

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 370/2018**

Shri Rajesh Gajanan Sonkusare,
Aged about 40 years, Occ. Service,
R/o Plot no.941, Nagsen one, Wanjari Layout,
Nagpur-17.

Applicant.

Versus

- 1) State of Maharashtra
through its Secretary,
P.W.D., Mantralaya, Mumbai.
- 2) The Chief Engineer,
P.W. Electrical Division,
Bandhkam Bhavan, 3rd floor,
Marzaban Road, Fort, Mumbai.
- 3) The Superintending Engineer,
P.W. Electrical Division,
Regional Office, Civil Lines, Nagpur.
- 4) The Executive Engineer,
P.W. Electrical Division,
Civil Lines, Nagpur.
- 5) The Deputy Engineer,
P.W. Electrical Sub- Division No.II,
Nyay Mandir Mandir Parisar,
Civil Lines, Nagpur.

Respondents.

S/Shri R.A. Gupte, D.S. Agnihotri, Advocates for the applicant.

Shri V.A. Kulkarni, P.O. for respondents.

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

JUDGMENT

(Delivered on this 6th day of November,2018)

Heard Shri R.A. Gupte, learned counsel for the applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The applicant joined the service under the respondents as Junior Engineer in 2003. In the year 2012, the applicant passed the examination conducted by the Maharashtra Public Service Commission (MPSC) and he was posted as Assistant Engineer, Grade-II with the respondents. The applicant was serving as Assistant Engineer Grade-II P.W. Electric Section, Mata Kacheri Branch, Nagpur.

3. It was official duty of the applicant to prepare the estimates of the work and submit the same to the Deputy Engineer for approval. The applicant was directed to prepare the estimate of the work providing renovation and alteration to Internal E.I. and power wiring for Academic Building in the premises of Government Engineering College situated at Mihan, Khapri, Dist. Nagpur. The applicant prepared the estimate at Rs.1,25,35,211/-. Thereafter there was a complaint and therefore the matter was referred to Higher Authority. Again the applicant was asked to submit the estimates for 15 different works of college. In the month of August 2017, someone questioned

the process of the work allotment and also challenged the estimates. The applicant was called upon to justify the estimates and reply was filed by the applicant and submitted to the respondent no.4. The respondent no.2 thereafter issued letter to the applicant for holding him responsible for the negligent work. Thereafter, the respondent no.2 and 3 issued letter to the applicant and directed him to submit his options to work on non-executive post. The respondent no.3 thereafter issued transfer order and posted the applicant in Amravati office on non-executive post.

4. It is submission of the applicant that without conducting any inquiry arbitrarily it was held that the applicant was negligent and by way of punishment he is transferred to Amravati on non-executive post. It is submitted that this action of the respondents is malafide and there was no propriety for holding the applicant responsible as negligent and therefore, the action of the respondents is illegal and it is liable to be quashed. It is contention of the applicant that he be allowed to work on his present post.

5. The respondent nos. 1,2,4 and 5 have submitted joint reply which is at page no.16 of the P.B. It is contention of the respondents that the applicant is intending to take benefit of the letter written by the respondent no.2. In this letter the words are used

“वदक; डकjh i nkoj cnyh dj.; kr ; koh-” According to the respondents, these words do not mean executive and non executive post. It is contention of the respondents that being the employee the applicant is bound to discharge the duty of a post on which he is appointed and transferred. According to the respondents, the applicant was due for transfer and he has no right to claim a particular post in the department. It is submitted that due to negligence of the applicant there were complaints and after preliminary inquiry as outcome of the inquiry the applicant was transferred to Amravati. It is further contended that the applicant was posted at Nagpur since 2012 and he was due for transfer and as per the directions of higher competent authority the applicant was transferred. It is also contention of the respondents that the matter was agitated in the Legislative Assembly, consequently, the action is taken by the respondents, there is no illegality, therefore, transfer order is illegal and the applicant has no right to insist posting at Nagpur on the same post. Hence, the application be dismissed.

6. I have heard the submissions on behalf of the applicant and the respondents. The material question is whether the government servant has a vested right to claim particular post, work and table. In this regard, I would like to point out that as the transfer of the applicant is not premature, similarly it is not general transfer.

Here it is necessary to consider the object for which the Government enacted the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfers Act"). It seems that in order to safe guard the government servants for their transfers as per the whims of the Transferring Authority without considering their inconvenience and showing favour to someone the Government of Maharashtra has brought into force this Act. The legal position is very sound that transfer is event of service and when employee joins the service, he undertakes to do work where he is posted by the employer. The employer is the best judge to decide the suitability of the employee and transfer and post his employee, because he knows the portfolio of the employee, his capacity to do work his integrity etc. In view of this, it is not possible to accept the contention that a government servant has a right to insist that he would work at a particular station or on a particular table or in a particular department, if it is permitted then the consequences would be serious, the authority competent to transfer would be a mere rubber stamp and he will have to act at the whim of the employees.

7. Similarly, the legal position is while hearing the applications in which the Government servant challenges his transfer

and posting, the Tribunals are not sitting as an Appellate Authority. The jurisdiction of the Tribunal is limited and it is confined to violation of the statutory provisions.

8. If there is no violation of statutory provision, it is none of the business of the Tribunal to examine whether the work allotted to the Government servant at a particular station is of the liking of the servant or not. In present matter even as per the contention of the applicant estimates were prepared by him and due to the estimates which were prepared by him there were complaints about the allotment of the work, there was preliminary inquiry and report was submitted and after considering this material decision was taken to give posting to the applicant in the Office. It is made clear that the normal tenure of three years was completed by the applicant. It further seems that the question of allotment of the work for which the estimates were prepared by the applicant was questioned in Legislative Assembly and the higher Officers had to answer the Government and in view of it, decision was taken by the authority. It is also cleared by the learned P.O. that yet inquiry is not completed and there is a possibility of disciplinary action. If all these background is considered then as per the Transfers Act, the Government has authority to transfer a government servant when serious complaints

are received against him, because if in such a situation a government servant is not transferred, then there is a possibility of interference of that government servant in the evidence conducting process before the inquiry.

9. In the present case, it seems that the applicant was posted at Nagpur since 2012 for more than five year, he was due for transfer and considering this background he was transferred to Amravati and he is given posting in the office. In my opinion, the applicant as no vested legal right to claim that he should be appointed on executive post and not to post in office to do the paper work. I do not see any merit in claim of the applicant that he be re-transferred and posted on post held by him at Nagpur. In view of this, I do not see any merits in the application, therefore, the following order :-

ORDER

The application stands dismissed. No order as to costs.

Dated :- 06/11/2018.

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

*dnk.