

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 406/2020 (S.B.)**

Keshao S/o Vishwanth Vyas,  
Aged about 52 years, Occ. Service as Sectional Engineer  
at P.W. Sub-Divisional Office Jalgaon Jamod, District Buldana,  
R/o Mohor, State Bank of India Colony, near Rokadiya Nagar  
Grampanchayat Office, Shegaon,  
District Buldana- 444 203.

**Applicant.**

**Versus**

- 1) State of Maharashtra  
through its Secretary Public Works Department,  
Mantralaya, Mumbai.
- 2) Chief Engineer, Public Works Region,  
Amravati.
- 3) Superintending Engineer, Public Works  
Circle, Akola.
- 4) Executive Engineer, Public Works Division,  
Khamgaon / Washim.

**Respondents.**

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**S/Shri S.S. Deshpande, S.M. Gachake, S.W. Kolhe, Advocates for  
the applicant.**

**Shri S.A. Sainis, P.O. for the respondents.**

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

**Dated :- 15<sup>th</sup> January, 2021**

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## **JUDGMENT**

Heard Shri S.S. Deshpande, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. The learned P.O. files reply on behalf of respondent nos.1&2. It is taken on record. Copy is served on the learned counsel for the applicant.

3. The substantial question involved in this O.A. is whether the order Annex-A-3, dated 1/9/2018 directing the applicant to work at Jalgaon Jamod is transfer order or order of deputation. The brief facts of the case are as under –

4. The applicant entered the service, initially he was posted at Akola and in the year 1998 the applicant was posted at Buldana as a Junior Engineer. The applicant was transferred to Public Works Sub-Division, Khamgaon and he worked there till 2006. The applicant was transferred from Khamgaon to Malegaon, District Washim, he worked there till 2010. The applicant was thereafter transferred to Public Works Sub-Division, Buldana as Sectional Engineer and he worked there till 2016. The applicant was thereafter transferred to Malkapur, District Buldana as a Sectional Engineer vide order dated 8/6/2016. It is case of the applicant that before completion of the normal tenure at Malkapur, the applicant was transferred after 11

months to Malegaon Dist. Washim. It is case of the applicant that vide order dated 1/9/2018, the respondent no.3 transferred the applicant vide order Annex-A-3 to Jalgaon Jamod, District Buldana and he was working there. It is grievance of the applicant that the respondent no.3 issued order dated 9/7/2020 and directed the applicant to resume duty at Malegaon. It is submitted that the applicant is transferred from Jalgaon Jamod to Malegaon before completion of normal tenure, therefore, the transfer order is illegal.

5. The next contention of the applicant is that after filing of this O.A., the respondent no.2 issued order dated 7/8/2020 and transferred the applicant from Malegaon to Sub-Division to Mangrulpir. It is contention of the applicant that his transfer from Jalgaon Jamod to Malegaon and his transfer from Malegaon to Mangrulpir both are illegal as the said orders are in violation of the Section 4(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"). It is submitted that without considering the family difficulties of the applicant, he is unilaterally transferred and therefore both the orders be quashed and set aside.

6. The respondent nos.3&4 have filed their reply which is at Page no.31 of the P.B. In Para-3 of the reply, these respondents have

specifically contended that the order dated 1/9/2018 was not transfer order, but in fact it was deputation at Jalgaon Jamod, as there was administrative need. It is submitted by the respondent nos.3&4 that the applicant was drawing his salary from Sub-Division Malegaon as he was on its establishment. It is submitted that as there was no need, therefore, order dated 9/7/2020 was passed and the applicant was directed to work at Malegaon. It is submitted that at the time of general transfers of the year 2021, the respondent no.2 transferred the applicant from Malegaon to Manglurpir vide order dated 7/8/2020. According to these respondents, there is no illegality in the order.

7. The respondent nos.1&2 have filed their reply at Page no.37, these respondents have denied that the applicant was transferred from Jalgaon Jamod to Malegaon. It is contention of these respondents that vide order dated 9/7/2020 the order of deputation was withdrawn and it was not transfer order. The respondent nos.1&2 in para-3 have specifically stated that the applicant was sent on deputation from Malegaon to Jalgaon Jamod, he is not transferred from Jalgaon Jamod, but withdrawn from Jalgaon Jamod and directed to work at Malegaon, therefore, there is no substance in the O.A. During pendency of the O.A., the respondent no.2 issued the transfer order dated 7/8/2020 transferring the applicant from Malegaon to Manglurpir, consequently, the applicant amended the O.A. The

respondents have filed reply and in their reply they have averted that the tenure of the applicant at Malegaon was considered including the period of duty at Jalgaon Jamod and as the normal period was completed, therefore, the applicant was transferred from Malegaon to Manglurpir by the Competent Authority as per the G.R. issued by the Government of Maharashtra on 7/7/2020. According to the respondents, there is no illegality in the order, therefore, there is no substance in the O.A.

8. The respondent nos.1&2 have also filed reply after amendment of the O.A. and now these respondents are alleging that the applicant was holding the additional charge and he is challenging the order dated 9/7/2020 by which the additional charge was withdrawn, therefore, the OA is not maintainable.

9. It is contention of the learned counsel for the applicant that the order impugned Annex-A-3, dated 1/9/2018 was a transfer order and therefore it was necessary for the respondents to comply mandatory provisions under Section 4 (4) & (5) of the Transfers Act,2005. It is submitted that the applicant was posted at Jalgaon Jamod and from the wording of the order inference must be drawn that it was order of transfer. The second contention of the learned counsel for the applicant is that the respondents have now changed their case and now they are claiming that the order dated 1/9/2018

was not deputation, but additional charge was given to the applicant and vide order dated 9/7/2020 this additional charge was withdrawn. On the basis of this, it is contention of the applicant that the respondents are making contradictory statements and therefore inference must be drawn that the order dated 1/9/2018 is transfer order and not order of deputation or not order to hand over the additional charge.

10. I have read the order Annex-A-3. The material portion of the order is as under –

^ mi jkDr fo" k; kuq kj dk; Zdkjh vfHk; ark] I k-ck-foHkkx] [kkexk; ; kuh i Lrkfor dY; kuq kj I k-cka mi foHkkx] tGxk tkekn ; Fkhy dkekph fudM y{kk ?kck I k-cka mi foHkkx] ekysk; ; Fks dk; jr vl yysJh- dsOgh- 0; kl ] 'kk[kk vfHk; ark ; kph I dk I k-cka mi foHkkx] ekysk; ; Fks I k-cka mi foHkkx] tGxk tkekn ; Fks I kozt fud I dB; k fgrkFKzo izkkl dh; I ks tP; k dkj .kkLro rkRi jR; k Lo#i kr i qhy vkn'skki ; r oxZdj .; kr ; s vks

Jh- dsOgh- 0; kl ] 'kk[kk vfHk; ark ; kph vLkFki uk I k-cka mi foHkkx] ekysk; ; Fks jkghy i jarw rsl k-cka mi foHkkx] tGxk tkekn ; Fksdke djrhy-\*\*

11. After reading the contents of Annex-A-3, it is impossible to believe that this was transfer order. In this regard, I would like to point out that vide order dated 7/8/2020, Annex-A-6 the respondent no.2 transferred the applicant from Malegaon, Sub-Division to Manglurpir Sub-Division and this order is issued by the Chief Engineer, the respondent no.2. I have perused the order dated 1/9/2018. This order was issued by the respondent no.3. Similarly, the order dated

9/7/2020 was issued by the respondent no.3 and deputation was withdrawn. When query was made as to who was the Competent Authority to transfer the applicant, the learned P.O. and learned counsel for the applicant accepted that the Chief Engineer was the Transferring Authority. This means that the respondent no.3, the Superintending Engineer had no authority in law to transfer the applicant from Malegaon to Jalgaon Jamod. Keeping in view this factor, if the impugned order dated 1/9/2018 is considered, particularly in view of the language used in the order, inference must be drawn that it was deputation and it was not transfer, otherwise also the respondent no.3 had no authority in law to transfer the applicant. Once it is accepted that the Transferring Authority was the respondent no.2, therefore, in absence of delegation of powers, the respondent no.3 had no authority in law to transfer the applicant from Malegaon to Jalgaon Jamod. I have also perused the impugned order dated 9/7/2020 Annex-A-4. It is mentioned in this order that the applicant was directed to work till further orders at Jalgaon Jamod vide order dated 1/9/2018 and this order was withdrawn by the respondent no.3. In view of this material, it is difficult to accept the submission of the applicant that the order dated 1/9/2018 was transfer order and therefore he was not due for transfer from Jalgaon Jamod. In view of

these facts, it is not possible to accept the contention of the applicant that order dated 9/7/2020 withdrawing the deputation is bad in law.

12. The second impugned order is Annex-A-6 by which the respondent no.2 transferred the applicant from Malegaon Sub-Division to Manglurpir Sub Division. After reading this order, it seems that the applicant was held for due for transfer considering his total stay at Malegaon. There is no dispute about the fact that the applicant was posted at Malegaon in the year, 2016, therefore, when the order dated 9/7/2020 was issued, the applicant had completed normal tenure of three years. There is no dispute about the fact that the G.R. dated 4/5/2020 was issued by the Government and there was direction not to transfer Government servants during financial year. In view of this G.R., there were no general transfers in the year 2020-21. It is important to note that this prohibition was lifted by the Government, by issuing subsequent G.R. dated 7/7/2020 and permitted transfers of 15% Government servants in the cadre and on the basis of this GR., the Transferring Authority, the respondent no.2 transferred the applicant from Malegaon to Manglurpir. If all these facts are considered collectively, then inference must be drawn that there is no illegality in the order dated 7/8/2020. The family difficulties of the applicant have no potential to label the transfer order dated 7/8/2020 as illegal. The applicant is at liberty to make representation to his



higher authorities for the convenient posting, but definitely on the basis of family difficulties, the impugned order dated 7/8/2020 cannot be quashed. In the result, I pass the following order –

**ORDER**

The O.A. stands dismissed. No order as to costs.

**Dated** :- 15/01/2021.

**(Anand 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 : 15/01/2021.

Uploaded on : 18/01/2021.

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