

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 294 OF 2017

(S.B.)

Mahesh Manikrao Deshpande,
Aged about 52 years,
Occupation – Service as Deputy Director,
R/o Ambagade, Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Principal Secretary,
Department of Skill Development & Entrepreneurship,
Mantralaya, Mumbai-32.
- 2) The Commissioner,
Skill Development & Entrepreneurship Department,
(M.S.), Kokan Bhavan (Extension), 3rd Floor,
Navi Mumbai.
- 3) Sunil Rambhau Kalbhande,
Aged Major, Occ. - Service,
O/o Deputy Director, Skill Development & Entrepreneurship,
Nagpur Division, Nagpur.

Respondents

Shri S.N.Gaikwad, the learned counsel for the applicant.

Shri A.M.Khadatkar, the learned P.O. for respondent Nos. 1 & 2.

Shri A.P.Tathod, the learned counsel for respondent no. 3.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 29th day of November, 2017)

Heard Shri S.N.Gaikwad, the learned counsel for the applicant, Shri A.M.Khadatkar, the learned P.O. for respondent nos. 1 and 2 and Shri A.P.Tathod, the learned counsel for respondent no. 3.

2. The applicant was initially appointed on the post of Assistant Director of Employment and Self Employment (Department of Skill Development and Entrepreneurship) and thereafter he was promoted to the post of Deputy Director of Skill Development and Entrepreneurship. On 08/01/2009, he was posted at Pune on promotion.

3. - Vide order dated 23/06/2015, respondent no. 1 transferred the applicant from Mumbai to Amravati as Deputy Director of Skill Development and Entrepreneurship, Amravati. The applicant was not due for transfer. But all of sudden, vide order dated 31/05/2017, the applicant has been transferred from Amravati to Nagpur. Even though it is mentioned that respondent no. 1 has followed the provisions of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharging of Official Duties Act, 2005 (hereinafter referred to as, "Transfer Act, 2005") and has complied with the provisions of Section 4(4) & 4 (5) of the Transfer Act, 2005, no valid and special reasons are assigned for transferring the applicant. It seems that

respondent no. 3 has been transferred in place of the applicant on his request and the purpose of impugned order of transfer seems to accommodate respondent no. 3 only. The transfer order of the applicant at Amravati is, therefore, illegal, invalid, arbitrary, harsh and unreasonable and has been issued with malafide intention and against the provisions of the Transfer Act, 2005. The applicant has, therefore, prayed that the impugned order of his transfer dated 31/05/2017 (Annexure,A-2) issued by respondent no. 1, Principal Secretary, Department of Skill Development and Entrepreneurship, Mantralaya, Mumbai be quashed and set aside.

4. Respondent nos. 1 and 2 have filed affidavit in reply and justified the impugned order passed by respondent no. 1. It is admitted that the applicant has not completed his tenure at Amravati. It is stated that the application for transfer to Amravati by respondent no. 3 was considered, considering the personal difficulties of respondent no. 3. It is stated that there were number of complaints against the applicant while he was working at Amravati in respect of improper implementation of the scheme called, "Rojgar Melava" and news was also published in daily newspaper Lokmat regarding financial misappropriation and, therefore, the Hon'ble Minister has taken cognizance of the news and had written a letter to the Secretary, Department of Skill Development and

Entrepreneurship, Mantralaya, Mumbai to take appropriate action against the applicant for misappropriation of funds. The competent authority also appointed the Commissioner, Department of Skill Development and Entrepreneurship, Mantralaya, Mumbai for conducting preliminary enquiry and submitting the report as regards allegations against the applicant. The order of applicant's transfer has been issued in the interest of administration and it is stated that the approval of the concerned Hon'ble Minister as well as the Hon'ble Chief Minister has been taken for applicant's transfer to Nagpur. The respondents have also placed on record various documents regarding enquiry to be conducted against the applicant.

5. - The applicant has filed rejoinder, denying allegations levelled against him. It is stated that if the applicant is being transferred on the basis of complaint against him and hence it is punitive order.

6. Section 4 of the Transfer Act, 2005 states that any Government servant shall not ordinarily be transferred unless he has completed his tenure of posting as provided in Section 3 of the Transfer Act, 2005. Sub-section (4) of Section 4 of the Transfer Act, 2005 states that, the transfer of a Government servant shall ordinarily be made once in a year in the month of April or May. However, proviso to that section as well as sub-section (5) of Section 4 of the Transfer Act empowers the

competent authority to transfer any employee at any time for the reasons stated in the said provision. The said relevant provisions are as under:-

“4. Tenure of transfer.

(1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.

(2)

(3)

(4) Transfer of a Government servant so essential be made only once in a year in the month of April or May :
Provided that the transfer may be made in time in the year in the circumstance specified below viz. --

i) to newly created post or to post become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave.

ii) Where competent authority satisfies that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with prior approval of the next higher authority.

(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of the immediately superior Transferring Authority mentioned in the table of section 6, transfer a Govt. servant before completion of his tenure of post.”

7. The learned P.O. has invited my attention to the reply affidavit in which it has been mentioned that the applicant was claiming transfer as Pune on request and respondent No.3 was claiming transfer at Amravati in place of the applicant. Applicant's case for transfer was recommended to the competent authority. But the competent authority thought it not proper to transfer the applicant at Pune, but to

transfer him at Amravati. From the minutes of the meeting placed on record, it seems that the Hon'ble Minister of Skill Development and Entrepreneurship has taken cognizance of the news published in daily newspaper, "Lokmat" as regards misappropriation committed by the applicant and not only that he directed the Principal Secretary, Department of Skill Development and Entrepreneurship, Mantralaya, Mumbai to appoint some officer of the cadre of Deputy Director for making enquiry as regards alleged misappropriation. From the perusal of the minutes of the meeting, it seem that the Hon'ble Minister himself recommended enquiry against the applicant. The relevant recommendation of the Hon'ble Minister as regards allegations published in the daily newspaper Lokmat are as under:-

शुद्ध शैक्षणिक विकास, रोजगार व उद्योजकता, अमरावती विभागीय मुख्यालयाच्या वतीने मे-२०१६ मध्ये अमरावती येथे पार पडलेल्या महारोजगार मेळाव्यातील हशोब जुळत नसण्याबाबत दैनिक लोकमत या वतमानपत्रात छापून आलेल्या बातमीसंदर्भात चौकशी करणेसाठी उपसंचालक दजाळा अधिकार्यांची नेमणूक करून दि. १५.४.२०१७ पर्यंत केलेल्या कायद्याह्या अहवाल या कायद्यास अवगत करावा.

-संभाजी पाटिल जलंगेकर, मंत्री"

8. The Hon'ble Minister himself has written in his own handwriting that the applicant shall be transferred at Amravati as under:-

खालील बाबींसह विभागाचा प्रस्ताव मान्य करण्यात येत आहे.

श्री एस.आर.काळबांडे, कौ.रो. व उ.विभागीय मुख्यालय, नागपूर येथून कौ.रो. व उ. विभागीय मुख्यालय, अमरावती येथे बदलीनंतर पदस्थापना देण्यात यावी. श्री. म.मा.देशपांडे, कौ.रो. व उ. विभागीय मुख्यालय, अमरावती येथून कौ.रो. व उ. विभागीय मुख्यालय, नागपूर येथे बदलीनंतर पदस्थापना देण्यात यावी. श्री. अ.भी.पवार, उपसंचालक, औरंगाबाद याना संचालनालय, कोकण भवन, येथील अतिरिक्त कार्यभार देण्यात यावा.

9. It seems that the said recommendation has been accepted by the Hon'ble Chief Minister and accordingly the applicant has been transferred to Amravati.

10. Alongwith the reply affidavit, the learned P.O. also placed on record the order passed by the Govt. of Maharashtra on 13/06/2016 from which, it seems that in the departmental enquiry initiated against the applicant, the applicant was found guilty of various charges alleged against him while he was working at Amravati and not only that his annual increment was withheld for three years for such misconduct. It seems that the Hon'ble Minister might have considered the antecedents of the applicant and allegations against the applicant and, therefore, thought it proper to transfer the applicant at Amravati and he has accordingly recommended the applicant's transfer at Amravati. In such circumstances, it cannot be said that the applicant was transferred with malicious intention. There is nothing on record to show that the competent authority has favoured arbitrarily to respondent no. 3 so as to disturb the applicant from Amravati. In any case, transfer of the applicant cannot be

said to be punitive, merely because the Hon'ble Minister thought it proper to take cognizance of the complaint against the applicant which was published in daily newspaper Lokmat and consequently thought it proper to direct the Principal Secretary of the Department to appoint enquiry officer and then to transfer the applicant to Nagpur.

11. The applicant has miserably failed to prove any malafides on the part of the respondent authorities, particularly the Hon'ble Minister. Transfer seems to have been carried out in the interest of administration. As seen from the facts and circumstances placed on record, though it is not specifically mentioned in the minutes of the meeting that it was necessary to transfer the applicant in the interest of administration, in any case, this is not a fit case to interfere in the discretion exercised by the competent authority to transfer the applicant from Amravati to Nagpur.

12. During the pendency of the O.A., the applicant claimed that he may be transferred to Nagpur, since the post of Nagpur was lying vacant. The respondent authority was directed to state as to whether the post at Nagpur is lying or not. It is stated that a person who is transferred from Pune to Mumbai was transferred on deputation and there is no post vacant at Pune. I do not find it necessary to go into the merits of this aspect as the applicant has not prayed for transfer to Pune in his O.A.

13. On a conspectus of discussion in foregoing paras, I do not find it necessary to interfere in the discretion exercised by the competent authority i.e. respondent no. 1 in transferring the applicant from Amravati to Nagpur. Hence, I proceed to pass the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

Dated :-29/11/2017

**(J.D. Kulkarni)
Vice-Chairman (J).**

pdg

