

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 680 of 2021 (SB)

Narendra Ramchandra Barapatre,
aged about 54 years, Occ. Service,
R/o Flat No.101, Empire Palace,
Venus Park Society, Old By-pass Road,
Amravati, Tahsil & District Amravati.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Agriculture Department, Mantralaya,
Mumbai-32.
- 2) The Joint Director of Agriculture,
Amravati Region, Amravati.

Respondents.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.
Shri M.I. Khan, P.O. for respondents.

**Coram :- Hon'ble Shri M.A. Lovekar,
Member (J).**

Date of Reserving for Judgment : 11th April, 2022.

Date of Pronouncement of Judgment : 20th April, 2022.

JUDGMENT

(Delivered on this 20th day of April, 2022)

Heard Shri G.K. Bhusari, learned counsel for the applicant
and Shri M.I. Khan, learned P.O. for the respondents.

2. Case of the applicant is as follows –

By order dated 11/09/2019 (Annex-A-6) the applicant was
transferred to the post of Technical Officer (Quality Control) on the

establishment of respondent no.2. By the impugned order dated 9/8/2021 (Annex-A-1) he has been transferred to the post of Technical Officer, on the same establishment of respondent no.2. It was a mid-term transfer. While effecting this transfer sub sections 4 and 5 of Section 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "the Act"), guidelines in G.R. dated 29/07/2021(Annex-A-2) and guidelines in G.R. dated 09/04/2018 were not followed. Hence the impugned order cannot be sustained.

3. Reply of respondent nos.1 and 2 is at pages 79 to 83. They have resisted the application mainly on the pleading set out as follows in para 5 -

" (5) It is submitted that, the averments made by the applicant in para no.4.3 to 4. 7 the same are not true and correct and hence denied by the respondents. It is further submitted that, the Secretary (Agriculture) is the competent authority to transfer the employee in consultation with the Hon'ble Minister (Agriculture) in Group-B category. In case of mid-term transfer it is necessary to get prior approval from the senior competent authority. Accordingly, the Hon'ble Minister (Agriculture) is the competent authority for the mid-term transfer of the applicant. The order dated 22.4.2016 is annexed herewith and marked as Annexure R-1. The applicant has been transferred with the approval of competent authority after complying the provisions of Section 4.4 and 4.5 of the Maharashtra Transfer Act, 2005. It is further submitted that, the General Administration Department has issued G.R. dated 29.7.2021, in the said G.R. as per para no.5 it is clearly mentioned that in special reason competent

authority may make transfer u/s 4.4 and 4.5 of the Transfer Act. The copy of the said G.R. is annexed herewith and marked as Annexure R-2.”

4. Annex-R-1 shows that Secretary (Agriculture) was the competent authority for transfer of the applicant (who is a Group-B employee) and Minister (Agricultural) was the competent transferring authority for mid-term transfer.

5. It is not in dispute that the applicant was not due for transfer and accordingly in none of the lists of employees, who were due for transfer in annual general transfers his name featured.

6. The impugned order states –

“ शासन आदेश -

उपरोक्त प्रस्तावनेमध्ये नमुद करण्यात आल्यानुसार कृषि विभागातील क्षेत्रिय स्तरावरील मोठ्या प्रमाणात असलेली रिक्त पदे प्रशासकीय सोयीसाठी भरणे आवश्यक आहे. ही बाब विचारात घेवुन महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडतांना होणा-या विलंबास प्रतिबंध अधिनियम, २००५ मधील तरतुदीनुसार बदली करण्यास सक्षम असलेल्या प्राधिका-यांच्या मान्यतेने जून, २०२१ अखेर बदलीस पात्र असलेल्या या विभागातील महाराष्ट्र कृषि सेवा, गट-ब (वे.श्रे. S-१६ : ४४९००-१४२४००) संवर्गातील खालील अधिका-यांना तक्त्यात दर्शविल्याप्रमाणे प्रशासकीय कारणास्तव बदलीने पदस्थापना करण्यास शासन मान्यता देण्यात येत आहे.

अ.क्र.	अधिका-याचे नांव व सध्याची पदस्थापना	बदलीने पदस्थापना
१.	श्री.नरेद्र बारापात्रे, तंत्र अधिकारी (गु.नि.), विभागीय कृषी सह संचालक, अमरावती	तंत्र अधिकारी, विभागीय कृषी सह संचालक, अमरावती

7. According to Shri Bhusari, the learned counsel for the applicant, the impugned order is passed in breach of sub sections 4

and 5 of Section 4 of the Act and hence, it cannot be sustained. Sub Sections 4 and 5 of Section 4 of the Act read as under –

“(4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May: Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:-

(i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;

(ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.

(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior [approval of the immediately superior] Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

8. Sub section 5 of Section 4 of the Act begins with a non-obstante clause. In the facts and circumstances of the case only it will have to be seen whether the impugned order fits within the four corners of this sub section. I have quoted para-5 of reply of respondent nos.1 and 2. What is stated in this para is not traversed by the applicant. The impugned order records reasons for the

transfer. Therefore, it will have to be held that the impugned order is in consonance with sub section 5 of section 4 of the Act.

9. According to the applicant, while passing the impugned order an important guideline pertaining to counselling contained in G.R. dated 9/4/2018 was not followed and hence, the impugned order will have to be set aside. There is no substance in this submission. This G.R. specifically states -

“मुदतपूर्व व मध्यावधी बदल्या - मुदतपूर्व व मध्यावधी बदल्या या प्रामुख्याने प्रशासनाची निकड किंवा कर्मचा-यांकडून प्राप्त विनंती अर्ज या कारणास्तव वर्षभर चालु राहणारी प्रक्रिया आहे. तसेच अशा स्वरुपाच्या बदल्या करतांना प्रशासनाची निकड ही एखादे ठराविक रिक्त पद भरणे अशा स्वरुपाचीच असल्यामुळे अशा बदलीसाठी समुपदेशनाची आवश्यकता राहत नाही”

10. Under the impugned order the applicant is transferred from the post of Technical Officer (Quality Control) to the post of Technical Officer on the same establishment of respondent no.2.

11. The applicant has averred -

“This fact shows that somebody is playing a role behind the curtain and is trying to displace the Applicant from the said post. It is submitted here that tomorrow the Government may take a stand that there may be no domestic problem to the applicant because he is shifted in the same city and as usual, they will take a stand. But certainly if the entire episode is considered in perspective manner, then this Hon'ble Tribunal will find that all these activities have been done by the officials of the Mantralaya to accommodate someone in the second phase of transfer which commenced from 10.8.2021 i.e. transfers on special reasons and to fulfil the obligation of third

person whosoever is interested to accommodate this post, which is held by the applicant. Certainly, it is an illegal one.”

12. This pleading is too vague. It cannot be relied upon.

13. Respondent nos.1 and 2 have relied on the following rulings -

(i) Chandrakant S/o Umajirao Mehetre Vs. State of Maharashtra and others. In this case it is held –

“(4) In an affidavit in reply filed on behalf of the State, a map showing the location of various offices in the Public Works Department has been placed on record. Perusal of the said map would reveal that the respondent no.5 has been posted in the same premises. However, it appears that the room in which he is now required to work is at the distance of 47.5 meters from the room in which he was earlier working. In that view, we find that the learned Tribunal has grossly erred in interfering with the transfer order impugned before it.”

(ii) Shri Rajendra Shankar Kalal Vs. State of Maharashtra and Ors. In this case it is held –

“(7) Thus where the Competent Authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons or in special cases the same could be effected after recording reasons in writing and that the prior permission of the higher authority than the Competent Transfer Authority mentioned in Section 6 of the Act.”

“(8) In Writ Petition No. 3301 of 2010 decided on 11/10/2010, we have already held that such internal transfers within the same office or at the same Head Quarter should not be treated as transfers in the normal meaning and these are only internal postings for the convenience of the administration.”

“(12) We reiterate that such an internal transfer cannot be termed as a transfer so as to raise a challenge before the Tribunal. It is only an internal posting within the very same office and in our opinion, the Tribunal/Court should be slow in interfering in such orders.”

14. In the impugned order reasons are recorded. Said order squarely falls within the four corners of Section 4 (5) of the Act. Allegations of malafides are too nebulous to be relied upon. Ratio laid down in the rulings relied upon by the respondents clearly supports the conclusion that this application is devoid of substance. Hence, the order -

ORDER

The O.A. is dismissed. No order as to costs.

Dated :- 20/04/2022.

(M.A. Lovekar)
Member (J).

dnk.*

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 : 20/04/2022.

Uploaded on : 20/04/2022.ok