

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 485/2020 (S.B.)

Eshant Kishor Potwar,
Aged about years, Occ. Service as Jr. Clerk,
R/o Presently working in the office of Tahsildar, Saoner,
District Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through the Secretary,
Revenue Department, Mantralaya, Mumbai.
- 2) Resident Dy. Collector,
Office of Collector, Nagpur.
- 3) Tahsildar, Saoner.

Respondents.

Shri N. R. Saboo, Mrs. K.N. Saboo, Advocates for the applicant.

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

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

Dated :- 19th November, 2020

JUDGMENT

Heard Shri N.R. Saboo, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents. The learned P.O. has filed reply on behalf of respondent no.3. It is taken on record. Copy is served on the applicant.

2. The applicant is serving as Clerk-cum-Typist on the establishment of Collector, Nagpur. The applicant was serving as Junior Clerk in the office of Tahsildar, Saoner. The respondent no.2, Resident Deputy Collector (RDC) issued transfer order dated 6/8/2020 and transferred the applicant to Tahsil Office, Umred on administrative grounds. The applicant is challenging the transfer order on the ground that the applicant was not due for transfer and without following the procedure under 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") the applicant is transferred. The second contention is that as per section 6 of the Act, the RDC, Nagpur was not authorised in law to transfer the applicant and therefore the transfer order is illegal.

3. The respondent nos.2&3 have placed their reply and justified the transfer. The respondents have contended that the District Collector, Nagpur is the Competent Authority to issue transfer order and as the Collector, Nagpur is not party to the O.A., the O.A. is not tenable. The second contention of the respondents is that the transfer is condition of service and as there were complaints received against the applicant, therefore, he is transferred in the interest of the public for administrative reasons. It is not disputed by the respondents that name of the applicant was not included in the list of

the employees who were due for transfer or considered for transfer. According to the respondents, as there were complaints, consequently, in the interest of the administration, the respondent no.2 transferred the applicant. According to the respondents, there is no illegality in the impugned order of transfer and therefore the O.A. be dismissed.

4. I have heard oral submissions on behalf of the applicant and on behalf of the respondents. The learned counsel for the applicant submitted that the applicant joined duty at Saoner in the month of June,2017 and in the month of May,2020 the applicant was not due for transfer. The second submission is that there is non-compliance of Section 4 (4) & (5) of the Transfers Act,2005. The main attack of the applicant is that the respondent no.2 had no authority in law to transfer the applicant.

5. The learned P.O. has justified the transfer on the ground that the applicant was transferred on administrative grounds as complaints were received against him, therefore, there is no violation of any legal provisions.

6. I have perused the impugned order of transfer dated 6/8/2020. In the impugned transfer order, it is mentioned that for administrative reasons, the applicant was transferred. It is pertinent to

note that in the transfer order it is nowhere mentioned that as complaints were received against the applicant, therefore, in contemplation of the disciplinary proceeding, the applicant was being transferred. The legal position is settled. The Disciplinary Authority cannot avoid to initiate disciplinary action against a Government servant who is guilty of misconduct and merely transfer him to another place. In this case it is admitted by the respondents that the applicant was not due for transfer, his name was not in a list of the employees who were considered as due for transfer. Under this situation, it was necessary for the respondent no.2 to follow the procedure laid down under Section 4 (4) & (5) of the Transfers Act,2005. The respondent no.2 who has issued the impugned transfer order, did not place the matter before the higher authority for the approval.

7. The transfer order is also attacked on the ground that as per the Section 6 of the Transfers Act,2005 the Head of the Departments are authorised to transfer Non-Gazetted employees in Group- B and Group-C. Admittedly, the applicant is employee in Group-C, therefore, his Transferring Authority was the Collector who was Head of the Department. In the present case, the transfer order is issued by the respondent no.2 who is the Resident Deputy Collector. The second proviso to Section 6 of the Transfers Act,2005 says that the Competent Transferring Authority specified in the table in

Section-6 may, by general or special order, delegate its power under this section to any of its subordinate authority. The applicant in Para-6, Clause (E) has specifically raised a ground that as required under Section 6 of the Transfers Act,2005, the Collector is the Competent Authority to issue transfer order, the impugned order issued by the RDC cannot be sustained. The respondent no.2 has nowhere contended that the Collector, Nagpur has issued general or special order delegating its powers under Section-6 of the Transfers Act,2005 and conferred this power on the respondent no.2. The learned P.O. was unable to make any statement whether any such general or special order was issued by the Collector, Nagpur for delegating powers to the respondent no.2. As the respondent no.2 has exercised the power otherwise than provided in Section 6 of the Transfers Act,2005, therefore, it was necessary for the respondent no.2 to show that the Collector, Nagpur has issued general or special order and delegated power of transfer to the respondent no.2. In absence of such contention and in absence of such general or special order, it is not possible to infer that the respondent no.2 was authorized in law to exercise the powers under Section 6 of the Transfers Act,2005. In view of this, I am compelled to say that the impugned transfer order is bad in law, it cannot be sustained and therefore, it is liable to be quashed. Hence, the following order –

ORDER

The O.A. stands allowed in terms of prayer clause nos. 9 (i) & (ii). No order as to costs.

Dated :- 19/11/2020.

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(Anand Karanjkar)
Member (J).

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 : 19/11/2020.

and pronounced on

Uploaded on : 20/11/2020..

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