

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.827/2016.

Smt. Nalini Laxman Bhoyar,
Aged about 48 yrs.,
Occ-Under Transfer Project (ATMA), Nagpur.
Permanent R/o Plot No.96, Surendra Nagar,
C/O Vilas Ramteke, Nagpur.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Agriculture, Animal Husbandry,
Dairy Development and Fisheries,
Mantralaya, Mumbai-440 032.
- 2) The Divisional Joint Director of Agriculture,
Civil Lines, Nagpur.

Respondents

Shri B.G. Kulkarni, the learned counsel for the applicant.
Shri M.I. Khan, the learned P.O. for the respondents.

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

JUDGMENT

(Delivered on this 5th day of May 2017.)

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

2. The applicant is District Superintending Agriculture
Officer. She was serving at Bhandara in the office of District

Superintending Agriculture Officer, Bhandara. Vide impugned order dated 16.12.2016, she has been transferred as Project Director, Agriculture Technology Management Agency (ATMA), Nagpur. It is stated that the said order is on administrative ground. According to the applicant, she has joined at Bhandara in view of order dated 5.4.2015, which transfer was on her request. She has not completed her normal tenure and in fact she has completed 1 year and 8 months only at Bhandara. It is alleged that the said order is against the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the "Transfer Act of 2005"). It is with malafide intention with bias. The said order is mid-term and mid-tenure also. The transfer is on deputation and the applicant never consented for her deputation and, therefore, it is against the provisions of the Maharashtra Civil Services ((Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as, "Joining Time Rules").

3. The respondents admitted the fact that the applicant has been transferred prior to completion of tenure of three years at Bhandara. The respondents tried to justify the transfer of the applicant on administrative ground.

4. The sum and substance of affidavit-in-reply is that there was complaint against the applicant and her administrative work was not satisfactory and, therefore, in the administrative convenience, she has been transferred. Her transfer was recommended by the Civil Services Board to the competent authority and on the basis of such recommendation and various complaints received from the Divisional Commissioner, Nagpur and the Collector, Bhandara, the competent authority decided to transfer her. It is stated that the post of District Superintending Agriculture Officer is a key post for implementation of various programmes and schemes which are directly related to the farmers and non execution of powers and delinquency in performing duties will certainly result in hampering of various developmental activities and targets to achieve the goals, outcome of which may affect the livelihood of farmers, the applicant was negligent in her duties which resulted in setback to ambitious schemes in backward district and, therefore, the applicant's case was considered for transfer.

5. The respondents further stated that as per Rule 36 of the Joining Time Rules, the applicant has been appointed on or after 30.6.1977 and, therefore, Rule 36 of the Joining Time Rules is not applicable to the applicant. It is also stated that the applicant tried to

bring political pressure on the competent authority for her retention at Bhandara.

6. Since most of the facts are admitted, the only question that is to be considered in this case is whether the transfer of the applicant was required to be effected in the administrative convenience. If this question is answered in affirmative, the applicant will have no case.

7. The learned counsel for the applicant has placed reliance on the judgment reported in **2013 (3) Mh.L.J. 463 in case of Kishor Shridharrao Mhaske V/s Maharashtra O.B.C. Finance and Development Corporation, Mumbai and others** wherein it has been held that, "mid-term or pre-mature special transfer must be effected by a reasoned order in writing and after due approval from the Competent Authority+.

8. The learned counsel for the applicant then placed reliance on the judgment reported in **2010 (2) Mh.L.J. 58 in case of Shriprakash Maruti Waghmare V/s State of Maharashtra and others** on the similar point. The learned counsel for the applicant has also placed reliance on the judgment delivered by this Tribunal in **O.A. No. 457/2016 in case of Dr. (Mrs.) Vidya Kishor Mankar V/s State of Maharashtra and there others on 23.12.2016**. In the said case,

the applicant was transferred from Bhandara to the post of Project Director (ATMA), Latur and it was observed that as per Rule 36 of the Joining Time Rules, 1981, the consent of an employee was necessary. The learned counsel for the applicant submits that the present applicant has been transferred from Bhandara to ATMA which is a foreign department and, therefore, as per Rule 36 of the Joining Time Rules, 1981, consent of the applicant was necessary for her transfer.

9. Before considering the aspect as to whether the applicant has been transferred in contravention of the provisions of the Transfer Act, 2005, it is necessary to consider as to whether the applicant's transfer to ATMA is in contravention of Rule 36 of the Joining Time Rules, 1981.

10. In para 10 of the affidavit-in-reply, the respondents submits that as per G.R. dated 31.10.2011, if any posting is to be done in the Agriculture Technology Management Agency (ATMA), that should be by way of deputation. It is, however, stated that since the applicant has been appointed on or after 30.7.1977, Rule 36 of the Joining Time Rules, 1981 is not applicable. In view of this, it is necessary to reproduce Rule 36 of the Joining Time Rules, 1981. The said relevant rule is as under:-

36. Transfer to foreign service not considerable without consent

(1) No Govt. servant may be transferred to foreign service against his will;

Provided that, insofar as the transfer of Govt. servant on foreign service to a Zilla Parishad under the provisions of sections 253-B of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (as amended from time to time) is concerned, his transfer on foreign service shall be regulated in accordance with the provisions of that section;

Provided further that, this sub-rule shall not apply to the transfer of a Govt. servant recruited in service on or after 30th July 1977, to the service of a body incorporated or not, which is whole or substantially owned and controlled by Government.

(2) Subject to the provisions of rule 39, a transfer to foreign service may be sanctioned by a competent authority on the terms and conditions mentioned in rule 40.+

11. Plain reading of Rule 36 of the Joining Time Rules, 1981 will make it crystal clear that the Government servant may not be transferred to foreign service against his will. However, second proviso as referred to above makes it crystal clear that this rule shall not apply to the transfer of Government servants recruited in service on or after 30th July 1977.

12. In the present case, the applicant has filed rejoinder. But she has not denied the fact that she has been appointed after 30th July 1977.

13. The respondents have stated in their affidavit-in-reply that ATMA is an agency fully owned and controlled by the Government i.e. Agriculture Department of Govt. of Maharashtra and the applicant is an employee of the same department. In view of this, I am of the opinion that Rule 36 of the Joining Time Rules, 1981 may not be applicable to the case of the present applicant.

14. The respondents have kept on record the minutes of the meeting in which the applicant's case was considered for transfer and also the documents on the basis of which, the applicant was transferred. It is stated that the applicant's work was not satisfactory and because of her negligence, various ambitious schemes of the Government were not being implemented properly and the ultimate sufferers were poor farmers. Perusal of the minutes of the meeting shows that following reasons were recorded for transferring the applicant and the same are as under:-

% जलयुत शिवार अभियानात भंडारा जिण्याची कामगार भवण्यामध्ये उंचावण्यासाठी डॉ. नलनी भोयर, यांचे या पदावतन ताकाळ आयुषी थानांतरण कन यांचे जागी स म अधिकार

देण्याबाबत मा. व्रभागीय आयुक्त, नागपूर यांनी द. २५.७.२०१६ रोजी मा.अ.मू.स. (कृषी) यांना पठविले आहे.

२. डॉ. भोयर यांची जि.अ. कृ.अ. गट्या येथे करण्याबाबत मा. मंत्री राजकुमार बडोले यांनी व्रनंती केली आहे.

३. डॉ. भोयर यांची बदली न करणेबाबत मा. आ. राजेश कशीवर यांनी व्रनंती केली आहे.

कंप संचालक (आय) नागपूर (टी शिबे यांच्या बदली) कामकाजाबाबत तर असल्याने शासकांच्या कारणातव.”

15. From the said reasons, it is clear that the competent committee has considered the performance of the applicant and the transfer was recommended in order to get concrete result. It was also mentioned that the applicant's retention at Gondia was recommended by the Hon'ble Minister as well as political persons. Considering all these aspects, her case was considered for transfer. I have also perused the letters written by Divisional Commissioner, Nagpur to the Additional Chief Secretary, Department of Agriculture, Govt. of Maharashtra dated 9.6.2016, 22/25th July 2016 and 23rd May 2016. These letters are filed on record alongwith the minutes of the meeting, from which it seems that the Divisional Commissioner, Nagpur time and again intimated the Chief Secretary, Govt. of Maharashtra about the negligence on the part of the applicant. It was clearly mentioned that the applicant was not giving her best and thereby the ambitious schemes as regards poor farmers were being neglected and in order to

get proper result, the Divisional Commissioner, Nagpur requested the Additional Chief Secretary, Department of Agriculture, Govt. of Maharashtra to transfer the applicant and to send better replacement. The applicant has not alleged malafides against any of the officers or against the Divisional Commissioner, Nagpur and, therefore, I do not find any reason in the recommendation made by the Divisional Commissioner, Nagpur to the Additional Chief Secretary, Department of Agriculture, Govt. of Maharashtra i.e. the competent authority for applicant's transfer. Even for the argument's sake, it is accepted that the Divisional Commissioner, Nagpur made complaint against the applicant, the tenor of the complaint shows that there was no malafides on the part of the Divisional Commissioner, Nagpur. The Divisional Commissioner, Nagpur wanted that the ambitious schemes of the Government shall be implemented properly that too with zeal. The applicant, however, was not co-operating the Divisional Commissioner, Nagpur. In such circumstances, if the competent authority writes a letter to the appropriate authority, recommending transfer of the applicant, it cannot be said that the applicant's transfer was on complaint or with malafide intention. The said transfer seems to have been recommended only in the administrative convenience. In such circumstances, I do not find any reason to interfere in the order of transfer. Admittedly, recommendation made by the Divisional

Commissioner, Nagpur has been accepted by the Government and, therefore, in such circumstances, proper procedure has been followed by the Government in transferring the applicant. Hence, I find no merit in the O.A. Hence, the following order:-

ORDER

The O.A. is dismissed with no order as to costs.

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

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