

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 775 /2016

Shankar S/o Rameshwar Mandwar,
Aged about 54 years, Occ. Service
C/o Wardha, District Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary Water Resources Department,
Mantralaya, Mumbai-32.
- 2) The Chief Engineer,
Water Resources Department,
Nagpur Division, Nagpur.
- 3) D.G. Barapatre,
Aged adult Occ. Service,
r/o c/o office of Executive Engineer,
Bembla Canal Division (Construction &
Irrigation) Yeotmal, District Yeotmal.

Respondents

Shri A.P. Tathod, A.D. Girdekar, Advocates for the applicant.

Shri M.I. Khan, Id. P.O. for respondent no. 1.

Shri S.G. Jagtap, S.S. Godbole, A.M. Kukday, Advs. for R-2&3.

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

JUDGEMENT

(Delivered on this 13th day of April,2017)

Heard Shri A.P. Tathod, Id. counsel for the applicant and Shri M.I. Khan, Id. P.O. for the respondent no.1 and Shri A.M. Kukday, Id. counsel for respondent nos. 2&3.

2. The applicant has challenged the impugned order of his transfer dated 7/12/2016 (A-2,P-19) whereby he has been transferred from the post of Executive Engineer, Lower Wardha Canal Division Wardha (Pimpri) to the post of Executive Engineer, Bembla Canal Division (Construction & Irrigation), Yavatmal. It is stated that the said order has been passed as per the provisions of section 4 (5) of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short 'Transfer Act'). The respondent no.3 D.G. Barapatre has been transferred in place of the applicant.

3. According to the applicant, he was promoted and posted as Executive Engineer, Lower Wardha Canal Division, Wardha (Pimpri) on 5/11/2015. Earlier he was at Ramtek and was transferred to Wardha (Pimpri) on promotion as already stated. Thus the applicant is at Wardha from 5/11/2015 only and has not completed his normal tenure. However vide impugned order he has been transferred from Wardha (Pimpri) to Bembla (Yeotmal). This order is not only a mid-tenure but also a mid-term and only with intention to

accommodate the respondent no.3. It is stated that respondent no.3 came to be transferred vide order dated 25/6/2015 from the post of Executive Engineer, Irrigation Project Division, Chandrapur to the post of Executive Engineer, Lower Wardha Canal Division Wardha (Pimpri). He however did not join there. Thereafter the respondent no.1 again issued transfer order on 13/8/2015 and transferred respondent no.3 to the post of Executive Engineer, Minor Irrigation Division, Zilla Parishad, Akola. In spite of that order respondent no.3 did not join at Akola and therefore he was again transferred on 15/12/2015 to the post of Executive Engineer, Bembla Canal Division (Construction & Irrigation), Yavatmal and within a span of one year respondent no.3 is again transferred in place of applicant. Thus the impugned order of transfer is to accommodate respondent no.3.

4. Perusal of the reply affidavit filed by respondent no.1 makes it crystal clear that the respondent no.3 was transferred on the ground of illness of his mother. It is stated that the mother of respondent no.3 requires frequent medical aid. The family of respondent no.3 is residing at Nagpur and it is not possible for respondent no.3 to go to Nagpur from Yavatmal for urgent / emergency medical aid and therefore on his request he was accommodated.

5. The applicant also files rejoinder and submitted that three posts of Executive Engineer were vacant at Nagpur and one post is even today vacant and therefore there was no reason as to why respondent no.3 was not adjusted at Nagpur but was adjusted in place of applicant only.

6. The learned P.O. has also placed on record the Minutes of meeting wherein the case of respondent no.3 was considered. It is material to note that in the said meeting the Department did not recommend the transfer of respondent no.3 in place of applicant and it was clearly stated that the respondent no.3 was not due for transfer. However still the respondent no.3 was considered. These minutes clearly show that the case of respondent no.3 was not fit for consideration and still he was considered. There is no reason as to what interest the respondent no.3 has for being posted in place of applicant only.

7. Admittedly the applicant has not completed three years of tenure and he was not due for transfer. Adjustment of one of the employee on his personal ground cannot be said to be administrative exigency. Had it been a fact that the State wanted to accommodate respondent no.3, he could have been accommodated at Nagpur itself and there was absolutely no reason to transfer respondent no.3 in

place of applicant as the applicant was neither due for transfer nor he claimed transfer on request. Considering all these aspects, I am satisfied that the impugned order of transfer of applicant and transferring respondent no.3 in place of applicant is absolutely against the provisions of Transfers Act,2005. Hence, the following order.

ORDER

The O.A. is allowed. The impugned order dated 7/12/2016 transferring the applicant from the post of Executive Engineer, Lower Wardha Canal Division Wardha (Pimpri) to the post of Executive Engineer, Bembla Canal Division (Construction & Irrigation), Yavatmal is quashed and set aside. The respondent no.1 is directed to allow the applicant to complete his normal tenure at Wardha (Pimpri). No order as to costs.

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

dnk.