

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 390 /2016 (S.B.)

Laxminiwas S/o Wamanrao Gotmare,
Aged about 53 years, Occ. Service,
Resident of Dehni, Tahsil Babhulgaon,
District Yavatmal.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai-400 032.
- 2) Sub Divisional Officer,
Yavatmal.
- 3) Tahsildar,
Babhulgaon, District Yavatmal.
- 4) The Collector,
Yavatmal.

Respondents.

S/Shri J.C. Shukla, H. Sheikh, Advocates for the applicant.

Shri A.P. Potnis, P.O. for respondents.

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

JUDGMENT

(Delivered on this 28th day of November,2018)

Heard Shri J.C. Shukla, learned counsel for the applicant and Shri A.P. Potnis, learned P.O. for the respondents.

2. The applicant was Talathi at village Mouza Dehni, Tq. Babhulgaon, Dist. Yavatmal. The applicant was suspended for his unauthorised absence and for some other lapses while discharging duty, so also another Talathi Shri R.N. Jagtap was also suspended. Lateron, the applicant challenged his suspension in O.A. 715/2015 and this Tribunal directed to reinstate the applicant. Thereafter the respondent no.2 in pursuance to the order passed by this Tribunal reinstated the applicant in service, but instead of posting the applicant at the same place transferred him to village Anjankhed, Tq. Arni, Dist. Yavatmal.

3. It is grievance of the applicant that the respondent no.2 revoked the suspension of Shri R.N. Jagtap, Talathi and posted him at Mouza Kondha, Tq. Babhulgaon which was close to Watkhed from where Shri R.N. Jagtap, Talathi was suspended. It is contention of the applicant that the impugned order posting applicant at village Anjankhed Tq. Arni is contrary to the transfer policy issued by the Government of Maharashtra. The second contention is that the order

passed by respondent no.2 posting the applicant at village Anjankhed is malafide exercise of jurisdiction and therefore this order is liable to be set aside.

4. The respondent nos. 2 and 3 have submitted their reply and resisted the application. It is contention of respondent nos. 2 and 3 that in contemplation of the departmental inquiry the applicant was suspended and thereafter in pursuance of the order passed by this Tribunal he is reinstated. According to respondent nos. 2 and 3, in order to have fair inquiry the applicant is posted at Mouza Anjankhed, Tq. Arni. According to the respondents, the posting of applicant at village Anjankhed is not transfer as per the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short 'Transfer Act') and considering the allegations and complaints against the applicant, he was posted at village Anjankhed, therefore, there is no question of any malice or to cause harassment to the applicant. It is submitted that the complaints against the applicant were that he was negligent in discharging his official work, he failed to prepare the Voter's list during the Gram Panchayat Election of year 2015 and he also avoided to attend the Meeting which was before Election in relation to the Voter's list. According to the respondents, besides this there are several complaints against the applicant and considering

that material the respondent no.2 has taken decision to post the applicant at Anjankhed and this was done in contemplation of the departmental inquiry against the applicant, therefore, there is no substance in the application and it is liable to be dismissed.

5. I have heard submissions of the applicant and the respondent nos. 2 & 3. It is settled legal position that the Disciplinary Authority is empowered to transfer the Government servant to another station when there are complaints against the Government servant and it is necessary to initiate the departmental inquiry, merely because another Talathi Shri R.N. Jagtap was posted at a Station in the same Taluka, this cannot be a ground to infer that there was a malice or illegality. As the applicant is posted Anjankhed, Tq. Arni in contemplation of the departmental inquiry, therefore, provisions of the Transfer Act are not attracted in this matter. In view of the allegations against the applicant, the complaints received against him the decision is taken by respondent no.2 who is a Disciplinary Authority, therefore, it is not possible to accept that this action is actuated by malice. The legal position is settled that the Tribunal cannot exercise jurisdiction as an Appellate Authority and examine the correctness of the administrative orders passed by the Disciplinary Authority. The Tribunal is empowered to interfere only when the orders passed by the Disciplinary Authority are contrary to law or actuated by malice.

As in present case the order passed by the respondent no.2 posting the applicant at Anjankhed, Tq. Arni is not contrary to law. Secondly, the order is not actuated by malice, therefore, there is no merit in the application. Hence, the following order :-

ORDER

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

Dated :- 28/11/2018.

*dnk.

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