

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 336/2018

Shri Ritesh S/o late Shri Anandrao Anantwar,
Aged about 43 years, Occ. Service,
C/o R.V. Kannamwar, Chhatrapati Nagar,
Ward No.2, Tukum, Chandrapur.

Applicant.

Versus

- 1) State of Maharashtra
through the Secretary
Department of Co-Operation and Co-operative
Societies, Mantralaya, Mumbai.
- 2) The Joint Registrar,
Co-operative Societies (Audit),
Nagpur Division, Nagpur.
- 3) Smt. N.C. Solote,
Age : Major, Occ. Service,
O/o District Auditor Class-II, Co-operative
Societies, Chandrapur.

Respondents.

Shri S.J. Kharbade, Advocate for the applicant.

Shri A.P. Potnis, P.O. for respondent nos.1 and 2.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for respondent no.3.

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

JUDGMENT

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

Heard Shri S.J. Kharbade, learned counsel for the applicant, Shri A.P. Potnis, learned P.O. for respondent nos. 1 and 2 and Shri D.M. Kakani, learned counsel for respondent no.3.

2. The applicant is challenging the impugned order dated 30/05/2018 by which he is transferred from Chandrapur to Wardha. The applicant is challenging the transfer mainly on the ground that as per Section 3 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfer Act") he was entitled to stay at Chandrapur for two tenures and before expiry of two tenures he is transferred, therefore, the transfer is premature. The second contention is that the respondent nos. 1 and 2 did not consider the representation of the applicant and mechanically transferred him to Wardha. It is contended that brother of the applicant is mentally ill person and the applicant is bound to maintain him and for this reason the applicant requested for retention at Chandrapur. It is also submitted that the wife of the applicant is serving in Gadchiroli District, therefore, he requested for his retention at Chandrapur. It is also contention of the applicant that the respondents did not prepare the transfer list as per the

requirement it ought to have been published in January, but it was published in April,2018 and it is violation of law. It is contention of the applicant that the options given by him were not considered and therefore this transfer is illegal.

3. The respondent no.3 has justified transfer of the applicant on the ground that the applicant was due for transfer. The respondent no.2 submitted written reply at page no.46 and contended that options were called from the applicant before the transfer. The applicant submitted only one option i.e. Chandrapur and it was not possible for the department to retain the applicant at Chandrapur, because he was due for transfer. It is submitted that as the applicant had completed normal tenure of three years, he was due for transfer and the vacant post was available at Wardha, therefore, the applicant was transferred to Wardha. It is contention of the respondent no.2 that the brother of the applicant though he is mentally ill person he is residing at Narendra Nagar, Nagpur and not residing with the applicant, therefore, there is no substance in the ground. Similarly, the wife of the applicant is working in Gadchiroli district and this could not be the valid reason for retention of the applicant at Chandrapur. It is submitted that the provisions of the G.R. on which the applicant is relying are not mandatory, but directory and for smooth administration

of the department, the applicant was transferred to Wardha, there is no illegality in it or no malice in transferring the applicant.

4. After hearing the learned counsel for the applicant and the respondents and perusing the material documents, it is necessary to consider the material provisions of the Transfer Act. Section 3 of the Transfer Act says that “the normal tenure of the government servant shall be three years”. It is contention of the applicant that as per the Transfer Act, the normal period is two full tenures at one station. After reading Section 3 (1) I do not see any merit in this contention. The proviso to the section says that after completion of two tenures at one station, the employee shall be transferred. Thus the meaning is that the employee can be retained at a station for a period more than three years, but it is not permissible to retain him after expiry of six years. The section does not say that the employee shall not be transferred before completion of two normal tenures at one station.

5. So far as second contention of the applicant that his brother is mentally ill person and he has to maintain his brother and therefore his retention at Chandrapur was essential is concerned, I would like to point out that the Medical Certificate which is at page no.18 of the record specifically shows that the Saurabh Anandrao Anantwar is residing at House no.25, Narendra Nagar, Nagpur. Thus

this document is sufficient to discard the case of the applicant that his mentally ill brother is residing with him at Chandrapur.

6. The third contention of the applicant that the respondent nos. 1 and 2 have committed breach of G.R. dated 9/4/2018 is concerned, I would like to point out that the applicant was called upon to submit his options for transfer. The applicant submitted only one option Chandrapur. The applicant did not submit 10 options as per the requirement. In Annexure to the G.R. in Clause-4, it is specifically mentioned that the government servant not submitting the option would be liable to be transferred to station as per convenience of the department and such government servant shall not be entitled to make representation for convenient posting. No one had prevented the applicant from giving 10 options to give more choice to the respondent nos. 1 and 2 for transferring the applicant. The applicant deliberately in order to take advantage of own wrong gave only one choice Chandrapur. In fact it was not transfer posting, but it was retention at a station. Considering this conduct of the applicant, it is not possible to infer that there is illegality in the transfer order.

7. It is contention of the applicant that his wife Sangita is serving at Panchayat Samiti, Etappali, District Gadchiroli and her transfer at Chandrapur was not possible, therefore, he should have

been retained at Chandrapur. In this regard, I would like to point out that the applicant could have given any option for his transfer to any station in Gadchiroli District, but it was not done. This conduct of the applicant is sufficient to show that there is no substance in the ground. After reading the G.R. dated 9/4/2018 and annexure, it seems that when a government servant is claiming transfer to convenient posting on the ground that his or her spouse is in service of the Government / Semi Government or local Government, then the department subject to its own convenience and administration give posting, the language of this G.R. is not mandatory, but it is directory. I have already observed that the applicant could have given any option in Gadchiroli district for his transfer, but he avoided to do so. Thus it seems that the object of the applicant is to stay at Chandrapur only he is not willing to leave Chandrapur. The legal position is settled that the transfer of government servant should not be interfered by the judicial authorities unless it is vitiated by malafides or it is in violation of the statutory provisions. The Courts or Tribunals do not sit as Appellate Authority over the transfer order. The Hon'ble Apex Court in case of **State of U.P. & Ors. Vs. Gobardhan Lal, AIR 2004 SC,2165** has observed as under :-

“Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in

the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a malafide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer / servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. The order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by malafides or is made in violation of any statutory provision.”

8. In case of **Mrs. Shilpi Bose & Ors. Vs. State of Bihar & Ors., AIR 1991 SC,532** following observations are made :-

“The Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights.

Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department.”

9. In view of the above legal position and considering the conduct of the applicant not giving 10 options for his transfer it is not possible to hold that any material illegality is committed by the respondent nos. 1 and 2 in transferring the applicant to Wardha. Therefore I do not see any merit in this application. Hence, the following order :-

ORDER

The application stands dismissed with no order as to costs.

Dated :- 26/11/2018.

*dnk.

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