

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 412 of 2020 (S.B.)

Gajanan S/o Eknath Rajgade,
Aged about 53 years, Occ. Service,
R/o B-105, Vrundavan Nagar, Part No.3,
Malkapur, Tah. Malkapur, Dist. Buldana.

Applicant.

Versus

- 1) The State of Maharashtra
Department of Revenue and Forest,
Mantralaya, Mumbai-32.
- 2) Divisional Commissioner, Amravati
Division, Amravati.
- 3) The District Collector, Buldana.
- 4) The Tahsildar, Malkapur
Tah. Malkapur, Dist. Buldana.

Respondents.

S/Shri P.B. Patil, D.M. Surjuse, Advocates for the applicant.

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

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

Date of Reserving for Judgment : 3rd December, 2020.

Date of Pronouncement of Judgment : 10th December, 2020.

JUDGMENT

(Delivered on this 10th day of December, 2020)

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

2. The applicant is challenging the impugned transfer order dated 27/7/2020 issued by the respondent no.1, transferring the applicant from Malkapur, District Buldana to Chikhaldara, District Amravati as Naib Tahsildar.

3. The impugned transfer order is attacked on the grounds that the applicant's son is taking education in 10th Standard, as per the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short "Transfers Act,2005") the normal tenure was six years and transfer of the applicant is before completion of normal tenure and it is mid-term transfer. It is submitted that the respondent nos.1 & 2 did not comply the provisions under Section 4 (4) & (5) of the Transfers Act,2005. The transfer is also attacked on the ground that the applicant had already worked in the tribal area and in violation of the Govt. G.R. dated 6/8/2002 he is again transferred in tribal area though he has completed age of 50 years. It is contention of the applicant that his father is 86 years old and ill person, he is in need of medical aid and without giving opportunity to submit options unilateral decision was taken and the applicant is transferred. It is submitted that Ku. Alka Nandu Chavan who was serving as Junior Clerk in the office of the applicant at Malakpur was resident of Shrigonda, District Ahmednagar and she was very keen for her transfer in Ahmednagar District and

therefore she has made false complaint against the applicant for her transfer. It is submitted that the statutory provisions are not complied with, therefore, the impugned transfer order is bad in law, it be quashed.

4. The respondent nos. 1 to 3 have filed their reply to the O.A. It is contention of the respondents that the applicant was posted at Malkapur vide order dated 31/5/2016 and normal tenure of three years was completed by the applicant, therefore, he was due for transfer.

5. The application is mainly attacked on the ground that Ku. Alka N. Chavan, Junior Clerk serving in the office of the applicant, made complaint to the President, Woman and Child Welfare Commission, State of Maharashtra, Mumbai and copy of that complaint was forwarded to the Collector, Buldana. The Collector, Buldana received that complaint on 16/11/2019 and immediately issued direction to the Sub-Divisional Officer (SDO), Mehkar, District Buldana to make inquiry about the allegations made in the complaint and submit the report. It was alleged in the complaint that the applicant subjected the lady Junior Clerk to mental torture, he used to threaten her and was forcing her to take insurance policy from the applicant's wife. It is submitted that the SDO, Mehkar submitted the inquiry report on 23/12/2019 and it was recommended to transfer the

applicant from Malkapur as matter was pending before the Women and Child Welfare Commission Maharashtra State. Thereafter, the Collector, Buldana wrote letter to the respondent no.2, the Divisional Commissioner, Amravati and the Divisional Commissioner, Amravati forwarded proposal dated 6/2/2020 to the respondent no.1 for transferring the applicant. It is submitted that after receiving the proposal from the respondent no.2, the respondent no.1 issued the transfer order dated 27/7/2020, it is absolutely legal and there is no illegality in it. It is contended that there is no merit in the application, therefore, it is liable to be dismissed.

6. The learned counsel for the applicant mainly attacked the impugned transfer order on the ground that the applicant was not due for transfer, it is a mid-term transfer and therefore it was necessary to comply the provisions under Section 4 (4) & (5) of the Transfers Act, 2005. The learned counsel for the applicant has placed reliance on the Judgments **State of Maharashtra & Ors. Vs. Dr. (Ms.) Padmashri Shriram Bainade & Ors., 2015 (2) Mh.L.J.,679, State of Maharashtra Vs. Ashok Ramchandra Kore & Ano., 2009 (4) Mh.L.J.,163**, Judgment in Writ Petition No.5465 of 2012 in case of **Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance & Development Corporation, Mumbai & Ors.**, decided on 7/3/2013 and **Shriprakash Maruti Waghmare Vs. State of Maharashtra &**

Ors., 2010 (2) Mh.L.J. On the basis of the above Judgments, the learned counsel for the applicant contended that it was mandatory for the Transferring Authority to record the special circumstances or exceptional circumstances for transferring the applicant, in the transfer order and as nothing is mentioned in the transfer order, the impugned transfer order is patently illegal.

7. The second contention is that the respondent no.2 had forwarded proposal dated 6/2/2020 for transferring the applicant from Malkapur. It is submitted that in this situation, it was role of the respondent no.1 only to give approval to the proposal or disapprove it. The respondent no.1 had no authority in law to transfer the applicant. It is submitted that the authority to whom proposal was forwarded can not act as Appellate Authority and therefore the impugned transfer order is illegal. The learned counsel for the applicant has placed reliance on the Judgment of the Hon'ble Apex Court, (2003) 5 SCC, 83.

8. In order to decide the controversy the first thing is to be investigated whether really the applicant was not due for transfer. As per the pleadings of the applicant vide transfer order dated 31/5/2016 he was transferred from Dharni, District Amravati to Malkapur, District Buldana and since then till the issuance of the impugned transfer order, the applicant was working at Malkapur, District Buldana as Naib

Tahsildar. It is contention of the applicant that his normal tenure was six years and for this the applicant is placing reliance on Section 3 of the Transfers Act.

9. Section 3 (1) of the Transfers Act, 2005 says that for All India Service Officers and all Group A, B & C State Government servants or employees, the normal tenure in a post shall be three years. The plain reading of Section 3 (1) compels me to say that the normal tenure of the applicant was three years. It seems that the applicant is intending to take advantage of Section 3 (1) first proviso. As per first proviso, the Government employee serving in non-secretarial services in Group C shall be transferred on completion of two full tenures in the office or department. After reading this proviso, it is not possible to say that the normal tenure of the Government servant is six years, therefore, it is not possible to accept the submission of the applicant that as per the provisions in the statute he was not due for transfer.

10. The learned counsel for the applicant invited my attention to Annex-A-1. It is letter written by the respondent no.2 to all Collectors within the Division along with the list of Naib Tahsildars who were considered due for transfer. It is submitted that name of the applicant was not included in the list and therefore the applicant was not due for transfer. In this regard, it is necessary to consider the G.R.

dated 4/5/2020. Due to menace of Covid,19 the G.R. dated 4/5/2020 was issued by the Government of Maharashtra and in Para-15 of the G.R. direction was issued that in view of the Corona,19 epidemic, no Government servant shall be transferred during the financial year. Thus, it seems that direction was given by the Government of Maharashtra to all Departments not to transfer any Government servant, but later on considering the urgency and need, second G.R. was issued by the Government dated 7/7/2020 and the prohibition on transfer was lifted and permission was given to transfer 15% Government servants (out of the Government servants due in that cadre for transfer). If G.R. dated 7/7/2020 is read, then it is not possible to accept that the applicant's transfer was a mid-term transfer, on the contrary the fact was that the applicant had already completed the period of three years in 2019, he was continued at Malkapur and in 2020 in the month of April/ May transfer orders were not issued and therefore the G.R. dated 7/7/2020 was issued by the Government and authority was given to issue the transfers in particular limits. In this G.R. it is mentioned that –

^ r l p] l o l k/kkj .k cnY; k0; frfjDr dlgh vi oknkRed i fjfLFkrheGsf d0k fo' k'sk dkj .keGscnY; k djko; kP; k v l Y; kl] v'kk cnY; k n[khy fnukad 31 ty]2020 i ; r cnyh vf/kfu; ekrhy rjrmh fopkjkr ?kÅu dj.; kr ; k0; kr-**

After reading this Clause in the G.R., it seems that besides the general transfers to the extent of 15%, if necessary permission was

given to issue transfer orders in exceptional circumstances, subject to taking into account the provisions under the Transfers Act.

11. In the first place as the applicant was due for transfer, he cannot make capital. It seems that the sanction was given to transfer 15% staff and considering the station seniority and other circumstances, the proposed lists for the transfers were prepared in which the name of the applicant was not included.

12. It is undisputed that Ku. Alka N. Chavan was serving as Junior Clerk in the office of the applicant. It is also undisputed that Ku. Alka N. Chavan directly lodged complaint to the Chairman, Woman and Child Welfare Commission, State of Maharashtra, Mumbai. The respondents have placed copy of this complaint, it is Annex-R-1. It is alleged in the complaint that she was working under the applicant and the applicant's wife was LIC agent. The applicant asked said Ku. Alka N. Chavan to take insurance policy from his wife and as Ku. Alka N. Chavan refused it, the applicant was annoyed and consequently he started giving insulting treatment to her and also used to threaten her. It was also alleged in the complaint that oral complaints were made by Ku. Alka N. Chavan to the higher officers, but no heed was paid, ultimately she decided to lodge complaint to the Woman and Child Welfare Commission. After receiving copy of this complaint, then Collector, Buldana issued direction on 20/11/2019 to the SDO, Mehkar

to conduct the inquiry into the allegations made in the complaint and submit the report. Thereafter receiving the report from SDO, Mehkar, the Collector, Buldana requested the Divisional Commissioner, Amravati to transfer the applicant. In the letter written by the Collector, Buldana dated 29/1/2020 it was mentioned that besides Ku. Alka N. Chavan other employees also gave information that they have obtained LIC policies from the wife of the applicant. It is not disputed by the applicant that his wife is working as LIC agent. It seems that the SDO, Mehkar while conducting the preliminary inquiry called upon the applicant to give his remarks and in his remarks, the applicant stated that his wife was working as LIC agent since 11 years. He also admitted that Ku. Alka N. Chavan had consumed poison while performing the official duty. It was submitted by the applicant in his remarks that such false allegations were made against him by Ku. Alka N. Chavan only for her transfer to Ahmednagar District. At present, the complaint is pending before the Woman and Child Welfare Commission, State of Maharashtra, therefore, I am refraining me from making any observation, but prima facie, the contention of the applicant that only for transfer from Malkarpur to Ahmednagar, Ku. Alka Chavan made false allegations against the applicant can not be digested. It is not contention of the applicant that he has strained relationship with Ku. Alka Chavan for some other cause, therefore, the

circumstances that one Government servant lady alleged that she was harassed at the work place as she did not take policy from the applicant's wife, she was humiliated, insulted and threatened, the lady also made attempt to commit suicide in the office were very serious. In view of this background, if the applicant is transferred, as the matter was pending before the Women and Child Welfare Commission, then it is not possible to say that there was absolutely no exceptional cause for transfer of the applicant.

13. In case of **State of Maharashtra Vs. Ashok R. Kore**, the Hon'ble Division Bench of the Bombay High Court observed that reasons need not be elaborated as in the decision of a Court of law and if the elaborate reasons are in existence in the files of the Government, then it would suffice. In all the Judgments on which reliance is placed by the applicant, the Government servants were not due for transfer and transfers were mid-term transfers. In the present case, I have already observed that the applicant had completed his normal tenure of three years and by virtue of G.R. dated 7/7/2020 the barrier on the transfer was lifted, therefore, case of the applicant is to be examined on different footing. Even for a sake of argument, it is accepted that the applicant was not due for transfer, but on perusal of the impugned transfer order, it seems that reference of the letter written by the respondent no.2 dated 6/2/2020 is given. It is also

mentioned that exercising the powers under Section 4 (4) & (5) of the Transfers Act, 2005 the applicant was transferred. Thus, it seems that after considering the letter dated 6/2/2020 written by the respondent no.2, the applicant was transferred. I have already discussed what were the circumstances which propelled the respondent no.2 to forward proposal to the respondent no.1 for transferring the applicant, therefore, apparently as the reasons were in existence for the transfer, it is not possible to say that without any reason, just as per whim the applicant was transferred.

14. Now, I would like to consider the provision under Section 6 of the Transfers Act, 2005. After reading the table mentioned in Section 6, entry (b), it seems that all Officers of State services in Group-A having pay scales less than Rs.10,650-15,850 and all Gazetted Officers in Group-B could be transferred by Minister-in-charge after consultation with the Secretaries of the concerned Departments. The first proviso to Section 6 says that the Officers in entry (b) in the table, working at the Divisional or District level, could be transferred by the Divisional Head within the Division and the District Head within the District. First Proviso to Section 6 entry (b) is clear. As per this provision, the District Head i.e. the Collector can transfer Group-B Officers within the District and the Divisional Commissioner can transfer the Group-B Officers within the Division.

In the present case, the applicant is transferred from Malkapur, District Buldana to Chikhaldara, District Amravati. The transfer is within Amravati Revenue Division, therefore, as per the proviso, the respondent no.2 was empowered to transfer the applicant, but as the proposal was sent in the month of February,2020 it was a mid-term. Instead of approving that proposal, the next higher authority i.e. Government itself decided to transfer the applicant. It is settled law that the Government is the Appointing Authority of all Government servants. The term Competent Authority used in the Act is defined in Section 2 (b). It means, the Appointing Authority of the Government servant and shall include the Transferring Authority specified in the Section 6. It must be remembered that the applicant is a Gazetted Officer in Group-B, therefore, his Appointing Authority is the Government and after considering the letter dated 6/2/2020 written by the respondent no.2, the Appointing Authority issued the transfer order. The submission of the applicant is to hyper technical, it implies that the Appointing Authority has no jurisdiction to issue transfer order, it has only jurisdiction to approve the proposed transfer. In my opinion, such hyper technical submission cannot be accepted.

15. It is also submitted by the applicant that he should have given extension after exercising the powers under Section 5. After reading section 6 it is clear that in particular circumstances mentioned

in the section, the Government may extend the tenure. As the case of the applicant is not covered under clauses a,b or c of section 5(1), therefore, he cannot claim any relief relying on section 5.

16. It is contention of the applicant that his son is taking education in 10th Standard, his father is old. Such family difficulties cannot be a ground to avoid the transfer when the Government servant is due for transfer.

17. So far as the contention of the applicant that once he worked in tribal area, therefore, the respondents were not empowered to transfer him in tribal area after completion of 50 years age, is concerned, in this regard, I will say that the provisions in the Government G.R. are directory in nature, they are not mandatory. The applicant has already made representation to the Government, it is under consideration, but that cannot be a reason to quash the impugned transfer order. The respondent No.1 is the disciplinary authority of the applicant and it is settled legal position that the disciplinary authority may transfer the Government servant in contemplation of disciplinary action. As the applicant had completed his normal tenure of three years in 2019 itself, therefore, he was due for transfer and as per the G.R. dated 7/7/2020 authority was given to the transferring authority to issue transfer orders till 31/7/2020, therefore, it is not possible to accept that the applicant's transfer is

illegal or malicious or actuated with malice In the result, I pass the following order –

ORDER

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

Dated :- 10/12/2020.

(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 : 10/12/2020.

Uploaded on : 11/12/2020.

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