

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.63/2017.

Prafulla Mahadeorao Lole,
Aged about 55 yrs.,
Occ-Service,
R/o Anjangaon Surji,
District Amravati.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Municipal Administration,
Mantralaya, Mumbai-440 032.
- 2) The Collector,
Amravati.
- 3) The Municipal Council,
Anjangaon Surji, District Amravati.
Through its Chief Officer.
- 4) The Director of Municipal Administration,
Govt. Transport Building, 3rd floor,
Sir Pochkhanwala Marg,
Worli, Mumbai-30.
- 5) The Director of Municipal Administration,
Amravati.

Respondents

Shri S.P. Kshirsagar, Ld. Counsel for the applicant.
Shri M.I. Khan, learned P.O. for the respondents 1 and 2.
Shri P.S. Deshpande, Adv. holding for Shri F.T. Mirza, Adv.for R.3.
None appeared for respondent Nos. 4 and 5.

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

Dated: - 29th March 2017.

Order

Heard Shri S.P. Kshirsagar, the learned counsel for the applicant, Shri M.I. Khan, the learned P.O. for the respondents 1 and 2 and Shri P.S. Deshpande, Advocate holding for Shri F.T. Mirza, the learned counsel for respondent No.3. None appeared for respondent Nos. 4 and 5.

2. The applicant in this case is a Civil Supervisor, Grade-III and has challenged the impugned order of his transfer dated 27.1.2017 issued by respondent No.2 whereby the applicant has been transferred from Anjangaon Surji, Distt. Amravati to Morshi, Distt. Amravati. It is clear that the said order of transfer is mid-term devoid of administrative exigency, amounts to punishment and is in contravention of circular dated 15.12.2004 and, therefore, it be quashed and set aside.

3. According to the applicant, he was Transferred to Anjangaon Surji from Nandura as per order dated 30.5.2015. There was dispute between the applicant and the Chief Officer, Municipal Council, Anjangaon Surji and on account of said dispute, the applicant came to be transferred to Chandur Bazar. The said order was challenged by the applicant by filing O.A. No.494/2016.

4. The O.A. No.494/2016 came to be disposed of by this Tribunal vide order dated 9.1.2017 and it was observed by this Tribunal that the applicant's transfer to Chandur Bazar was before the completion of tenure of the applicant and compliance U/s 4 (4) & (5) of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as, 'Transfer Act, 2005') was not made as the order was completely silent about the said compliance and, therefore, the order was quashed. The applicant was served with some show cause notices at the time of relevant order and, therefore, the Tribunal made it clear that the respondents will be at liberty to take any recourse to meet the exigency, according to law and that the order passed by this Tribunal will not stand as a hurdle in the applicant's way.

5. The learned counsel for the applicant submits that in spite of the fact that the earlier order of transfer of the applicant from Anjangaon Surji to Chandur Bazar was quashed for non compliance of Section 4 (4) & (5) of the Transfer Act, 2005, the impugned order has been passed and here also there is no such compliance.

6. Respondent No.3 i.e. Chief Officer, Municipal Council, Anjangaon Surji filed affidavit in reply and tried to justify the order. It is stated that the impugned order has been implemented and

one Shri Ganvir has been posted in place of the applicant and, therefore, Shri Ganvir is a necessary party. It is further stated that there were serious complaints against the applicant for which enquiry was contemplated and, therefore, the order is legal.

7. Respondent No.2 i.e. Collector, Amravati also tried to justify the order. It is stated that the wife of the applicant is from political circle and trying to interfere in the work. Two notices have already been issued to the applicant for his misconduct and for submitting false medical certificates and also the applicant was asked to show cause as to why he should not be kept under suspension.

8. From the affidavit in reply filed on behalf of the respondents, it seems that the respondents are claiming misconduct on the part of the applicant and not only that, they are making allegations of fraud. In the affidavit in reply of respondent No.3, it has been specifically mentioned that there were serious complaints against the applicant by the residents and members of the Municipal Council. The conduct of the applicant is detrimental to the administration of the respondent Municipal Council and, therefore, the applicant has been rightly transferred to ensure smooth administration. It is further alleged that Smt. Manjusha Lole, wife of the applicant was holding the post of President, Municipal Council and for the purpose of fair enquiry, it is

necessary to transfer the applicant. Similar allegations are made by respondent No.2 also.

9. Perusal of affidavit in reply as aforesaid will make it crystal clear that serious allegations are made against the applicant and not only that the show cause notices have been issued to the applicant, calling upon him to explain as to why he should not be kept under suspension. If it is accepted that the applicant has been transferred only because of such allegations made against him, then the impugned order of transfer can be said to be punitive, as the respondent authorities want to punish the applicant for the alleged allegations by transferring him. If at all the conduct of the applicant is not befitting the Government servant and if the allegations are so serious, the respondents ought to have kept the applicant under suspension during the pendency of enquiry, so as to avoid his interference in the enquiry. But transfer cannot be said to be a way out to punish the applicant.

10. The order of transfer has been passed by the Collector, Amravati. There is nothing on record to show that the sanction of higher authority has been obtained for such transfer and, therefore, there seems to be a prima facie breach of section 4 (4) & (5) of the Transfer Act, 2005. In spite of earlier order passed in O.A.

No.494/2016, the respondent seems to have committed same mistake in not complying with the provisions of Section 4 (4) & (5) of the Transfer Act, 2005.

11. The Ld. P.O. as well as learned counsel for respondent No.3 submit that the order has been complied with and one Shri Ganvir has taken charge of the post of the applicant. The said action seems to have taken place on 17.2.2017. The applicant is not making any allegations nor claiming anything against Shri Ganvir and even otherwise non compliance of the provisions of the Transfer Act cannot be overlooked only because the impugned order has been implemented. However, if the respondents are so much worried about the right of Shri Ganvir, they will be at liberty to adjust him in any other post at Anjangaon Surji or as per Shri Ganvir's convenience.

12. From the discussion in foregoing paras, I am, therefore, satisfied that the impugned order of transfer of the applicant from Anjangaon Surji to Morshi is illegal. It is also a mid-term transfer order and devoid of administrative exigency and it amounts to punishment and, therefore, I proceed to pass the following order:-

(i) The O.A. is allowed in terms of prayer clause-A.

(ii) The respondents are directed to allow the applicant to work at Anjangaon Surji as he was workilgn at the time of impugned order of transfer.

(iii) No order as to costs.

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

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