

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 756/2021****WITH****CIVIL APPLICATION NO.273/2021**

1. Rohan Kishore Thaware,
Aged about 35 years, Occ-Jr. Geologist,
O/o District Mining Officer, Nagpur.
R/o Plot No.70, Jai Bajrang Society,
Seminary Hills, Nagpur
2. Mrs. Harsha Kishavrao Vidhate,
Aged about 39 years, Occ- Jr. Geologist,
Directorate of Geology, Head Office,
Nagpur.
R/o Plot No. 70, Jai Bajrang Society,
Seminary Hills, Nagpur

Applicants.**Versus**

- 1) The State of Maharashtra,
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai-400 032.
- 2) The State of Maharashtra,
Through its Secretary,
Industry, Energy and Labour Department,
Mantralaya, Mumbai-400 032.
- 3) Directorate of Geology and Mining,
Govt. of Maharashtra,
Through its Director, 27, Khanji Bhavan,
Cement Road, Shivaji Nagar, Nagpur.
- 4) The District Collector,
Nagpur District, Nagpur.

Respondents

Shri A.M. Sudame, Ld. counsel for the applicant.
Shri A.M. Ghogre, Ld. P.O. for the respondents.

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

Dated: - 27th January 2022.

Heard Shri A.M. Sudame, learned counsel for the applicant and Shri A.M. Ghogre, Ld. P.O. for the respondents.

2. By the impugned order dated 9.8.2021 (Annexure A-1), respondent No.2 transferred applicant No.1 from the office of District Mining Officer, Nagpur to the office of District Mining Officer, Beed, and applicant No.2 from Directorate of Geology, Head Office, Nagpur to the office of District Mining Officer, Nanded. The applicants are husband and wife. Both of them are Junior Geologists.

3. Applicant No.1 was appointed by order dated 26.7.2016 (Annexure A-2) and applicant No.2 was appointed by order dated 9.10.2015.

4. On 17.8.2021, the applicants submitted representations to the Additional Chief Secretary (Annexure A-5 collectively) and prayed that they be accommodated either in the Regional office at Nagpur or in the office of District Mining Officer, Nagpur. Their representations were not considered. Hence, this application.

5. To assail the order of their transfer (Annexure A-1), the applicants have raised following grounds:-

(i) There were no administrative exigencies to transfer either of the applicants.

(ii) No list of employees due for transfer was published as mandated by Section 4 (2) 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").

(iii) The applicants were transferred in the month of August without assigning special reasons. This was in breach of Section 4 (5) of the Act.

(iv) There were no special reasons or exceptional circumstances to transfer the applicants by exercising the powers either under sub-section (4) or sub-section (5) of Section 4 of the Act.

(v) No options were called from the applicants regarding places of their choice for transfer. Had this been done, they could have relied on husband--wife unification policy.

(vi) While transferring the applicants, general / broader policy of transfer was given a go-bye.

(vii) The impugned order is arbitrary. In addition, it does not reflect good faith. Applicant No.2 was unilaterally relieved contrary to Rule 31 of the M.C.S. (General Conditions of Services) Rules, 1981.

6. Reply of respondent Nos. 2 and 3 is at pages 44 to 49. These respondents have resisted the application on following grounds:-

(i) The impugned order was passed in terms of G.R. dated 29.7.2021 (Annexure R-1). It was primarily necessitated by requirement at various places.

(ii) G.R. dated 27.11.1997 (Annexure A-6) sought to be relied upon by the applicants cannot be pressed into service, because the "Act" regulating transfers has come into effect.

(iii) Guidelines laid down by G.R. dated 9.4.2018 on which the applicants desire to rely are directory and not mandatory.

(iv) By letters dated 28.5.2020 and 7.9.2020 (Annexure R.2 collectively), the concerned authorities had

communicated a need to post the persons in the offices of District Mining Officer at Nanded and Beed.

(v) Both the applicants were due for transfer. It was necessary to transfer them to meet administrative exigencies.

(vi) If applicant No.1 applies for transfer either at Pabhani or Latur, respondent No.1 may consider the same.

(vii) Applicant No.1 was relieved by order dated 1.9.2021 (Annexure R-3) which was neither irregular nor contrary to any Rule.

7. In their rejoinder at pages 57 to 65, the applicants have denied contentions of respondent Nos. 2 and 3, and reiterated that the manner of relieving applicant No.1 was contrary to Rule 31 of the M.C.S. (General Conditions of Service) Rules, 1981. The applicants have relied on Clause-1 of G.R. dated 27.11.1997 (Annexure A-6), which is as under:-

“(१) राज्य शासनाच्या तसेच राज्य शासनांतर्गत असलेल्या निमशासकीय सेवकांच्या बदल्या या सर्वसाधारणतः वर्षातून एकदाच करण्यात याव्यात. अधिकारी / कर्मचाऱ्यांच्या पालयांच्या शैक्षणिक गरजा लक्षात घेता, या बदल्या मे महिन्यातच करण्यात याव्यात. मात्र खालील प्रकरणी या सर्वसाधारण धोरणास अपवाद करण्यात यावा.

(अ) सेवानिवृत्ती / पदोन्नती / राजीनामा इत्यादींमुळे रिक्त होणाऱ्या पदांवरील नियुक्त्या,

(ब) पती / पत्नी यांना एकत्रित ठेवण्याच्या धोरणानुसार

असलेल्या बदल्या.

(क) जिथे अपवादात्मक परिस्थितीमुळे बदली करणी आवश्यक आहे, अशी सक्षम अधिकाऱ्यांची खात्री झाल्यास, मात्र तसे करताना "तत्संबंधीची कारणे नमूद करण्यात यावीत."

It was submitted by Shri A.M. Sudame, learned counsel for the applicant that the G.R. dated 27.11.1997 was issued to ensure transparency and convenience of employees in the matter of their transfers and considering this object, the manner in which the applicants were transferred will have to be scrutinized. In reply, it was submitted by Shri A.M. Ghogre, learned P.O. that the guidelines contained in G.R. dated 27.11.1997 are directory, the same are not mandatory and because of introduction of "The Act" regulating transfers, provisions of the Act will have overriding effect. There is merit in this submission.

8. So far as general / broader policy of transfer is concerned, the applicants have relied on **"Shesharao Nagorao Umap V/s State of Maharashtra and others—1984 Mh.L.J. 627"**.

In this case, the Hon'ble Bombay High Court observed in para 6—

"A provision for transfer is intended to check creation of vested interest, nepotism and corruption. It is true that nobody has a right to say that he cannot be transferred without his consent. However, like any other executive or administrative power, the power of transfer must be exercised in good faith, and as per the

guidelines laid down in that behalf. The Government is bound by its own policy decision, and must enforce it faithfully. While implementing the policy it cannot pick and choose. It is equally true that such executive instructions or a policy decision cannot confer any enforceable legal right nor an order issued in breach of it, will become per se illegal. These instructions could be directory in nature. There could be exceptions to the general rule due to exigencies of service or due to some administrative reasons, but the exception cannot be permitted to become a rule. It is equally well settled that the Courts should not interfere with the orders of transfers, which are issued in the exigencies of service and, in discharge of administrative or executive power. However, if the order is issued in mala fide or in colourable exercise of power then the Court is bound to interfere, since the mala fide exercise of power is not considered to be legal exercise of power. Once a policy is laid down by the Government it must apply equally to every employee.”

While dealing with the aforesaid submission of the applicants, contents of G.R. dated 29.7.2021 will have to be considered as well. It may be reiterated that this G.R. was issued to take care of the situation which had arisen due to Covid-2019 Pandemic. Heading of this G.R. dated 29.7.2021 reads as under:-

“कोविड-१९ या संसर्गजन्य रोगाच्या पार्श्वभूमीवर सन २०२१-२२ या चालू आर्थिक वर्षातील बदल्यांसंदर्भात करावयाच्या कार्यवाही बाबतच्या सूचना”.

Further, the G.R. refers to—

“संदर्भ:- १) “महाराष्ट्र शासकीय कर्मचाऱ्यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडताना होणाऱ्या विलंबास प्रतिबंध अधिनियम, २००५”.

- २) सामान्य प्रशासन विभागाच्या संक्रमांकाचा दिनांक १०.५.२०२१ चा शासन निर्णय.
- ३) सामान्य प्रशासन विभागाच्या संक्रमांकाचा दिनांक ९.७.२०२१ चा शासन निर्णय.

Clauses 2 and 3 of this G.R. read as under:-

- “२) २५ टक्के मर्यादेत सर्वसाधारण बदल्या करत असताना,संबंधित पदावर विहित कालावधी पूर्ण झालेल्या सर्व पात्र अधिकारी / कर्मचारी यांच्यापैकी ज्यांचा संबंधित पदावर जास्त कालावधी पूर्ण झाला आहे अशा अधिकारी / कर्मचाऱ्यांची प्राध्याप्याने बदली करण्यात यावी.
- ३) सर्वप्रथम सर्वसाधारण बदल्याची कार्यवाही दिनांक ९ ऑगस्ट २०२१ पर्यन्त पूर्ण करण्यात यावी.”

9. On considering G.R. dated 29.7.2021, it will have to be concluded that the guidelines stated therein were to have primacy in the matter of effecting transfers for the year 2021-2022. As per the G.R, there was ceiling of transferring only 25% employees who had completed their tenure. The G.R. stipulates that general transfers were to be effected till 9.8.2021 and for effecting transfers for special reasons, the time limit was upto 30.8.2021. The impugned order transferring the applicants is dated 9.8.2021. Thus, it was passed within the time stipulated for effecting general transfers. Both the applicants had completed their tenure at Nagpur. They were due for transfer.

It was submitted on behalf of the applicants that the latter part of Clause-2 of G.R. dated 29.7.2021 was not followed, persons whose length of tenure at Nagpur was longer than that of the applicants were retained and this circumstance would indicate malafides while passing the impugned order.

In written notes of argument, the applicants submitted as follows:-

“G.R. dated 29.7.2021 also states that seniority is required to be followed while issuing orders of transfer, however, the respondents, in violation of the provisions of G.R. have retained as many as 3 officers namely, Smt. Dhanashree Lanjewar, Shri Vishal Dhande and Shri Umesh Barde who have been at the Regional office and Head office respectively since 2015 i.e. prior to the petitioners.”

Clause-2 quoted above of G.R. dated 29.7.2021 is not to be rigidly interpreted. It says that preference will be given to those persons for the purpose of transfer, whose length of service / tenure at the station is more. Perceived breach of Clause-2 would have assumed significance had there been any material to show want of bonafides on the part of transferring authority.

10. It was submitted on behalf of the applicants that before passing the impugned order, mandatory provision U/s 4 (2) of the Act was not followed. Said provision reads as under:-

“4. Tenure of transfer.

(1) x x x

(2) The competent authority shall prepare every year in the month of January, a list of Govt. servants due for transfer, in the month of April and May in the year.”

So far as this submission is concerned, reference will have to be again made to G.R. dated 29.7.2021. Clause-1 of this G.R. reads—

“सध्यस्थितीत, महाराष्ट्र हे कोरोनाबाधित राज्य असल्यामुळे व तिसऱ्या लाटेची संभाव्य शक्यता विचारात घेता, तसेच कोविड-19 या विषानुमुळे उद्भवलेली महामारी व त्या अनुषंगाने घालण्यात आलेले अनेक निर्बंध यामुळे राज्याच्या अर्थव्यवस्थेवर विपरीत परिणाम झाला असल्यामुळे बदली भत्त्यावरील खर्च मर्यादित स्वरूपात करण्याच्या दृष्टीने, सर्वसाधारण बदल्या या एकूण पदांच्या 25 टक्के एवढ्या मर्यादेत, बदली अर्धीनियमातील कलम 6 मध्ये नमूद केलेल्या सक्षम प्राधिकाऱ्याच्या मान्यतेने करण्यात याव्यात.”

This Clause makes it apparent that it was not feasible to comply with Section 4 (2) of the Act. Had the situation been better making it feasible to comply with Section 4 (2) of the Act and had options been not called even then, that would have been a valid ground of challenge.

11. On behalf of the applicants, following contentions are also raised:-

“The Civil Service Board has not considered the case of the applicants. The 1st proposal sent to the Board proposed transferring the applicant No.1 in place of applicant No.2 and vice versa page No. 151 / 163. However, there was no discussion thereon.

Revised proposal was written by pencil and overwritten and states that applicant No.2 be transferred to Osmanabad and applicant No.1 to Latur, on the basis of his own request. However, there is no such request made by applicant No.1. Pg. 315 / 323.

Transfer file was never put before the authority / or sanction of appropriate authority not taken.”

Further contentions are also raised by relying on the record. Record shows that proposals as above were made. Record further shows that thereafter fresh orders were made which led to the impugned order of transfer. The question is whether before passing the impugned order, case of the applicants was duly considered. On pages 15 to 17 of record, there is proposal for transfer of the applicants and two others. All these transfers were part of general transfers and the proposal was forwarded for sanction alongwith recommendation of the Civil Services Board. At pages 21 and 22 of the record, there is recommendation of the Committee not to consider representations for modification of

impugned order made by the applicants. Record does not show that individual cases were not duly considered. There is nothing to show want of bonafides while passing the impugned order.

12. The applicants have further relied on the following rulings:-

(i) Shri Prakash Maroti Waghmare V/s State of Maharashtra and others, 2010 (1) ALL MR 176.

(ii) S.B. Bhagwat V/s State of Maharashtra and others, 2012 (3) Mh.L.J. (Bombay High Court).

(iii) Kishore Shridhar Mhaske V/s State of Maharashtra, OBC Finance and Development Corporation, Mumbai and others, 2003 (3) Mh.L.J.463.

In all these cases, the Bombay High Court has held that if transfer is made as a special case by resorting to Section 4 (5) of the Act, it is mandatory to record reasons therefor in writing. None of these rulings will apply since Section 4 (5) of the Act deals with transfer before completion of tenure whereas both the applicants were transferred only after they were due for transfer by virtue of completion of their tenure.

13. According to the applicants, though the applicant No.2 was relieved immediately after passing of the impugned order, no one had joined at her place and this was contrary to Rule 31 of the M.C.S. (General Conditions of Service) Rules, 1981. Order relieving the applicant No.2 (Annexure A-7) expressly states that there were directives for relieving her immediately. Rule 31 (b) provides that for special reasons which must be expressed on the face of order and be of a public nature, the competent authority may permit the charge to be made over elsewhere. Thus, there is no merit in the submission that the act of relieving applicant No.2 was contrary to Rule 31 of M.C.S. (General Conditions of Services) Rules, 1981. In support of this conclusion, following contents of letter at Annexure A-C written by Administrative Officer, Directorate of Geology and Mining, Govt. of Maharashtra, Nagpur can be relied upon:-

“संदर्भ क्रमांक 1 वरील शासन आदेशांवये आपली बदली जिल्हा खनिकर्म अधिकारी, नांदेड येथील रिक्त पदावर करण्यात आलेली असून सदर शासन आदेशात निर्देशित केल्यानुसार या संचालनालयाने स्थानिक पर्यायी व्यवस्था करून आपणास बदलीच्या ठिकाणी तात्काळ रुजू होण्यासाठी या संचालनालयातून संदर्भ क्रमांक २ वरील पत्रान्वये दिनांक ९.८.२०२१ रोजी (मा.नं) कार्यामुक्त केलेले आहे. तसेच सदर कार्यामुक्त आदेश आपणास बजाऊन त्याची पोच दिनांक ९.८.२०२१ रोजी प्राप्त केलेली आहे.

संदर्भ क्रमांक ३ वरील शासन पत्रान्वये कळविल्यानुसार महाराष्ट्र विधानमंडळ अंदाज समिति दिनांक ६.९.२०२१ ते ८.९.२०२१ या कालावधीत नांदेड जिल्याचा दौरा करणार असून खणीकर्म

विभागाशी संबंधित मुद्दे उपस्थित होवू शकतात. त्यामुळे आपण जिल्हा खनिकर्म अधिकारी, नांदेड म्हणून सदर महाराष्ट्र विधानमंडळ अंदाज समितिच्या बैठकीस उपस्थित राहून त्यांना आवश्यक असलेली माहिती द्यावी व सदर समितीची कोणतीही तक्रार या संचालनालयास प्राप्त होणार नाही याची दक्षता घेण्याची नोंद घ्यावी. संदर्भ क्रं. ३ वरील शासन पत्राची प्रत यासोबत सलग्न केलेली आहे.”

14. Discussion made so far would show that the impugned order (Annexure A-1) does not suffer from any infirmity.

15. Shri A.M. Sudame, learned counsel for the applicant submits that interim order which was subsisting during the pendency of this application be extended by one week so that the applicants can approach the Hon'ble High Court to challenge this order.

In order dated 1.9.2021, this Tribunal granted interim relief as follows:-

“In view of this situation, transfer order dated 9.8.2021 (A-1,P.24) related to the applicant No.1 Shri Rohan K. Thaware is stayed till filing of reply and the respondents are directed not to force applicant No.2 i.e. Smt. Harsha K. Vidhate to join at Nanded. At the same time, the post from where she has handed over the charge but nobody has joined till now, they should not post if nobody is posted till now on that post till filing of reply.”

Thereafter, in order dated 22.9.2021, this Tribunal ordered as follows:-

“Till next date of hearing all the parties are directed to act according to the order dated 1.9.2021 related to the applicant Nos. 1 and 2.”

Again in order dated 22.11.2021, this Tribunal observed as follows:-

“The learned counsel for the applicants has pointed out the orders of this Tribunal dated 1.9.2021 and 22.9.2021. The specific orders were passed by this Tribunal. As per the submissions of the learned counsel for the applicants, the orders of this Tribunal are not complied by the respondents and on the contrary they have not permitted the applicants to join at Nagpur.”

In order dated 22.12.2021, this Tribunal observed as follows:-

“The respondents are directed to comply the orders dated 1.9.2021 and 22.9.2021. The Ld. P.O. is directed to get instructions in respect of compliance of the above orders.”

Thereafter, by order dated 11.1.2022, this matter was kept for final hearing by consent. It was finally heard on 18.1.2022.

16. By pointing out this chronology, the learned counsel for the applicants submits that though, the application is dismissed, directions contained in para 3 of order dated 1.9.2021 may be directed to continue for one week so that the proceeding which the applicants intend to file in the High Court is not rendered infructuous. There is merit in this submission. Case is made out to extend

operation of directions contained in para 3 of order dated 1.9.2021 till 4.2.2022. Hence, the order.

ORDER

- (i) The O.A. is dismissed.
- (ii) C.A. No. 273/2021 is disposed of.
- (iii) Operation of direction contained in para 3 of order dated 1.9.2021 passed by this Tribunal which is quoted above is extended till 4.2.2022.
- (iv) No order as to costs.

(M.A.Lovekar)
Member (J)