

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 643 OF 2017 (S.B.)

Rajendra S/o Baburao Bujade,
Aged 50 years, Occupation – Service,
R/o Plot No. 90, New Mahalaxmi Nagar,
New Narsala Road, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Social Justice & Special Assistance Department,
Having its office at
Mantralaya, Mumbai-400 032.
- 2) Commissioner Social Welfare,
Maharashtra State,
3rd Church Road
Pune.
- 3) Regional Deputy Commissioner,
Shraddhanand Peth, Opp. ITI Nagpur

Respondents

Shri S.P.Palshikar, Id. Adv. for the applicant.

Shri M.I.Khan, Id. P.O. for the respondents.

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

JUDGMENT

(Delivered on this 07th day of December, 2017)

Heard Shri S.P.Palshikar, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the respondents.

2. The applicant joined the services of the respondents in the office of Commissioner Animal Husbandry (Maharashtra State), Pune on 13/12/1993 and was posted as Senior Clerk at Aurangabad in 2006 and was transferred as such at Nagpur in 2007. He was promoted on 01/02/2014 and was posted in the office of the respondent no. 3. Thus, admittedly, the applicant is serving at Nagpur from 17/02/2014.

3. Vide order dated 23/05/2017, the applicant has been transferred from the post of Head Clerk in the office of the Regional Commissioner, Social Welfare, Nagpur to the office of Social Welfare Commissioner at Pune. Thereafter, vide order dated 31/07/2017, the applicant has been posted in the Education Department of Social Welfare Commissioner at Pune in the place of One Smt. Khalekar, Head Clerk who was kept under suspension, on administrative ground. According to the applicant he has been transferred in place of Smt. Khalekar, but the said post is not vacant and, therefore, it will be difficult for the applicant to get his salary from the said office.

4. According to the applicant, one Shri Ashok Nete, Member of Parliament filed a complaint against the applicant on 11/06/2016 and an enquiry was ordered on the said complaint. In the enquiry, nothing

adverse was found against the applicant, but without considering the said fact, the applicant has been transferred and, therefore, the impugned order of transfer of the applicant is illegal and against the provisions of Transfer Act, 2005. No sanction for applicant's transfer was obtained from the higher authority and, therefore, the applicant has challenged both the impugned orders. It is stated that the order was against the direction issued by the Hon'ble Apex Court in the case of **TSR Subramanyam Vs. Union of India, AIR 2014 SC 263**. It is stated that an employee can be transferred only on a vacant post and the post where the applicant has been transferred, is not vacant.

5. The respondent nos. 2 and 3 have filed affidavit-in-reply and justified the order of transfer. It is stated that the applicant has completed his tenure at Nagpur and, therefore, has been rightly transferred. So far as the impugned order dated 31/07/2017, it is stated that the sanction of the higher authority has been obtained for such transfer. The Civil Services Board has recommended the transfer of the applicant.

6. As regards the contention of the applicant that he was posted in a place which was not vacant, it is stated that Smt. Khalekar, the Head Clerk has been kept under suspension and she was posted in the Regional Social Welfare Department at Pune for drawing pay and

allowances during suspension period and, therefore, the grievances of the applicant that he will not get salary etc. has no force.

7. The Id. P.O. has also invited my attention to the affidavit-in-reply of the respondents in which it is stated that the office of the respondent no. 3 has received various complaints against the applicant, as the applicant was working in the same office for more than 10 yrs. and the applicant was overdue for transfer. It is further stated that posting an employee in a particular post and in a particular department is a matter, which falls within the domain of State Government and the applicant cannot deny to join the post where he has been transferred.

8. Perusal of the ground taken in the O.A. as well as that has been argued before this Tribunal makes it crystal clear that the applicant's only apprehension is that he may not get regular salary since the post, where he has been transferred at Pune, is not vacant. However, this apprehension has no substance, as respondents have made it clear in the affidavit-in-reply that Smt. Khalekar, who is kept under suspension and in whose place the applicant has been transferred, has been posted in the office of Regional Deputy Commissioner, Social Welfare Department, Pune for drawing pay and allowances during the suspension period. Thus there will be no problem in applicant getting the regular salary. Even otherwise that itself cannot be a ground to justify the denial, on the part of applicant, to join at transferred post.

9. The respondents have placed on record the minutes of the meeting of the Civil Services Board in which the applicant's case was considered for transfer. It seems that the applicant's case was recommended for transfer and the same was sanctioned by the Board and accordingly vide order dated 23/05/2017 he was transferred. The subsequent order seems to have been issued, as Smt. Khalekar's Head Quarter was to be changed. The recommendation of the Board has been accepted by the competent authority and the applicant has been posted in place of Smt. Khalekar on administrative reasons. I absolutely find no reason to doubt about the intention of the respondents in transferring the applicant in place of Smt. Khalekar.

10. The Id. counsel for the applicant submits that the Member of Parliament, Shri Ashok Nete has made a complaint against the applicant and enquiry was made. The copy of the complaint is placed on record as Annexure-A-3 from which it seems that Member of Parliament, Shri Ashok Nete made a complaint that, applicant was serving at the same post for more than 15 yrs. and, therefore, there was corruption. There were other allegations made against the applicant. However, after enquiry, nothing incriminating was found in the behaviour of the applicant. It is material to note that the applicant has not been transferred on the basis of complaint as seen from the documents. Admittedly the applicant was overdue for transfer. Even for argument

sake, it is accepted that there was some complaint against the applicant and because of his prolonged tenure at Nagpur, it was necessary to transfer him and, therefore, the competent authority thought it proper to transfer the applicant, since he was overdue, nothing wrong has been committed by the competent authority in transferring the applicant. No malafides are complained and proved against the action taken by the respondent authorities. In view thereof, I do not find any merit in the O.A. Hence the following order:-

ORDER

1. O.A. stands dismissed.
2. No order as to costs.

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

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