

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 457/2016

Dr. Mrs. Vidya Kishor Mankar,
Aged about 44 years, Project Director, (ATMA),
Chandrapur,
R/o 5/A, Tapowan Complex,
Somalwada, Nagpur. -----**Applicant.**

Versus

1. The State of Maharashtra,
Through its Secretary,
Agriculture, Animal Husbandry Dairy
Development and Fisheries Department,
Mantralaya, Mumbai.
2. The Commissioner of Agriculture,
Maharashtra State, Pune.
3. Shri Vijay Dharmaji Lokhande,
Project Director, (ATMA),
Osmanabad. ----- **Respondents**

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1. Shri Bharat Kulkarni, Advocate for the applicant.
 2. Smt. S.V. Kolhe, Presenting Officer for the Respondents.
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CORAM : S.S. Hingne: Vice Chairman
DATE : 23rd December, 2016

ORDER

Heard Shri Bharat Kulkarni, Id. counsel for the applicant and Smt. S.V. Kolhe, Id. P.O. for the respondents.

2. With the consent of the Id. counsel for both the parties, the matter is heard and decided at the admission stage.

3. The applicant, Agriculture Superintendent challenged the order dtd. 31/5/2016 (Annex.A-1, page-15) by which she is transferred from Chandrapur to Latur.

4. The applicant was working at Chandrapur on deputation as Project Director, Agriculture Technology Management Agency(hereinafter referred to as ATMA). She was due for transfer. The applicant was also on deputation at West Bengal from December, 2011 to February, 2013. The applicant has given the options (Page-24) for the places of her choice on 9/2/2016 and 16/2/2016 for general transfer of 2016 on the ground that her son is 10th standard student of CBSC course, which is the important year and she has

worked in a naxilite affected tribal area for 3 years hence she be given the posting at the places of her choice or she may be retained at Chandrapur. The applicant's name was not recommended by the Civil Services Board for transfer. However, according to the respondents, her transfer order is issued at the instance of the Hon'ble Minister of Agriculture.

5. At the threshold, according to the applicant, she is working on deputation and she has not opted for any deputation at Latur and the deputation cannot be without consent of the employee. The reply of the respondents is that the recommendation of the Civil Services Board is not binding on the competent authority and the applicant is posted at a district place and the prior approval of the Hon'ble Chief Minister is also taken and the order is issued.

6. So far as the aspect of deputation is concerned, the applicant is the employee of the Agriculture Department. Vide order dtd. 8/11/2012 (Annex-A-2, page-19) and she was already on deputation as a Sr. Administrative Officer at

Kolkata. While that deputation was in force the applicant was transferred as a Project Director, ATMA, Chandrapur. Now by the impugned order, she is transferred from that post to Latur on the same post i.e. Project Director, ATMA, Latur. Meaning thereby the original order of deputation is in continuation. Chapter IV of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 deals with the subject. As per Rule 36, consent of the employee is necessary. The Appendix 2 of Rule 40 lays down terms and conditions of the transfer on deputation. Clause I of the Appendix relates to the period of deputation and which can be mentioned in the order. The order is not placed on record to show, when the deputation is come to an end or deputation period is expired. The employee cannot be continued on one post for years together and he can be subjected to transfer as per the provisions 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) during period of deputation. When the earlier deputation is in existence fresh consent of the employee for transfer on deputation from one place to another is not necessary because the employee continues to be on deputation.

7. The Id. counsel for the applicant further urged that the applicant has served for 3 years in the naxalite affected area at Chandrapur and therefore she is entitled to get the benefits as per the G.R. dtd. 6/8/2002 and other circulars issued from time to time granting the benefits to the employees who worked in naxalite affected or tribal areas. Needless to mention that it is a settled legal position that the Govt. resolutions or circulars do not confer any right to the employee which can be enforced in the court of law. Such provisions are made with a view to give incentives to the employees working in such areas but the same cannot be claimed as a matter of right. In this view of the matter, the applicant cannot lay claim to get the relief.

8. The Id. counsel for the applicant submitted that the son of the applicant is a student of 10th standard . No doubt, such aspects are to be considered so that the career of the student will not be hampered. However, this aspect needs to be considered by the department. The Tribunal or the Court cannot grant relief on such ground because the entire material cannot be available before the Tribunal which consist of the difficulties of the other employees , the difficulties of their children, the availability of the posts, work load at the particular place and comparative difficulties of other employees etc. In this view of the matter the Court should be loath to grant the relief on this count.

9. It is also contended that several other officers are given posting in the region or even some are placed at the nearest place but the applicant though a lady officer is sent out of region and that too at a long distance. It transpires from the record that the husband of the applicant is working in the Forest Department at Nagpur . No doubt from the transfer order it appears that there is a ring of truth in the contention of

the applicant. However, unless the data is available before us showing what was the period of tenure of those employees at a particular place, what options they had given, what were their personal domestic difficulties and when they are due for transfer, it cannot be said that discrimination is done. Moreover, to establish the malice or favoritism cogent and clinching material needs to be placed on record. In the absence of such material, the submission on this ground cannot be sufficient.

10. The matter does not end there. The Id. counsel for the applicant ingeniously argued that the Civil Services Board has not proposed the transfer of the applicant and despite of this the applicant is transferred. No doubt, every matter of transfer is to be routed through the Civil Services Board. However, the report of the Civil Services Board is not binding on the competent authority. Therefore, even though the transfer of the applicant was not proposed by the Civil Services Board, the competent authority can issue the transfer order.

11. As last string to the bow, the Id. counsel for the applicant submits that the reasons are to be recorded as laid down by this Tribunal in several cases i.e. O.A. No.200/2016 (Ravindra Shivnarayansing Pardesi -vs. State of Maharashtra two others), decided on 20/4/2016 by the Mumbai Bench relying on the case of TSR Subramaniam Vs-Union of India [A.I.R.(2014)SC 263], wherein it is held that political executive can overrule the decision of the Civil Services Board by recording reasons. After going through the file of the approval which was made available, it is seen that the Civil Services Board observed that due to the difficulties contended by the applicant she was not recommended for transfer. However, the transfer order is issued as the Hon'ble Agriculture Minister proposed. It reveals from the note sheet that several changes are made therein and in some cases the reasons are recorded. However, there is no cursory reference in the note sheet as to why, how and for what reasons the Civil Services Board's opinion is ignored and for what reasons and grounds the applicant's transfer is

proposed. The applicant's name is at Sr. No.19 in the list of the note sheet prepared by Mantralayra, says that " ---उर्वरित अधिका-यांबाबत पृ.१७-१८/टिवि वरील परिशिष्ट-अ नुसार आदेश दिले आहेत." . Barring this stray sentence there is no any reason why the applicant's representations were not considered, why the opinion of the Civil Services Board is ignored and for what purpose the applicant is transferred out of region though a lady officer. Meaning thereby it is crystal clear that no reasons are recorded at all in the case of the applicant.

12. The Transfer Act was brought into force as per the observations made by Their Lordships of the Apex Court of the land in the case of **TSR Subramaniam Vs-Union of India [A.I.R.(2014)SC 263]**. Their Lordships considered cases of Govt. employees from all angles and ramifications observing several aspects and directed the Govt. why the enactment governing the transfers is necessary. The object and reasons are elaborately highlighted in the judgment. Therefore, the provision is also made that everything should be regulated for transfer and for the transparency reasoned

orders should be passed so as to rule out the possibility of malice, favoritism etc. However, by not recording the reasons the very purpose is thrown to the wind in the case in hand. The reasons are not recorded, which is in contravention of the principles laid down in the above cited cases resulting that such order cannot be legal and valid. Consequently, the O.A. deserves to be allowed. Hence the following order is passed.

- a) The O.A. is allowed.
- b) The impugned order dtd.31/5/2016 so far as it relates to the transfer of the applicant is quashed
- c) No order as to costs.

(S.S. Hingne)
Vice-Chairman.

Skt.