

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 507 of 2016 (S.B.)**

Pravin S/o Bhayyaji Waghmare,  
Aged about 44 years,  
R/o C/o Ranjan Y Aole, Mayur Complex,  
Block-H, 2<sup>nd</sup> Building, Mul Road,  
Chandrapur, Tq. & Dist. Chandrapur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Public works Department,  
Mumbai.
- 2) Chief Engineer, PWD,  
Divisional Office, Bandhakam Sankul,  
Civil Lines, Nagpur-01.
- 3) Superintendent Engineer,  
Public Works Circle, Chandrapur.
- 4) Executive Engineer,  
Road Project Division, Chandrapur.
- 5) Sub Divisional Officer/ Assistant Engineer,  
Road Project Sub Division no.1, Chandrapur.

**Respondents**

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**S/Shri Y.R., U.Y. Sonkusare, Advocates for the applicant.**

**Shri A.M. Khadatkhar, learned P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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## JUDGMENT

**(Delivered on this 26<sup>th</sup> day of March,2018)**

Heard Shri Y.R. Sonkusare, Id. counsel for the applicant and Shri A.M. Khadatkar, Id. P.O. for the respondents.

2. The applicant has been appointed as Junior Engineer in the Department of Public Works. In the year 2007 he was suffering from back pain and was undergoing treatment. He has under gone detailed medical examination through Board and the Board issued a Certificate on 22/06/2009 stating that he was fit for service, but for light work. On 28/07/2011 the applicant was referred to one Dr. Anil Madurwar for detailed check up as he was suffering from Lumber Spine. He was accordingly examined by the Civil Surgeon on 01/08/2011. On 15/03/2012, the applicant suffered a severe back pain and slip disc and therefore he requested the respondents to transfer him. He was accordingly transferred on 31/05/2012. The applicant had again undergone medical treatment under Dr. Hemant Puttewar in the year,2016. In spite of such disease, the applicant has been transferred at Katol, i.e., at a long distance from his native place and therefore he requested for transfer. The applicant also requested for cancellation of his transfer at Katol, but nothing was done. The applicant was relieved compulsorily and was asked to appear before the medical board.

3. According to the applicant, the letter dated 27/05/2016 (Annex-A-11, P-25) whereby the applicant has been transferred from Chandrapur to

Katol be quashed and set aside. The applicant has further prayed that the letter dated 12/07/2016 (Annex-A-19) whereby the applicant has been asked to get himself examined through the medical officer be quashed and set aside. It is further stated that respondent no.2 be directed to reinstate the applicant in service on the place where he was working before the order of transfer dated 27/05/2016.

4. The respondent no.2, i.e., the Chief Engineer, PWD, Nagpur has filed reply-affidavit. The respondent no.2 admitted the history of the applicant as regards his illness. It is, however, denied that the applicant was advised light work. It is stated that the applicant, at the time of joining has filed medical certificate, the copy of which is at Annex-A-4 which does not state about the light work to be given to the applicant. The said certificate simply states that the applicant was fit for duty.

5. According to the respondents, in the year 2012 the applicant was working in Road Project Sub Division No.4, Chandrapur under the control of Public Works Division No.1, Chandrapur. He wanted to continue in the same head quarter for his medical treatment and therefore on his request he was transferred vide order dated 31/05/2012. Since 2012, the applicant had not submitted any request application nor he submitted any documents in support of his illness. The applicant was due for transfer since he had completed his tenure at Chandrapur and therefore he was considered for transfer in the annual general transfers of 2016. Accordingly

he was transferred to Katol vide order dated 27/05/2016. There was some error in the said transfer order and it was also corrected subsequently.

6. The respondent no.2 referred to the conduct of the applicant. It is submitted that after receiving the order of transfer, the applicant proceeded for one month leave on medical ground from 03/06/2016. It was only with intention to get the order of cancelled. The application was submitted on 06/06/2016 after 3 days from the date of proceeding on leave. The notice was issued to him making it clear as to why he was absent without any initiation since 03/06/2016. The applicant deliberately stated that he has not received the transfer order. It was also intimated to him that his absence will be treated as leave without pay and it is in view of this correspondence he submitted another application on 07/06/2016 admitting that he received the transfer order. The applicant stated that he was unable to walk, sit and stand due to his back problem and requested for cancellation of transfer order. In the meantime, he was relieved, but the applicant alleged that he was relieved compulsorily.

7. In view of the medical problem as stated above, the Chief Engineer, PWD, Region Nagpur asked the Superintending Engineer, Public Works Circle, Chandrapur to refer the applicant for his fitness before the medical board and therefore the Executive Engineer, PWD, Chandrapur therefore requested the Chairman, Indira Gandhi Medical College (IGMC), Nagpur for applicant's medical check up. The Chairman of IGMC accordingly requested the applicant to be present before medical board on

22/08/2016. It was certified that the applicant was unfit for duty and therefore he was directed to remain present before the board after two months. The applicant, however, did not remain present before the board on 24/10/2016 and till today and on the contrary filed this O.A.

8. From the facts of the case as referred above, it is clear that the applicant must be facing some medical problems and this medical problem has been since long. In spite the specific order to join on the transferred place, the applicant did not join, on the contrary proceeded on leave without intimation and subsequently filed leave application on medical ground. Thus, it is clear that the applicant has avoided to join at the post of transfer. If an employee remains absent for a long period and the competent authority has any doubt about his medical fitness to resume duty, there is absolutely no reason as to why the employee should deny for getting examined through medical board. The applicant could not make out any cause for denying to appear before medical board.

9. So far as the applicant's claim that his order of transfer at Katol dated 27/05/2016 be cancelled, he could not make out ground for cancellation of such transfer. In fact the applicant was admittedly due for transfer from Chandrapur and on prior occasion his request for retention at Chadnrapur was duly considered on medical ground. The applicant cannot insist the respondent authorities not to relieve him or to post him at a particular post or place. If the applicant has any medical problem, he should have joined at Katol and ought to have filed representation for

change of posting or cancellation of transfer as the case may be but remaining absent without any reason and without application cannot be justified.

10. It seems that my learned predecessor vide order dated 15/02/2018 was pleased to observe in para-2 of the order is as under :-

*“(2) Upon hearing on both the sides, it is clear that the present transfer order is neither mid-term nor mid-tenure. Even one mistake committed regarding T.A. in the transfer order is withdrawn. The applicant now merely wants that representation be decided. The same can be decided by the respondents within a time frame that may be put by this Tribunal. The learned counsel for the applicant therefore may take instructions regarding withdrawal if any of the present applicant.”*

11. However the learned counsel for the applicant on instructions submits that the applicant does not want to withdraw the O.A. and on the contrary wants that the matter shall be heard on merits and therefore the matter is heard on merits. On a conspectus of discussions in forgoing paras, it will be thus crystal clear that the applicant could not make out any case for cancellation of his transfer to Katol. On the contrary, it seems that he was due for transfer and therefore he has been transferred to Katol at the time of annual general transfers. Instead of joining the post at Katol, the applicant remained absent on alleged medical ground. In spite the specific direction to appear before the medical board, the applicant did not follow the instructions and did not appear before the Board. Unless and until the applicant is got examined through medical board and declared fit, it may not be possible for the office to allow him to join. I, therefore, do not find any

merits in the O.A. The applicant himself is responsible for whatever situation that has arisen. In view thereof, the following order :-

**ORDER**

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

**Dated :- 26/03/2018.**

**(J.D. Kulkarni)  
Vice-Chairman (J).**

dnk.