

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 573/2018

Shri Sudhir S/o Palasram Sute,
Aged about 46 years,
Occ. Service, R/o Plot No.56,
Sant Tukdoji Ward, Hinganghat, Dist. Wardha.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary,
Department of Revenue,
Mantralaya, Mumbai-32.
- 2) The Collector,
Wardha, Dist. Wardha.
- 3) The Sub-Divisional Officer,
Dist. Wardha.
- 4) The Tahasildar,
Hinganghat, Dist. Wardha.
- 5) Shri Anil S/o Chirkuta Lokhande,
Aged : Major years, Occ. Service,
R/o Master Colony, Wardha, Dist. Wardha.

Respondents

Shri A.S. Moon, Advocate for the applicant.

Shri A. P. Potnis, P.O. for respondent nos. 1 to 4.

Chitali Bhute, Advocate for respondent no.5.

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

Dated :- 01/11/2018.

ORAL ORDER

Heard Shri A.S. Moon, Id. counsel for the applicant and Shri A.P. Potnis, Id. P.O. for respondent nos. 1 to 4. None for respondent no.5.

2. The applicant was serving as Talathi at Saza Donduda, Tq. Hinganghat, District Wardha, by order dated 13/07/2018 the Sub-Divisional Officer, Hinganghat, District Wardha transferred the applicant from Saza Donduda to Saza Wadner, Tq. Hinganghat, District Wardha on administrative grounds.

3. The applicant is challenging the transfer order mainly on the ground that by order dated 31/05/2016 he was transferred and posted at Donduda, Tq. Hinganghat, District Wardha even the normal tenure was not completed by him. The second ground of attack is that the procedure laid down under the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfers Act") under section 4(4) & (5) are not complied with. It is submitted that the transfer order is illegal and it be set aside.

4. It is contention of the respondents that Shri A.C. Lokhande was Talathi of saza Wadner, Tq. Hinganghat, District Wardha, he was negligent in performing his duty and as directed by said State Election Commission vide order dated 30th June,2018 show cause notice was

served on Shri Lokhande. It is contention of the respondents that Shri Lokhande was neglecting to perform his duty in relation to the Election, therefore, there was administrative exigency for transferring Shri Lokhande from saza Wadner. It is submitted that in view of this circumstances the transferring authority issued order dated 13th July,2018 and there is no illegality in this order.

5. After hearing submissions of both sides and on perusing the documents, it appears that the present applicant was posted at Donduda, Tq. Hinganghat, District Wardha by order dated 31st May,2016. Thus the applicant was not due for transfer as normal tenure of three years was not completed by him. Now I would like to consider whether the requirements under section 4 sub section 5 of the Transfers Act are complied with. Section 4 sub section 4 permits the competent authority to transfer a Government servant in the mid of the session, on ground (1) to fill the newly created posts or vacant posts due to promotion, retirement, resignation reversion, reinstatement etc. And (2) where the competent authority is satisfied that such transfer order is essential due to exceptional circumstances or special reasons.

6. Sub section 5 of the Transfers Act says that in special cases after recording reasons in writing and with the prior approval (approval of the immediately superior) transferring authority, referred

in the Table, section 6, the competent authority may transfer a government servant before completion of the normal tenure.

7. I have made query with P.O. whether the proposal of the transfer was placed before the Collector, Wardha who was the immediate superior of the SDO, Hinganghat. Positive statement is not made by the learned P.O. that any such proposal was placed before the Collector and it was approved by the Collector.

The learned counsel for the applicant has placed reliance on the Judgment in case of **S.B. Bhagawat Vs. State of Maharashtra & Ors., 2012 (3) Mh.L.J.,197** the issue before the Hon'ble Apex Court was requirement of recording reasons in writing in case of premature transfer. In the present case the special reasons recorded by the SDO for transferring the applicant, are not produced before this Tribunal. It is observed by the Hon'ble Apex Court merely calling a case a special case does not constitute sufficient reason. The relevant portion of the Judgment is as under :-

“Merely calling a case a special case does not constitute sufficient reason. The rationale why the legislature has required that reasons be recorded in writing for transferring an employee even before completing his tenure is to bring objectivity and transparency to the process of transfers. The fourth respondent was sought to be transferred from Nashik to Sangli at his request. The petitioner is sought to be displaced. The manner in which the power has been exercised leaves no manner of doubt that the exercise was carried out not in public interest, but with a view to accommodate the request of the fourth respondent. The mandatory statutory provision of recording reasons in writing for justifying recourse to the exceptional power conferred by sub section (5) of the section 4 has not been

fulfilled. There is a clear breach of the statutory provisions. The petition is therefore allowed by quashing and setting aside the impugned order dated 29th August,2011.”

8. In the present case also it is simply mentioned in transfer order dated 13/07/2018 that the applicant and Shri A.C. Lokhande were transferred on administrative grounds. There is total non compliance of the mandatory provision under section 4 sub section 5 of the Transfers Act. Though it is alleged in reply filed by the respondent nos.3 and 4 that Shri A.C. Lokhande was not performing his duty, show cause notice was issued as per the order of State Election Commission to Shri Lokhande, but this entire material is not placed before this Tribunal. Under such circumstances it is not possible to accept that really there was administrative exigency for the transferring the applicant, secondly as no heed was paid by the SDO, Hinganghat to the mandate under section 4 sub section 5 in Transfers Act, therefore, the transfer order is vitiated. Hence, I pass the following order :-

ORDER

The application is allowed. The impugned transfer order dated 13/07/2018 is hereby set aside. The O.A. stands disposed of with no order as to costs.

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