

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.363/2016

Krishna Namdeo Balpande,
Aged about 48 years,
R/o Plot No. 45, Dwarka Nagar,
Old Subhedar Layout,
Nagpur. -----

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Archaeology and Museums,
Ministry of Tourism and Cultural Affairs,
Mantralaya, Mumbai-440 032.
- 2) The Director of Archaeology and Museums,
Saint George Fort, Saint George, Hospital,
Compound, Near C.S.T. Railway Station,
Mumbai.
- 3) The Assistant Director of Archeology ,
Opp. Govt. Press, Civil Lines, Nagpur.
- 4) ShriShantaram K. Kekde,
Conservation Assistant,
O/o The Asstt. Director of Archeology,
Ratnagiri. -----

Respondents.

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1. Shri S.M. Khan, Advocate for the applicant.
 2. Shri M.I. Khan, Presenting Officer for respondents No.
1 to 3 .
 3. None for Respondent No. 4.
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Coram:- J.D. Kulkarni : Vice-Chairman (J)
Dated : - 31/3/2017

ORDER

The applicant is a Conservation Assistant and has challenged the impugned order of transfer dtd. 26/5/2016 issued by the Respondent No. 2, whereby he has been transferred from Archaeological Department, Nagpur to Ratnagiri. It is stated that prior to his transfer at Nagpur, the applicant was serving at Ratnagiri itself and from Ratnagiri, he was transferred to Nagpur vide order dtd. 31/5/2011. The applicant has therefore, not completed two tenures of three years each at Nagpur and as such the impugned order of transfer is mid-tenure since he has not completed 6 years at Nagpur. In the reply-in-affidavit filed by the Respondent No. 2, it is stated that the applicant is working at Nagpur from 1/6/2011 and has been transferred on 30/5/2016, that is he has completed almost 5 years. He has been relieved on 14/6/2016 by the Respondent No. 3 and has joined at Ratnagiri on 16/6/2016 and therefore, has completed his almost tenure

of 5 years at Nagpur. The Respondent No. 2 also tried to justify the order dtd. 26/5/2016 on the administrative ground. It is stated that the applicant was previously working at Ratnagiri from 2008 to June 2011 as a Conservation Asstt. It is stated that the post of Jr. Engineer in Conservation Branch is very important for the work of conservation and restoration and the post of Conservation Asstt. is created to assist the Jr. Engineer. There are 6 posts of Conservation Asstt. on the establishment of the Respondent No. 2. The applicant and the Respondent No. 4 are occupying two such posts. The post of Junior Engineer at Pune is vacant and there is no post of Junior Engineer at Nasik. In order to avoid any interference or obstruction in the work of conservation and restoration at Pune and Nasik, the names of two experienced Conservation Assistants working at these two places, were not considered for the purposes of transfer. Considering all these circumstances it was decided to transfer the applicant as he was having experience of work in Konkan Division and the fact that the Respondent No. 4 was

junior most employee in the category of conservation Assistant, the Respondent No. 4 was transferred in place of the applicant. It is stated that the transfer is in conformity with Section 3(1) of the Maharashtra Govt. Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the Transfer Act.)

2. The main contention raised by the Id. counsel for the applicant is that the applicant has not completed his two tenures of three years each at Nagpur and therefore, the transfer is mid-tenure transfer. The Id. P.O. submits that even though it is an admitted fact that the applicant is a Class-III employee, the tenure of the Class-III employee is 3 years and not 6 years as stated by the Id. counsel for the applicant. The Id. P.O. placed reliance on the judgment delivered by this Tribunal in O.A. No. 277/2016 (Bharat Dallu Sable –Vs. State of Maharashtra and 2 others) decided on 14/6/2016. In the said judgment, this Tribunal has observed in paras No. 3 to 5 as under :-

Para 3 :- “ ***Shri D.M. Kakani, Id. Sp. Counsel for the respondents, submitted that the present O.A. can be disposed of without waiting for a reply to be filed by the respondents since it is the settled issue that the normal tenure of a Group-C employee is 3 years and not 6 years. For this he relied on the order dtd. 15/7/2009 in O.A. No.381/2009 (Umesh Wamanrao Rahate) and 3 other O.As. The Tribunal had held that the proviso to Section 3 (1) of the Transfer Act does not confer any right on a Group-C employee to stay at a place of posting for 6 years. This order of the Tribunal was also upheld by hon’ble the High Court in Umesh Wamanrao Rahate (W.P. No.3740/2009, dtd.18/6/2010) and Gunvant Keshav Borkute (W.P. No.4379/2009, dtd. 27/10/2010).***”

4. ***I find that the applicant’s only grievance against the impugned order is that it has been issued before he could complete his normal tenure of 6 years. The Nagpur Bench of the Tribunal in its order dtd. 15/7/2009 in O.A. No.381/2009 (Umesh Wamanrao Rahate) and 3 other O.As. had held that the normal tenure of a Group-C employee in terms of Section 3 (1)***

is 3 years and not 6 years. The relevant part of the order in this regard is reproduced below :-

“ If the contention of the learned counsel for the applicants that if the employee is entitled to stay at a place of post for two full tenures of 3 years each at a place of posting, if accepted then the competent authority will be required to prepare a list of Govt. servant who have completed 6 years period at a place of posting. However, it does not appear to be correct. If such interpretation is accepted, the main provision to sub-section (1) which refers to the Govt. employee of Group of Group “C” also stating therein that normal tenure in a post shall be of 3 years would become redundant . Therefore, it is clear that employee of Group- “C” also become due for transfer on completion of normal tenure of 3 years in a post held at a particular place. However, if all such persons who have completed 3 years through become due , could not be transferred in view of the provisions of sub-section (ii) of Section 5 of the Act, in

that case though name of such persons are included in that list of persons due for transfers, such employee may be retained beyond the period of 3 years and the maximum period for holding the post can be extended up to 6 years in view of the provisions of first proviso. However, the said proviso, does not confer any right on the employee to say at the place of posting for a period of 6 years. Therefore, contention raised by learned Counsel for the applicant appears to be devoid of any substance and as such it is rejected.”

5. ***As I have already stated earlier, the above order of the Tribunal has been upheld by hon’ble the High Court. Thus, the issue that a Group-C employee’s normal tenure is of 3 years, is now well settled.”***

3. In view of the aforesaid circumstances, it will be clear that the normal tenure of Class-III employee at his station is 3 years and as already stated the applicant has not only completed 3 years of normal tenure but has completed

almost 5 years at Nagpur. In such circumstances, the transfer of the applicant cannot be said to be mid-tenure. I do not find any reasons to deny the reasons given in the reply-in-affidavit as regards administrative exigency to transfer the applicant. No mala-fides are alleged against the respondents. There is nothing on the record to show that the impugned order of transfer has been issued only with an intention to accommodate the Respondent No. 4 in applicant's place. Considering all these aspects, I do not find any merits in the O.A. Hence the following order :-

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

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

Skt.

