

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

COMMON ORDER IN O.A. NOS. 933 AND 953 BOTH OF 2019

(1) ORIGINAL APPLICATION NO. 933 OF 2019

DIST. : NANDURBAR

Taher Ali Majhar Ali Syyed,)
Age. 49 years, Occu. : Service)
Circle Officer, Wasphali, Tq. Akkalkuva,))
District : Nandurbar.) .. **APPLICANT**

V E R S U S

1. State of Maharashtra,)
Through : Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai - 32.)
2. The Collector, Nandurbar.).. **RESPONDENTS**

A N D

(2) ORIGINAL APPLICATION NO. 953 OF 2019

DIST. : NANDURBAR

Varsha Vijay Malaskar,)
Age. 27 years, Occu. : Service)
Clerk in the office of Sub- divisional Officer,))
Nandurbar, Tahsil Office, Navapur,))
District : Nandurbar.) .. **APPLICANT**

V E R S U S

1. State of Maharashtra,)
Through : Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai - 32.)
2. The Collector, Nandurbar.).. **RESPONDENTS**

APPEARANCE :- Shri S.D. Dhongde, learned Advocate for
the applicant in O.A. no. 933/2019.
: Shri S.G. Kulkarni, learned Advocate for the
applicant in O.A. no. 953/2019
: Shri M.P. Gude, learned Presenting Officer
for the respondents in both the cases.

CORAM : Hon'ble Shri B.P. Patil, Acting Chairman

RESERVED ON : 3rd December, 2019

PRONOUNCED ON : 4th December, 2019

ORDER

1. Facts and the issues involved in these Original Applications are similar and identical therefore I have decided these Original Applications by the common order.

2. Applicant Shri Taher Ali Majhar Ali Syed in O.A. No. 933/2019 was appointed as a Clerk with the respondents. On 9.2.1996 he was transferred to Tahsil Office, Nandurbar. Thereafter on 1.6.2003 he was transferred to Tahsil Office, Talida. He was transferred to Nandurbar on 11.8.2006. On 1.6.2010 he was promoted and posted at Navapur. On 1.6.2016 he was again transferred as a Circle Officer at Wadphali, Tq. Akkalkuva. By the order dtd. 31.5.2019 he was transferred at Tahsil Office, Shahada on his request as his parents are residing there and they are suffering from illness and nobody was there to take care of them. Accordingly he joined in the office of Tahsildar, Shahada on

4.6.2019. He had not completed his normal tenure at Shahada and he was not due for transfer, but the respondent no. 2 abruptly issued the impugned order dtd. 16.8.2019 and cancelled his earlier transfer order transferring him to Shahada and reposted him at Wadaphali, Tq. Akkalkuva. Accordingly he joined at Wadaphali, Akkalkuva on 30.9.2019. It is his contention that the impugned order issued by the respondent no. 2 is in contravention of the G.Rs. and the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short Transfer Act, 2005). His parents are suffering from paralysis, kidney etc. and therefore he has been transferred to Shahada on his request. But the respondent no. 2 illegally cancelled the earlier transfer order and reposted him at Wadaphali, Tq. Akkalkuva.

3. Applicant Smt. Varsha Vijay Malaskar in O.A. no. 953/2019 was initially appointed as a Peon in Group-D category in the year 2013. Thereafter she was promoted as a Clerk in the year 2017 and posted at Navapur. She was working there since 6.1.2017. Her husband is not residing with her. Therefore she has to maintain her old aged grandmother, mother and also her younger brother who is taking education. It is her contention that her family members are residing at Nandurbar. Therefore she made request to the respondent no. 2 to transfer her at Nandurbar. The

respondent no. 2 was pleased to consider her request and issued the order dtd. 31.5.2019 and transferred her from Navapur to Nandurbar. Accordingly she joined at Nandurbar. But the respondent no. 2 again issued the impugned order dtd. 16.8.2019 and cancelled earlier transfer order dtd. 31.5.2019 and reposted her at Navapur. It is her contention that the impugned order is against the provisions of the Transfer Act, 2005. She was not due for transfer as she has not completed her normal tenure of posting at Nandurbar. The distance between Navapur and Nandurbar is about 80 kilometers and she has to travel for more than two hours. It is her contention that because of her reposting at Navapur it is difficult for her to take care of her old aged parents. It is her contention that the impugned order is arbitrary and illegal.

4. It is contention of the applicants that the respondent no. 2 has issued the impugned order dtd. 16.8.2019 illegally and in violation of the provisions of the Transfer Act, 2005. It is issued mala-fide, arbitrarily and therefore they prayed to quash the impugned orders by allowing the O.As.

5. The respondent no. 2 filed affidavit in reply in both the matters and resisted the contentions of the applicants. He has not disputed the fact regarding appointment of the applicants and

their postings at different places in Nandurbar district. He has admitted the fact that both the applicants have been transferred on their request by the order dtd. 31.5.2019 by his predecessor in his office and accordingly they joined the new postings. It is his contention that earlier transfers of the applicants were not in accordance with the provisions of the Transfer Act, 2005 and the G.R. dtd. 9.4.2018. Both the applicants had not completed their normal tenure of posting at their earlier place of postings i.e. at Wadaphali, Tq. Akkalkuva and Navapur respectively. They were not due for transfers but they have been illegally transferred at Shahada and Nandurbar by the order dtd. 31.5.2019. Therefore he cancelled the earlier transfer order of the applicants and reposted them at their earlier places of posting by issuing the order dtd. 16.8.2019. It is his contention that there is no illegality in the impugned orders and therefore he prayed to reject the O.As.

6. I have heard the arguments advanced by Shri S.D. Dhongde, learned Advocate for the applicant in O.A. no. 933/2019, Shri S.G. Kulkarni, learned Advocate for the applicant in O.A. no. 953/2019 and Shri M.P. Gude, learned Presenting Officer for the respondents in both the cases. I have also gone through the documents placed on record.

7. Admittedly the applicant Shri Taher Ali Majhar Ali Syyed in O.A. No. 933/2019 joined the service as a Clerk with the

respondents. On 9.2.1996 he was transferred to Tahsil Office, Nandurbar. Thereafter on 1.6.2003 he was transferred to Tahsil Office, Talida. Thereafter he was transferred to Nandurbar on 11.8.2006. On 1.6.2010 he was promoted and posted at Navapur. Thereafter on 1.6.2016 he was again transferred as a Circle Officer at Wadphali, Tq. Akkalkuva. Admittedly at the time of general transfer of the year 2019 he filed representations and requested the respondents to transfer him at Shahada due to family problems. He has been transferred at Shahada by the order dtd. 31.5.2019 and accordingly he joined the said posting. By the impugned order dtd. 16.8.2019 he has been again transferred from Shahada to Wadphali, Tq. Akkalkuva as the respondent no. 2 cancelled the earlier transfer order dtd. 31.5.2019.

8. Admittedly the applicant Smt. Varsha Vijay Malaskar in O.A. no. 953/2019 was initially appointed as a Peon in Group-D category in the year 2013. Thereafter she was promoted as a Clerk by the respondents vide order dtd. 6.1.2017 and posted at Navapur only. She rendered total six years service at Navapur. Her husband is not residing with her and therefore she has to maintain her old aged grandmother, mother and also her younger brother who is taking education. As the family members of the applicant Smt. Varsha Vijay Malaskar are residing at Nandurbar

she requested to the respondent no. 2 to transfer her at Nandurbar. The respondent no. 2 considered her request and passed the order dtd. 31.5.2019 transferring her from Navapur to Nandurbar. Accordingly, she joined on the said post at Nandurbar. But the respondent no. 2 issued the order dtd. 16.8.2019 cancelling the earlier transfer order dtd. 31.5.2019 and reposted her at Navapur.

9. Learned Advocates for the applicants have submitted that the applicants have been transferred at Shahada and Nandurbar respectively by the order dtd. 31.5.2019 issued by the respondent no. 2 on their request considering their family problems. Accordingly both the applicants joined their posting at Shahada and Nandurbar respectively. They have submitted that the applicants have not completed their normal tenure of posting at Shahada and Nandurbar respectively. They served for about less than three months at their new places of posting, but the respondent no. 2 issued the impugned order dtd. 16.8.2019 and cancelled the earlier transfer orders dtd. 31.5.2019 and posted the applicants at Wadaphali, Tq. Akkalkuva and Navapur respectively.

10. Learned Advocates for the applicants have submitted that the impugned orders dtd. 16.8.2019 have been issued by the respondent no. 2 without following the provisions of the Transfer

Act, 2005. The proposal regarding the said transfers has not been placed before the Civil Services Board and he issued the impugned orders dtd. 16.8.2019 illegally without recommendations of the Civil Services Board. They have submitted that the respondent no. 2 issued the orders posing himself as a higher / appellate authority and cancelled the earlier orders dtd. 31.5.2019 issued by his predecessor in his office. The impugned orders are arbitrary and illegal and therefore they prayed to quash the same by allowing the O.As.

11. Learned Presenting Officer has submitted that both the applicants had not completed their normal tenure of posting at Wadaphali, Tq. Akkalkuva and Navapur respectively. But the predecessor-in office of the respondent no. 2 issued the orders dtd. 31.5.2019 in violation of the provisions of the Transfer Act, 2005 and the G.R. dtd. 9.4.2018. The respondent no. 2 noticed the said facts and therefore he corrected the mistake committed by his predecessor-in office and issued the impugned order dtd. 16.8.2019 cancelling the earlier transfer orders dtd. 31.5.2019 and reposted the applicants at their earlier places of postings i.e. at Wadaphali, Tq. Akkalkuva and Navapur respectively. There is no illegality in the impugned orders and therefore he supported the impugned orders.

12. On going through the record it reveals that both the applicants submitted their representations before the respondent no. 2, who is the competent transferring authority before the general transfers of 2019 and requested to transfer them from Wadaphali, Tq. Akkalkuva and Navapur to Shahada and Nandurbar respectively due to their family problems. The predecessor of the respondent no. 2, who was the competent transferring authority, placed their applications before the Civil Services Board and after recommendation of the Civil Services Board he issued the transfer orders of the applicants dtd. 31.5.2019 and thereby transferred them to Shahada and Nandurbar respectively. The said orders dtd. 31.5.2019 issued by the predecessor-in office of the respondent no. 2 were in accordance with the provisions of the Transfer Act, 2005. Those orders were implemented and the respective applicants joined their new places of postings and started discharging their duties. The respondent no. 2 abruptly issued the orders dtd. 16.8.2019 cancelling the earlier transfer orders dtd. 31.5.2019 and retransferred the applicants to Wadaphali, Tq. Akkalkuva and Navapur respectively. The reasons recorded by the respondent no. 2 while passing the impugned orders dtd. 16.8.2019 are that the provisions of the Transfer Act, 2005 and the G.R. dtd. 9.4.2019 were not followed by his predecessor-in office and therefore he

cancelled the earlier transfer orders dtd. 31.5.2019. It reveals that the respondent no. 2 has taken the decision of cancelling the earlier orders dtd. 31.5.2019 posing himself as a higher or appellate authority of his predecessor-in office. In fact the respondent no. 2 has no authority to cancel the earlier transfer orders issued by his predecessor-in office who is competent transferring authority. Not only this but the respondent no. 2 had not placed the matter related to impugned transfer before the Civil Services Board, which is mandatory. The respondent no. 2 arbitrarily and mala-fide cancelled the transfer orders dtd. 31.5.2019 of the applicants and reposted them at earlier places of their postings without recording the just grounds. No doubt, the respondent no. 2, being competent transferring authority, is empowered to transfer the employees working under him, but the respondent no. 2 has to exercise the said powers by following the provisions of the Transfer Act, 2005. The impugned orders dtd. 16.8.2019 are midterm and mid tenure transfer orders of the applicants. No exceptional circumstances have been made out while making the transfers of the applicants. No reasons have been recorded in that regard. Moreover, prior approval of higher / next competent authority had been obtained to the said transfers as required under sec. 4(4) and 4(5) of the Transfer Act, 2005. The respondent no. 2 exceeded the powers given under the

provisions of the Transfer Act, 2005. Therefore, action on the part of the respondent no. 2 cancelling the earlier transfer orders dtd. 31.5.2019, which were issued by the competent authority by following the due process and the provisions of the Transfer Act, 2005, are illegal, arbitrary and mala-fide. Therefore, the impugned orders dtd. 16.8.2019 require to be quashed by allowing the O.As.

13. In view of the discussion in foregoing paragraphs the O.A. no. 933/2019 and 953/2019 are allowed. The impugned orders dtd. 16.8.2019 cancelling earlier transfer orders dtd. 31.5.2019 of the applicants and posting them at Wadphali, Tq. Akkalkuva and Navapur respectively are hereby quashed and set aside. The respondent no. 2 is directed to repost the applicants at their earlier places of posting i.e. at Shahada and Nandurbar respectively as per the orders dtd. 31.5.2019, immediately. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 4th December, 2019