

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 325 of 2017

Anilkumar S/o Madhukarrao Dhole,
Aged about 44 years, Occ. Senior Technical Assistant,
Directorate of Sericulture, Nagpur R/o 885, Teacher
Colony, Yerkheda, Kampetee, District Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through the Secretary, Textile Department,
Mantralaya, Mumbai-32.
- 2) The Director of Sericulture,
Director of Sericulture New Administrative
Building no.2,6th floor, B Wing, Civil Lines,
Nagpur.

Respondents

Shri A.V. Bhide, Advocate for the applicant.

Shri A.M. Khadatkhar, Id. P.O. for the respondent no.1.

S/Shri P.D. Meghe, Aarti Singh, Archana Lanjewar, Advs. for R-2.

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

JUDGEMENT

(Delivered on this 11th day of August,2017)

Heard Shri A.V. Bhide, Id .counsel for the applicant, Shri
A.M. Khadatkhar, Id. P.O. for respondent no.1 and Shri P.D. Meghe, Id.
Counsel for respondent no.2. The O.A. is being heard finally with
consent of Id. Counsels for respective parties at the admission stage.

2. Vide impugned order dated 29/4/2017 the applicant has been transferred from the post of Senior Technical Assistant, Directorate of Sericulture, Nagpur to the office of District Sericulture Office, Beed on a vacant post. According to the applicant, he is at Nagpur from last 5 years and 11 months and was not due for transfer. The applicant has relied on one G.R. dated 31/1/2014, whereby a Committee is required to be formed for considering transfer of the various Officers. It is stated that initially the Committee was properly formed, but on 29/4/2017 another Committee was formed which was not as per the G.R. dated 31/1/2014. The procedure laid down in the said G.R. has not been followed properly.

3. It is the case of the applicant that his wife is also serving as a Senior Clerk at Nagpur and as per the Government G.R. dated 27/11/1997 in cases of husband and wife being employee, they have to be adjusted at one place. It is further stated that the applicant's son is in 9th Standard and therefore it is not proper to transfer the applicant on this ground also. It is further stated that the posts are vacant at Bhandara, Chandrapur and the applicant is ready to serve anywhere in Vidarbha. The post of Class-I Officer at Beed is vacant since 14/5/2012. It is further stated that the applicant has worked on Tasar Branch and he is not expert to be appointed at Beed. Some expert Officers are, on the contrary, ready to work at Beed, but their requests

have not been considered. It is, therefore, submitted that the impugned order dated 29/4/2017 issued by respondent no.2, i.e., the Director of Sericulture, Nagpur be quashed and set aside. Similarly, the communication dated 30/5/2017 whereby the applicant's request has been rejected, be quashed and set aside and the respondents be directed to transfer the applicant in the vacant post of Senior Technical Assistant in Nagpur Division.

4. It seems that the applicant has filed earlier O.A.No.280/2017 on the ground that he had not completed two tenures of three years each at Nagpur and was not due for transfer. In the said O.A. impugned order challenged in this O.A. was the subject matter. The said application, however, came to be disposed of on 11/5/2007 by this Tribunal as the applicant had shown his willingness to go anywhere in Vidarbha Region and for that purpose a representation was filed by him. The learned counsel for the applicant in that O.A. submitted that his O.A. be disposed of with direction to the respondent authority to consider his representation as there were at least 4 posts were available in Nagpur Division and number of persons have opted for Beed. In view of said submission this Tribunal was pleased to direct the respondents to take the decision on the representation dated 29/4/2017 filed by the applicant without being influenced by any of the observations made in the order.

5. Accordingly the respondent authorities have decided the representation and rejected the applicant's request for cancellation of transfer vide communication dated 31/5/2017. The said impugned communication is also the subject matter of this O.A.

6. From the facts on record it is thus clear that though the applicant is claiming that he is not due for transfer. The applicant at the time of filing of O.A. has almost completed 5 years and 11 months at Nagpur and therefore he cannot be said to be "Not Due" also considering his total stay period at Nagpur.

7. The learned counsel for the applicant submits that his son is taking education in 9th Standard and if he is transferred to Beed which is about 350 Kms. from Nagpur, it will affect his further studies. In this regard it is material to note that applicant's wife is serving at Nagpur and therefore it cannot be said that the applicant's transfer will affect education of his son.

8. The respondents have filed reply-affidavit and have stated as to how the transfer of applicant at Beed is necessary in the administrative convenience. It is submitted the almost entire tenure of the applicant has been in Vidarbha area. He was transferred only because he is well qualified person and technically sound to handle the work in Beed District which is draught prone area. It is also stated

that as per the policy decision of the Govt. of Maharashtra it has been decided to implement program of malberi cultivation at massive level to support the Farmers financially. The district Beed in Marathwada is having highest number of farmers' suicide cases. Considering the vast experience gained by the applicant in Bhandara and Gadchiroli districts in respect of malberi development programs, it was decided to transfer him in the draught prone area like Beed and merely because some posts are vacant at Nagpur and Amravati Division the applicant cannot insist that he shall be transferred that Nagpur only.

9. The respondents have annexed a Chart as per Annex-R-2 (P-119) giving details of the services done by the applicant in Vidarbha area. From the said Chart it is clear that the applicant is working in Vidarbha area right from 27/4/1994 till his transfer to Beed in various places. At Nagpur the applicant has worked in various capacities in between 11/6/1998 to 3/6/2003 and thereafter from 1/6/2010 to 29/4/2017. Even in the present post the applicant has worked from 11/8/2011 till today as he has also taken advantage of status-quo order.

10. The learned counsel for the applicant submits that the order has not been passed by the Competent Authority as contemplated in the G.R. dated 31/1/2014. The said G.R. is placed on record at P.B. page no.96. It is stated that the earlier Committee was

as per the said G.R., but the same has been changed as per letter dated 29/4/2017 (Annex-A-4). I have perused the G.R. dated 31/1/2014 and as per the said G.R., the Nagari Sewa Mandal-2 shall consist of four persons, i.e., Regional Head, Regional Deputy Head, next to Regional Head and the concerned Establishment Officer. It is stated that the Committee constituted as per letter dated 29/4/2017 consist of only three persons such as Director of Sericulture, Nagpur, Dy. Director of Sericulture, Nagpur and Accountant, Class-I, Nagpur. So it is not as per the G.R. dated 31/1/2014. The respondent no.2 have filed additional affidavit and submitted that the Nagari Sewa Mandal constituted earlier as G.R. dated 31/1/2014 was re-constituted on 24/4/2017 with prior approval of the Government and its meeting was called on 25/4/2017. The said Committee comprised of Director of Sericulture as Chairperson and Dy. Director of Sericulture and Accountants Officer, Class-I and a conscious decision was taken in the said meeting to transfer the applicant. Permission was sought from the Principal Secretary of Textile Department of Cooperation, Marketing and Textile and such permission was received on 28/4/2017. The respondents have placed on record the copy of the permission granted for constituting the Committee.

11. In the reply- affidavit the respondent no.2 stated that "However, Government Resolution, dated 31/1/2014 clearly states that

Regional Head of the Department shall be the Chairman of the Nagari Seva Mandal for Group C employees. However in the present case, the post of applicant though from Group C but being state level post, the respondent no.2 is Chairman of said Nagari Seva Mandal. Therefore, said contention raised by the applicant that there was no proper Nagari Sewa Mandal or before effecting transfer of applicant, no proper procedure was followed, is without any basis and said constitution is as per Government Resolution, dated 31/1/2014.”

12. Perusal of the impugned communication dated 29/4/2017 shows that the administrative convenience for applicant's appointment at Beed considering his vast experience has been considered by the Committee. It is stated that the persons on whose the applicant was claiming transfer at Bhandara was not due for transfer. The relevant observations in the impugned order is as under :-

^ vki .k j s k t h e l p k y u k y ;] e g k j k " V a j k T ; ; k p s f u ; a . k k [k k y h o f j " B r k a = d l g k ; d ; k i n k o j d k ; j r v k g r - o f j " B r k a = d l g k ; d ; k i n k p s l o k i o s k f u ; e r l p l n j i n k p s d k e d k t k u d k j v k i . k k a r k a = d i n k p s d k e d k t n s k r v k y s y s v k g s r l p o f j " B r k a = d l g k ; d g s i n j k T ; l o x h z i n v l u l n j i n k o j d k ; j r v l y y ; k r k a = d d e p k & ; k a u k v k o ' ; d r u d k j j k T ; k r T ; k f t Y g ; k r r k a = d l o k v k o ' ; d v k g s r f k s c n y h d j . ; k r ; s s

L i p k y u k ; k a x i r , d a q 3 7 9 i n s e a t i j v l u R ; k i s o h 2 7 2 r k a = d o 1 0 7 v r k a = d i n s v k g s - , d u k i n k a s o h l ? k f l F k r h r 8 6 i n s f j D r v l u f j D r i n k a s o h 6 8 i n s r k a = d o 1 8 i n s v r k a = d v k g s - r l p f j D r r k a = d i n k a e / ; s 8 i n s o f j " B r k a = d l g k ; d ; k l o x k i r h y v k g s -

ftYgk js kthe dk; kÿ;] chM ; Eks I ?kLFkrhr 626 'kr d&; kadMs895 , dj rqrh ykxom vl uu l u 2017&18 e/; suohu 636 'kr d&; kauh 636 , dj rqrh ykxom dj.kl kBh ukm.kh dsy syh vkgs ftYgk js kthe dk; kÿ;] chM ; Eks, duk 14 ins eatj vl uu R; ki ðh I ?kLFkrhr , duk 11 ins dk; jr vl uu R; ki ðh 9 ins rka=d vl uu R; ki ðh js kthe fodkl vf/kdkjh Jskh 1 gsin fjDr vkgs l nj in kpk vfrfjDr dk; Hkkj Jh- HkkasOgh-, e- ofj"B rka=d l gk; d ; kpsdMsfnyyk vkgs chM ftYg; kr js kthe foLrkj o fodkl kps dkedkt ekB; k iek.kkr vkgs rl p chM ftYgk gk nfdkGxLr vl uu rFkhy 'kr d&; kpsftoueku mpfo.; kl kBh l nj ftYg; kr js kthe 'krh foLrkj o fodkl kl kBh rka=d depk&; kph vko'; drk vkgs

Jh- Ogh-i h- jk; fl æ] ofj"B rka=d l gk; d] ftYgk js kthe dk; kÿ;] HkMkj ; kps kh vki 'kh cnyh nsk vxixr Jh-jk; fl æ gs l ?kLFkrhr cnyhl ik= ukghr rl p Jh-jk; fl æ ; kps cnyhl kBh ofj"B i kf/kdk&; kpai ÷ZekU; rk ukgh R; keGsvki 'kh cnyh vt kpk fopkj djrk ; s ukgh-

vki.k dk; jr ofj"B rka=d l gk; d ; k inkps dkekps Lo#i rka=d Lo#i kps vkgs rl p vki ysin gs jkT; l ÷xh; in vkgs vki Y; k l oph ftYgk js kthe dk; kÿ;] chM ; Eks vko'; drk vl Y; kus cnyh vf/kfu; e 2005 e/khy dye 4 ¼4½ ¼nk¼ o dye 4 ¼5½ e/; suem rjrm fopkjkr ?kou ofj"B i kf/kdk&; kpsi ÷ZekU; rous vki yh cnyh ofj"B rka=d l gk; d] ftYgk js kthe dk; kÿ;] chM ; k fjDr in dj.kr vkysy vkgs R; keGs vki Y; k fnuad 29@4@2017 jkstHP; k nksghgh vt kpk l /; k fopkj djrk ; skkj ukgh- vki Y; k rka=d l oph ftYgk js kthe dk; kÿ;] chM ; Eks vko'; drk vl Y; kus fnuad 27@4@2017 jkstHP; k vkns kUo; s cnyh dj.kr vkys; k fBdk.kh vki .k Rojhr #twOgkos vki ysnksgh vt kbj dkekph fudM y{kk ?kou Hkfo"; kr fopkj dj.kr ; bÿ-**

13. Perusal of the aforesaid order clearly shows that the respondents have considered the administrative convenience as well as the experience of the applicant. The reason for rejection for

applicant's request for cancellation of transfer has been reflected in the impugned order.

14. The learned counsel for the applicant submits that the applicant is not expert in Tasar Branch. However, the Tribunal is not expected to go into such details. It is for the competent authority to consider as to how to utilize the services of particular employees in the administrative convenience. The applicant has completed 6 years in his present post and even at the time of filing application he had already completed more than 5 years and 11 months. Considering his previous postings in Vidarbha area, it seems that he has worked at Nagpur for more than 13 years.

15. The learned counsel for the applicant submits that as per the G.R. dated 27/11/1997 the Govt. has taken a policy decision to post the employees whose spouses are serving in Government Department at one place. The said G.R. cannot be against the administrative convenience. Since the applicant has completed his tenure at Nagpur, he cannot take benefit of G.R. dated 27/11/1997.

16. The learned counsel for respondent no.2 Shir Meghe submits that out of 23 years of service, the applicant has served at Nagpur for 13 years on various posts. The post of the applicant is at State Level cadre and there is no violation of any G.R. He has also

relied on the minutes of the meeting in which the transfer of applicant was considered. In the said minutes of meeting which is at Annex-R-2 in P.B. page nos. 135 & 136, the administrative convenience has been taken into consideration. There is nothing on the record to show that respondent authorities are having any malice against the applicant and therefore in such circumstances, I do not find it necessary to interfere in the administrative decision taken by the respondent authorities whereby the applicant has been transferred to Beed and his representation for cancellation of transfer or for adjustment in Nagpur Region has been rejected.

17. Shri Meghe, Id. Counsel for respondent no.2 has placed reliance on the Judgments which are as follows :-

“ 1) (2009) 8 SCC 337 (Airports Authority of India Vs. Rajeev Ratan Pandey & Ors.)

2) 1995 SCC (L&S) 666 (State of M.P. and Ano. Vs. S.S. Kourav & Ors.)

3) 2008 (2) Mh.L. J. 640 (V.B. Gadekar Vs. Maharashtra Housing and Area Development Authority & Ano.).

4) 2008 II CLR 444 (MSEB Kamgar Sena through its President/ Secretary, Nagpur and Ano. Vs. Managing Director, Maharashtra State Power Generation Co. Ltd.)”

18. I have carefully gone through all the citations. The hardship to the employee cannot be a ground for judicial review, particularly when the administrative convenience is considered and

the employee has no vested right to challenge the transfer. The Hon'ble Apex Court in 2008 (2) Mh.L.J., 640 in the case of **V.B. Gadekar Vs. Maharashtra Housing and Area Development Authority & Ano.**, has held that the transfer is an essential incidence of service. Rules give protection to an employee to stay at the place of posting for three years, but such provisions are regulatory and not prohibitory in their applications. It is further stated that the discretion is vested in the authorities to make an exception of tenure of two and three years wherever special circumstances exist. In the present case the applicant had already completed 5 years and 11 months at the time of transfer at Nagpur and even prior to that he was at Nagpur since 1/6/2010. Out of his service career of 23 years, he has been posted at Nagpur for more than 13 years and when the administration requires his experience to be utilised somewhere else and the said fact has been considered by the Committee, it will not be proper to interfere in the administrative decision taken by the respondent no.2. Hence, I pass the following order :-

ORDER

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

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