

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 329/2018 (S.B.)

Roshan Shukat Mohammad,
Aged about 37 years, Occ. Service,
R/o Parwati Nagar, Pusad,
Tq. Pusad, Dist. Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
- 2) Additional Commissioner,
Tribal Development Department,
Amravati, Behind C.P. Office,
Amravati Tq. & Dist. Amravati.
- 3) Project Officer,
Integrated Tribal Development Project,
Pusad Division, Tq. Pusad, Dist. Yavatmal.
- 4) Head Master,
Government Ashram School Wadgaon- Shinde,
Tq. Pusad, Dist. Yavatmal.
- 5) R.M. Pawar,
Age – Adult, Occ. Service,
R/o Government Ashram School,
Swali-Kheda, Tq. Dharni, Dist. Amravati.

Respondents.

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

Shri P.N. Warjurkar, P.O. for respondents.

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

JUDGMENT

(Delivered on this 26th day of November,2018)

Heard Shri P.A. Kadu, learned counsel for the applicant and Shri P.N. Warjurkar, learned P.O. for the respondents.

2. The applicant is challenging his transfer from Wadgaon-Shinde to Government Residential School, Kutunga. It is submission of the applicant that in year 2009 he was appointed on the post of Male Superintendent, Government Residential School and his posting was at Government Ashram School, Hiwari. In May, 2013 the applicant was transferred from Government Ashram School, Hiwari to Government Ashram School, Wadgaon Shinde, Tq. Pusad, District Yavatmal. It is grievance of the applicant that vide impugned order dated 29/5/2018 (Annex-A-1,P-17) he was transferred from Wadgaon-Shinde to Kutunga.

3. It is contention of the applicant that respondent nos. 1 to 4 have violated the G.R. dated 9/4/2018 and transferred him to Kutunga. It is submitted that wife of the applicant Sau. Anjum Mohammad Roshan is working as Teacher in Government Secondary Ashram School, Harshi, Tq. Pusad, District Yavatmal. The applicant, therefore, requested to transfer him to Harshi. It is submitted that it was incumbent on the respondent nos. 1 to 4 to prepare and publish

the list of the employees who were due for transfer and give them opportunity to give their choices for transfer and as per this G.R. Dt/9-4-2018. It is contended that as per this G.R. the respondents were bound to post husband and wife at one station subject to availability of post. According to the applicant, he could have been transferred to Ashram School, Harshi as the post was vacant, but it was not done. According to the applicant, he had submitted three options for his transfer, to Government Ashram School, Pusad, Government Ashram School, Harshi and Government Ashram School, Khairkheda, but discarding the options of the applicant, he was transferred to remote station Kutunga and therefore, the transfer is illegal.

4. It is also alleged by the applicant that Shri B.B. Wakode and Shri S.N. Maske had completed more than 5 years, but they were not transferred and therefore the transfer order is malafide. It is grievance of the applicant that he is transferred to a distance place 250 Kms. away from his residence and therefore the transfer order is malafide and liable to be set aside.

5. The respondent nos. 2 and 3 have submitted their reply-affidavit. It is contention of the respondents that department published the list of the employees due for transfer on 19/5/2018. The opportunity was given to the applicant to submit his options for

transfer. Considering the service record and the vacancies the applicant was transferred to Kutunga. It is submitted by the respondent nos. 1 to 4 that behaviour of the applicant was not proper, therefore, his increment was permanently stopped vide order dated 11/10/2017. Similarly, the applicant was not properly maintaining the record of the Ashram School and Students attendance. He was not maintaining the mess menu record and record as to the test of food etc. The applicant did not provide the food as per the regulations and in hygienic manner. It is contention of the respondents that the person who served in hilly area for a normal tenure, should be posted in non hilly area as the respondent no.5 was serving in hilly area and remote area, therefore he was posted to Vadgaon Shinde as the post was vacant. It is submitted that transfer of the applicant is purely on administrative ground and there is no illegality in it.

6. After hearing the submission of both the sides, it seems that the applicant is mainly challenging his transfer order on the ground that he is posted at remote place and he is not posted at Harshi, where his wife is serving. The respondents have made it clear that respondent no.5 was serving in hilly area for normal tenure and therefore, as per the direction in the G.R. it was necessary to transfer him to non hilly area, therefore he was transferred to Vadgaon Shinde as the post become vacant due to transfer of the applicant. Merely

because the respondent is transferred to Vadgaon Shinde where his wife is serving, can not be a good ground to say that the transfer of the applicant is illegal. The transferring authority transferred the applicant from Vadgaon shinde and as the post was vacant, therefore, the respondent no.5 was posted on vacant post. In view of this background it is not possible to say that the action of the respondents is apparently illegal.

7. It seems that the applicant served for about five years at village Wadgaon-Shinde, he was due for transfer. The applicant was called upon to give 10 options for his transfer, but he submitted only 3 options, therefore, the department had no alternative and to post the applicant on vacant post which was available.

8. It is submission of the applicant Shri P.S. Tayade was posted at Harshi and as he was transferred to Panaj it was possible to transfer the applicant at Harshi. On perusal of the transfer order it seems that Shri D.S. Damodare was posted at Kinwat, was transferred to Harshi, therefore, there was no vacancy at Harshi to accommodate the applicant. So far as the contention of the applicant that it is mandate of G.R. dated 9/4/2018 that husband and wife shall be posted at one station is concerned, I do not see any merit in this contention. The language of the G.R. is directory, it is not mandatory. The legal position is that the government servant cannot claim as of

right any posting. The Competent Authority is the best judge to decide which government servant is suitable in which place.

9. In case of **Union of India Vs. S.L. Abbas, AIR 1993 SC 2444**, it is held that the guidelines issued by the Government for transferring the Government employee do not confer any legally enforceable right on the Government employee. If the department has followed the guidelines the Courts or Tribunals cannot interfere unless it is vitiated by malafides or there is a violation of statutory provisions. The following observations are very much material :-

“While ordering the transfer of Government employee, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject, but the said guidelines do not confer upon the government employee a legally enforceable right. Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it.”

10. So far as contention of the applicant that Shri B.B. Wakode and Shri S.N. Maske were due for transfer as they had completed period more than 5 years but not transferred is concerned, I would like to point out that Shri B.B. Wakode and S.N. Maske are not party to the proceeding and in their absence it is not permissible to investigate whether they were rightly retained or wrongly retained at the same station. Besides this, there is no authentic documentary

evidence on record to justify that Shri B.B. Wakode and S.N. Maske were retained at the station for more than 5 years. As per the G.R. dated 9/4/2018 whenever it is possible, the Competent Authority shall post a Government servant and his or her spouse at one station, but for smooth running of the administration and vacancy of the post the competent authority is authorised to transfer the government servant to any place as per the convenience of the administration.

11. It appears from the facts that the applicant is transferred as he was due for transfer, therefore, there is no violation of the Transfer Act. Secondly, merely because as the applicant is not transferred to station of his own choice and some other employees are transferred as per their choice, these facts are not sufficient to draw inference that the transfer of the applicant is vitiated by malafides. I therefore, do not see any merit in this case. Hence, the following order :-

ORDER

The application stands dismissed with no order as to costs.

Dated :- 26/11/2018.

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

*dnk.