Commission. Thus though the order dated 04.09.2024 of this Tribunal apparently looks helpful in the case of the applicant; however, on certain other points it is distinguishable. Such as in the present matter as pointed out by learned Counsel Ms. Mahajan the guideline No.II of Clause 3 of the Election Commission dated 31.07.2024 was not considered at the relevant time. She has pointed out the order dated 06.09.2024 passed in other O.A.No.1046/2024 is relied by her. In the said clause of the guidelines dated 31.07.2024 a phrase used is 'completed three years in that district' is used, so importance is given while counting three years of service. It is to be noted that the order of counting the period of three years in O.A.No.1050/2024 & Ors. was passed on 04.09.2024 and in O.A.No.1046/2024 was passed on 06.09.2024. Thus, the term

‘completed three years in the district’ or on that post, is considered as a yardstick while interpreting sub clause (ii) of Clause 3 of the guidelines dated 31.07.2024 was argued specifically and was considered later and not earlier order as the said point was not raised. Thus, this Tribunal had taken a view that it is only the period that is to be counted from the date of the posting, but not from the date of the transfer. It is to be noted that in the present case the applicant was given specific posting i.e., Competent Authority No.7, SRA and the transfer order and the same was given to the applicant on deputation. The cadre of Deputy Collector is always designated as Competent Authority No.7, SRA in the transfer order. Thus there is no change in the posting which was made in the order dated 01.11.2021. Therefore, though the applicant was actually given posting on 01.02.2022 he took the charge of the said post on 02.02.2022. It is the fact that he was transferred on 01.11.2021 and therefore he has put in three years in Mumbai. Thus, the applicant was transferred under the guidelines dated 31.07.2024 of the Election Commission of India. Hence, there is no necessity to comply with the provisions of Rule 4 of ROTA 2005 by giving specific reasons and circumstances. No case is made out for grant of interim relief.

11. Hence O.A. stands dismissed.

12. At this point, learned Counsel Mr. Sakolkar requested that by order dated 06.08.2024 in O.A.No.957/2024, status quo was granted and it be continued for a week.

13. Learned Counsel Ms. Mahajan opposes on the ground that Respondent No.3 is without posting.

14. Considered submissions. In view of the ensuing code of conduct and orders passed for implementing the directions of Election Commission, I am of the view that the order cannot be stayed and the applicant is directed to join his transferred post of Deputy Collector (Land Acquisition) Metro Centre-3, Panvel and Respondent no.3 to join the transferred post of Competent Authority No.7, SRA immediately as Respondent No.3 is without any posting. The request of learned Counsel Mr. Sakolkar stands rejected.

Sd/-

(Mridula Bhatkar, J.)
Chairperson

prk