

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 163/2019 (S.B.)
WITH CIVIL APPLICATION NO.85/2019

Dr. Shradhar N. Bedarkar,
Assistant Commissioner,
Aged about 47 yrs.,
Maharashtra State Veterinary Council, Nagpur,
Having his residence at plot no.78,
Vatsalaya, Hudkeshwar Road, Sanmarg Nagar, Nagpur-34.

Applicant.

Versus

- 1) State of Maharashtra,
through its Deputy Secretary,
Ministry of Agriculture, Animal Husbandry
Dairy Development and Fisheries Department
Having its office at Mantralaya, Mumbai.
- 2) State of Maharashtra,
through its Principal Secretary
Ministry of Agriculture, Animal Husbandry
Dairy Development and Fisheries Department,
Having its office at Mantralaya, Mumbai.
- 3) State of Maharashtra,
through its Chief Secretary
its office at Mantralaya, Mumbai.
- 4) Maharashtra State Veterinary Council,
through its Registrar having its office at Udyog
Bhavan, Civil Lines, Nagpur.

Respondents.

S/Shri N.B. Rathod, Barun Kumar, N.T. Gwalwansh, Advs. for the applicant.

Shri A.M. Ghogre, P.O. for respondent nos. 1 to 3.

Shri G.K. Urade, Advocate for respondent no.4.

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

Date of Reserving for Judgment : 30th April, 2019

Date of Pronouncement of Judgment : 8th July, 2019

JUDGMENT

(Delivered on this 8th day of July,2019)

Heard Shri N.B.Rathod, learned counsel for the applicant and Shri A.M. Ghogre, leaned P.O. for respondent nos. 1 to 3. None for respondent no.4.

2. This O.A. is filed to quash the transfer order dated 27/2/2019 passed by the respondent no.1, thereby transferring the applicant to Tiroda, District Gondia.

3. The impugned order is attacked mainly on the ground that the transfer order was issued before expiry of the normal tenure, as it is mid-term transfer without complying with the provisions under Sections 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"). The second submission is that the impugned transfer order is colourable and malafide exercise of power.

4. The respondents have justified their action. It is contention of the respondents that in view of the contemplated departmental inquiry and for conducting fair inquiry, decision was taken by the Competent Authority to transfer the applicant.

5. After perusing the record, it appears that vide order dated 31/5/2017 the applicant was transferred from Chandrapur to Nagpur. At Nagpur the applicant was posted as Assistant Commissioner, Live Stock Development and Animal Husbandary Council, Nagpur. It is contended that on 28/12/2018 the applicant received show cause notice issued by the Principal Secretary, Government of Maharashtra. It is submitted that he discharged his official duty as per the rules in fair manner, but without any reason false complaints were lodged against the applicant, and consequently the applicant is transferred though there was no reason or need or administrative exigency for the same. The learned counsel for the applicant has invited my attention to Annex-A-6 the order of transfer dated 27/2/2019. Vide this order the applicant was transferred to Tiroda, District Gondia for administrative reasons on the vacant post. It is submitted that the impugned order is illegal on ground that reasons are not mentioned in this order and there was no administrative exigency for the transfer.

6. In the reply the learned P.O. submitted that the complaints were received regarding working of the applicant at the Veterinary Council, Nagpur, the applicant without any authority, proof and without seeking permission of higher authorities and following the procedure, initiated action under Indian Veterinary Council Act and issued directions to lodge FIR against the private Veterinary Practitioners. It is submitted that before transferring the applicant the proposal was submitted before the Competent Authority and after seeking approval of the next Higher Authority, the applicant is transferred.

7. My attention is invited to G.R. dated 15/6/2018. As per this G.R. to transfer a Government servant in Pay Scale Rs.15600-39100 with Grade Pay Rs. 5400/- the transferring authority was the Secretary/Principal Secretary/Additional Chief Secretary and the next Higher Authority was the Minister of the concerned Department. In the present matter it appears that the case of the applicant was placed before the Competent Authority, the Competent Authority discussed the matter and thereafter matter was kept before the Civil Services Board. It appears that the Note Sheet was placed for transferring the applicant on administrative ground and in the Note Sheet it was specifically mentioned that though there was no reasonable evidence to register Crime against Smt Ishita Lal, action was taken by the

applicant and for this purpose it was recommended to transfer the applicant. It was also alleged that due to action of the applicant, Maharashtra Veterinary Council was defend and therefore it was decided to take action against the applicant. It seems that the Note Sheet was approved by the Principal Secretary and thereafter it was placed before the Hon'ble concerned Minister who gave approval for transferring the applicant.

8. It is submission of the learned counsel for the applicant that work of the applicant was noteworthy and he was not involved any serious misconduct, therefore, the transfer was unwarranted. After reading the show cause notice dated 28/12/2018 it appears that the applicant was not permitted by the Maharashtra State Veterinary Council to initiate any criminal action and in absence of such permission directions were given by the applicant to lodge the FIR. The second contention in the notice was that one complaint was lodged by Dr. Kasturi Bhadsawale and the applicant talked with Dr. Kasturi Bhadsawale in insulting language and mentally tortured her. The third contention was that the office of the applicant without following the due procedure, cancelled the registration of Dr. Dilip Sonwane and Dr. Apurva Gujrati and it was done without any authority as per the law. It was further alleged that the cancellation of

registration was set aside and their names were again entered. It was also contended in the show cause notice that office of the applicant issued direction to the District Live Stock Development, Deputy Commissioner, Pune to lodge FIR against Dr. Dilip Sonwane and Dr. Apurva Gujrati and this action was taken without any authority. No doubt the applicant has replied the show cause notice dated 28/12/2018 by his reply dated 2/1/2019. It seems that the respondent no.1 was not satisfied after reading the explanation by the applicant and consequently decision was taken to transfer the applicant from Nagpur on vacant post at Tiroda, District Gondia.

9. On perusal of the Transfers Act, 2005 as per the Section 4 (4) & (5) the Competent Authority, is empowered to transfer a Government servant before completion of the normal tenure, after seeking approval from the next Higher Authority, when administrative exigency arises. After perusing the Note Sheet, it seems that this material was placed before the next Higher Authority and after considering all circumstances, decision was taken by the Minister to transfer the applicant. It seems that on 16/02/2019 the concerned Minister gave approval for transfer after considering the material. In view of this material on record it is not possible to accept that

the impugned order of transfer is apparently without following the procedure under Section 4 of the Transfers Act,2005.

10. The learned counsel for the applicant has placed reliance on the Judgment in case of **Sanjay Tulshiram Shinde Vs. Maharashtra State Electricity Transmission Company Ltd.**, Writ Petition (L) No. 3056/2017, decided on 24/11/2017. In matter before the Hon'ble High Court the reasons for the transfer were supplied by way of affidavit and additional affidavit, therefore, it was held the reasons were after thought. In the present case it seems that the Note Sheet was prepared on 1/2/2019 it was referred to Civil Services. Similarly in the Note Sheet all the facts were mentioned and it was approved by the Minister on 16/2/2019 and thereafter the impugned transfer order was issued. In view of these facts, it is not possible to say that the transfer order is in violation of law.

11. The learned counsel for the applicant has submitted about the remarks of the applicant in his C.Rs. and it is also attempted to say that the applicant is innocent, he did not commit any violation of law and he acted fairly. In this regard, I would like to point out that at this juncture it is not possible to examine whether misconduct was committed by the applicant or not. It is for the Disciplinary Authority to take a decision as disciplinary action is proposed against the applicant. It is submission of the applicant

that in past he served at Chandrapur in naxalite area and therefore his transfer to Tiroda is in violation of law. In this regard, I would like to point out that the Department was compelled to transfer the applicant due to administrative exigencies as post was vacant at Tiroda, District. Gondia, therefore, the applicant is transferred to Tiroda, District Gondia. In view of this discussion, I do not see any merit in this application. Hence, the following order –

ORDER

The O.A. and the C.A. stand dismissed with no order as to costs.

Dated :- 08/07/2019.

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