

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 374 of 2019
WITH CIVIL APPLICATION No. 219 of 2019 (S.B.)

Vikas S/o Vidyadhar Wadekar,
Aged about 56 years, R/o, C/o Prof. Harne's
Residence, Gandhi Ward, Wadsa, Dist. Gadchiroli.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
- 2) The Settlement Commissioner and
Director of Land Records (M.S.), Pune
Opp. Council Hall, new Administrative Building,
2nd floor, Pune-411 001.
- 3) Dy. Director of Land Records, Nagpur Region,
Room No.28, Old Council Hall, Civil Lines,
Nagpur.
- 4) District Superintendent,
Land Records, Gadchiroli, near RTO Office,
Gadchiroli-442 605.

Respondents.

Shri S.M. & Smt. G.S. Bhagde, Advocates for the applicant.

Shri P.N. Warjurkar, P.O. & Shri Vishal Anand, Id. counsel for the respondents.

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

Dated :- 27/01/2020

JUDGMENT

Heard Shri S.M. Bhagde, learned counsel for the applicant and Shri P.N. Warjurkar, learned P.O. along with Shri Vishal Anand, learned counsel for the respondents.

2. The applicant is serving as Deputy Superintendent of Land Records at Wadasa/Desaiganj, District Gadchiroli since 04/11/2016. It is grievance of the applicant that before completion of the normal tenure at Desaiganj, he is transferred to Bhamragarh, District Gadchiroli in violation of the Government G.R. dated 6/8/2002. It is submitted that though the applicant completed age of 50 years, he was posted in naxalite area vide order dated 25/10/2016, the applicant worked there, but all of a sudden the order dated 28/05/2019 was issued and the applicant came to be transferred to Bhamragarh in naxalite area. It is submission of the applicant that provisions under G.R. dated 6/8/2002 are violated.

3. It is submitted that as the applicant worked for a period more than two years in naxalite area, therefore, as per the G.R. dated 6/8/2002 it was necessary to post the applicant out of naxalite area as the applicant was due for retirement in a very short period less than one year. It is also submitted that the applicant is suffering from cervical spine compression and therefore the applicant had given

options on 1/2/2019 to post him in Pune District or Mumbai Division or Pen / Alibag. It is contended that the respondent no.1 has transferred one Sujit Jadhav vide Annex-A-7 from Ahemednagar to Pen, District Raigad, but though case of the applicant was genuine was not considered. It is submitted that the transfer of the applicant from Desaiganj to Bhamragarh is illegal exercise of jurisdiction and it is malafide, therefore, it be quashed.

4. The respondents have submitted their reply and resisted the application. It is submitted that in view of the conduct of the applicant it is not possible to say that the applicant's conduct and performance at Wadasa/Desaiganj was good. The learned P.O. submitted that the Government servant whose performance while working in naxlite area is good for a period of two years, only then he can claim the transfer as per his choice. The learned P.O. submitted that there were various complaints received against the applicant from the Staff. It is further submitted that the matter was reported to the higher authorities and departmental inquiry was initiated against the applicant and it is in progress. The learned P.O. contended that as the departmental inquiry is initiated against the applicant and is pending, therefore, in the interest of justice it was necessary to transfer the applicant from Desaiganj.

5. The application is mainly attacked on the ground that the inquiry is going on at Nagpur, therefore, it was in the interest of the applicant to keep him near the place of the inquiry and as the post was vacant at Bhamragarh, consequently, the applicant was transferred to Bhamragarh. The learned P.O. submitted that this entire material was considered by the Settlement Commissioner and thereafter the impugned order dated 28/05/2019 came to be passed in the name of the Hon'ble Governor (M.S.). It is submitted that there is no illegality in the order or it is not actuated by malice, therefore, the O.A. is liable to be dismissed.

6. There is no dispute about the facts that various complaints are received against the applicant and on the basis of the complaints, departmental inquiry is initiated against the applicant, and it is going on at Nagpur. The learned counsel for the applicant submitted that when the departmental inquiry is initiated against the Government servant, he cannot be transferred and reliance is placed on the Judgment in case of **Somesh Tiwari Vs. Union of India & Ors., AIR 2009 SC,1399.**

7. After reading the Judgment it seems that the Hon'ble Apex Court has laid down as under –

“20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and

based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal”.

8. Thus it is laid down by the Hon'ble Apex Court when transfer order is passed in lieu of punishment, then it is liable to be set aside. In the present case the applicant is not transferred in lieu of punishment, but he is transferred to avoid his interference in the disciplinary inquiry which is going on against him. It appears from the facts and circumstances that total 11 staff members have collectively lodged complaints against the applicant. Similarly, it appears that there was complaint against the applicant that while working as Deputy Superintendent of Land Records, Wadasa there were several illegalities committed by the applicant, for which charge sheet was served on him on 4th September, 2018. It is also case of the respondents that in order to avoid interference of the applicant in the disciplinary inquiry, he was transferred. It seems that the entire proceeding was examined by the Joint Secretary, the Settlement Commissioner and the Additional Chief Secretary (Revenue) and thereafter the applicant is transferred. Thus, it seems that after following the procedure laid down under Section 4 (5) of the Maharashtra Government Servants Regulation of Transfers and

Prevention of Delay in Discharge of Official Duties Act, 2005 (In short "Transfers Act,2005"), the applicant is transferred.

9. There is substance in the contention of the learned P.O. that blanket cover right is not given to the Government servant for claiming choice posting on the ground that he worked in naxlite area for two years, the material requirement is the performance of the Government servant during two years period in naxalite area must be good. In view of this, it is not possible to accept that transfer of the applicant was not for administrative exigency or it is actuated with malice. In fact, if the applicant was posted in Raigad District or in Mumbai Zone, then it would have created so many problems for the applicant, as it was necessary for him to remain present at Nagpur for the inquiry.

10. In view of this, I do not see any merit in this application. Hence, the following order –

ORDER

The O.A. stand dismissed along with the C.A. No order as to costs.

Dated :- 27/01/2020.

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

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 27/01/2020.

Uploaded on : 28/01/2020.