

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 118/2019 (S.B.)**

Shri Sandip S/o Madhukar Mahajan,
Aged about 53 years, Occ. Service,
R/o Manisha Building, Mangilal Plots,
Camp Road, Amravati, District Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
1st floor, Mantralaya, Hutatma Chowk,
Mumbai-400 032.
- 2) The Divisional Commissioner,
Camp Road, Amravati,
District Amravati.
- 3) The Collector,
Amravati, Tq. & Dist. Amravati.

Respondents.

Shri A.P. Sadavarte, Advocate for the applicant.

Shri A.M. Ghogre, P.O. for respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 15th July, 2019.

Date of Pronouncement of Judgment : 18th July, 2019.

JUDGMENT

(Delivered on this 18th day of July, 2019)

Heard Shri A.P. Sadavarte, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The applicant is challenging transfer order dated 20/02/2019 by which the applicant is transferred from Amravati and posted as Deputy District Election Officer, Washim. The facts in brief are as under –

3. The applicant joined the service in the year 1990 as Naib Tahsildar and posted at Karanja, District Washim (then District Akola). The applicant was promoted as Tahsildar in the year 1997. In September, 2008 the applicant was promoted as Deputy Collector and posted as Land Acquisition Office, Washim, then the applicant was transferred to various places and ultimately the applicant was transferred to Amravati on a post Deputy Collector, Employment Guarantee Scheme vide order dated 29/9/2018.

4. It is grievance of the applicant that vide order dated 12/2/2019 Shri Anil Khandagale, Deputy Collector, Land Acquisition Officer, Akola was transferred to Washim as Deputy District Election Officer, but that transfer order was cancelled and thereafter vide order dated 20/2/2019 the applicant was transferred as Deputy District Election Officer, Washim.

5. The applicant is challenging the impugned transfer order for the reason that the applicant's wife is suffering from Cancer. The applicant has old mother and his daughter was pregnant at the relevant time. It is also submitted that as per policy of the Election Commission of India the Government servant should not be posted at a place where he has served for a considerable long period. It is submitted that the applicant was serving at Amravati as Deputy Collector, Employment Guarantee Scheme and he was not connected with the Election programme and consequently there was no reason to transfer him to Washim. It is submission of the applicant that he was posted at Washim for a considerable period, therefore, the impugned order is in violation of law. It is submitted that there was no administrative exigency for transferring him to Washim before completion of the normal tenure at Amravati and therefore the impugned order is in violation of Section 4 (4) & (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short "Transfers Act,2005"). On the basis of the above grounds it is submitted that the impugned order dated 20/2/2019 be quashed and set aside.

6. The respondent no.2 has filed the reply at page no.32 and the respondent no.1 filed reply at page no.38. The respondent no.3

has filed affidavit which is at page no.53. The respondents have resisted the application on the ground that the applicant was transferred before completion of the normal tenure, because, it was administrative need. It is submitted that in view of the forthcoming Lok Sabha Election letters were received by the Government of Maharashtra and in pursuance of the letters received from the Election Commission of India, it was duty of the respondent no.1 to make necessary arrangement to fill the post of the Officers for conducting the Lok Sabha Election in time. The respondents have stated that vide order dated 12/2/2019 Shri Anil Khandagale, Dy. Collector, Land Acquisition, Akola was posted as Dy. District Election Officer, Washim. Shri Anil Khandagale made representation for cancellation of his transfer, because, he had family difficulties. The case of Shri Anil Khandagale was placed before the Civil Services Board and it was recommended by the Civil Services Board to cancel transfer of Shri Anil Khandagale to Washim. It is contended that the name of the applicant was at Sr.No.18 in the proposal before the Civil Services Board and there was urgency to fill up the post of the Dy. District Election Officer, Washim, consequently the applicant was transferred. It is denied that there was no administrative exigency for the transfer and only with intention and to show favour to Shri Anil Khandagale, the applicant was transferred.

7. It is contention of the applicant that there is no violation of the instructions issued by the Election Commission of India while transferring the applicant. It is submitted that there is no substance in the ground of illness of the wife raised by the applicant, because, the applicant's wife is taking medical treatment of the Doctors from Pune. On the basis of this submission the respondents have contended that the application is devoid of merit and it be dismissed.

8. I have perused the transfer orders and the directions issued by the Election Commission of India. In the transfer order dated 20/2/2019 there is a reference of the letters received from the Election Commission of India on 16/1/2019, 7/2/2019 and 9/2/2019. In the transfer order dated 20/2/2019, it is specifically mentioned that as it was necessary to fill the post of the Officers who were connected with the election process, the transfer order was issued.

9. It is pertinent to note that the applicant was posted at Yavatmal before his transfer to Amravati and at Yavatmal the applicant was Dy. District Election Officer. Thus, it seems that the applicant had discharged the work in the election process and he was well acquainted with the election process. Initially the applicant was not transferred, but Shri Anil Khandagale was transferred to Washim as Dy. District Election Officer. The representation of Shri Anil Khandagale was considered, it was placed before the Civil Services

Board and with consent of the Civil Services Board, transfer of Shri Anil Khandagale was cancelled. It appears from the record that the Transferring Authority was not prejudiced against the applicant or having strained relations with the applicant. Similarly there is nothing on record to infer that there was any reason to show undue favour to Shri Anil Khandagale.

10. So far as contention of the applicant that he was transferred before completion of the normal tenure is concerned, after reading transfer order dated 20/2/2019 it is crystal clear that the Government of Maharashtra had no alternative, but on priority it was duty of the Government of Maharashtra to fill all the posts of the Officers for completion of the election process. Under these circumstances, apparently there is no substance in the contention that there was no administrative exigency and the transfer order is in violation of the Section 4 (4) & (5) of the Transfers Act, 2005. The legal position is very much settled that the transfer is an essential incidence of service and the provisions of the Transfers Act, 2005 are regulatory and not prohibitory in their application. The provisions under Section 4 of the Transfers Act contemplates vesting of discretion in the authority to make an exception to the normal tenure of three years of posting, therefore, unless malafides are shown the

Tribunal cannot interfere in the exercise of discretion by the Transferring Authority.

11. In the present case after reading the entire application and after perusing the documents it is not possible to infer that there was any reason available to the Transferring Authority to show undue favour to Shri Anil Khandagale. Consequently, I do not see any merit in the submission of the applicant that his transfer is in violation of the Section 4 (4) & (5) of the Transfers Act,2005.

12. The learned counsel for the applicant has relied upon the instructions issued by the Election Commission of India in letter dated 16/1/2019. In para-3, it is mentioned as under –

*“(3) Hence, the Commissioner has decided that **no officer connected directly with elections shall be allowed to continue in the present district of posting** –*

(i) if she/he is posted in her/his home district.

*(ii) if she/he has completed three years in that district during last **four (4)** years or would be completing 3 years on or before 31st May,2019”.*

13. After reading Para 3 (ii) it seems that when the Officer has completed three years in the District during last four years ending before 31/5/2019, then he should not be posted at such a Station. In the present case it is nowhere shown by the applicant that he was posted in Washim District during last four years before 31/5/2019. On

the contrary, it seems that the applicant worked at Washim lastly in the year,2011. In view of this, it is not possible to accept that the Government of Maharashtra has violated the instructions in letter dated 16/1/2019 written by the Election Commission of India.

14. The result of the above discussion is that the transfer of the applicant is not in violation of law and also it is not actuated by malice, therefore, I do not see any merit in this application. Hence, the following order –

ORDER

The O.A. stands dismissed. No order as to costs.

Dated :- 18/07/2019.

(A.D. Karanjkar)
Member (J).

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 18/07/2019.

and pronounced on

Uploaded on : 18/07/2019.