

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 388/2019 (S.B.)**

Mr. Sandeep S/o Damodar Chopkar,
Aged about 50 years,
Occ. Service, R/o Plot No.99, "Pranav2" Apartment,
Pande Layout, Khamala, Nagpur-440 025.

Applicant.

Versus

- 1) The State of Maharashtra,
Tribal Development Department,
Mantralaya, Mumbai-440 032 through its Secretary.
- 2) Additional Tribal Commissioner,
Tribal Development Department,
Giripeth, Nagpur-440 010.
- 3) Additional Collector/ Project Officer,
Integrated Tribal Development Project,
Bhandara-441 904.

Respondents.

Ku. K.K. & Mr. S.A. Pathak, Advocates for the applicant.

Shri H.K. Pande, P.O. for respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 18th September, 2019.

Date of Pronouncement of Judgment : 18th September, 2019.

JUDGMENT

(Delivered on this 18th day of September,2019)

Heard Ku. K.K. Pathak, learned counsel for the applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. The applicant was working in the office of Project Officer, Tribal Development Project, Bhandara. The applicant is transferred vide order dated 31/05/2019 to the office of Tribal Development Project, Aheri, District Gadchiroli. The applicant is challenging the transfer order mainly on the ground that the transfer order is in violation of the provisions under Section 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfers Act,2005") and the transfer order is malafide. The learned counsel for the applicant submitted that the applicant was not transferred in the general transfer, but he is transferred as a consequence of the complaint and the impugned order of transfer is punitive in nature, therefore, it is in violation of the law.

3. The learned counsel for the applicant has invited my attention to the letter 29/5/2019 which was the cause of the impugned transfer. It is submitted that in the letter dated 29/5/2019 the Assistant Collector/ Project Officer, Tribal Development Project, Bhandara requested the Additional Commissioner, Tribal Development, Nagpur that due to indecent behaviour of the applicant as a punishment, the applicant should be transferred to other place. It is submitted that the

Transferring Authority promptly took the cognizance of this letter and without considering the facts and circumstances of the case, transferred the applicant.

4. The learned counsel for the applicant submitted that the applicant had crossed the age of 50 years and the applicant had already rendered his service in the Naxalite/ Tribal area for a considerable period, but disregarding this fact the applicant is again posted in Naxalite affected area.

5. I have perused the para-4 of the O.A. in this para, the applicant has given the details of his previous postings in Naxalite/Tribal area. The applicant worked at Aheri, District Gadchiroli from 12/8/1996 to 4/7/2003 (four about 7 years) then the applicant again worked at Deori, District Gondia from 7/7/2009 to 25/8/2010 (about 1 year). The applicant was again posted at Gadchiroli District and he worked there from 19/3/2011 to 4/3/2015 (about 4 years). Thus is shown that the applicant had already worked for a period of about 11-12 years in Naxalite/Tribal area and without considering this fact and his age he was again transferred to Naxalite/Tribal area. It is apparent that without making any enquiry or investigation about the truth in the allegations made against the applicant the transferring authority acted on letter written by the Project officer. It is submission of the applicant that he had requested his Higher Authorities to

examine the CCTV recording, but it was not done and therefore the transfer is malafide and it is in violation of law.

6. It is also contention on behalf of the applicant that before transferring the applicant, it was duty of the Transferring Authority to place this matter before his Higher Authority for the consent and as this was not done, the transfer is in violation of Section 4 (5) of the Transfers Act,2005.

7. The learned P.O. appearing on behalf of the respondents justified the action. It is submitted that explanation of the applicant was called and the applicant gave reply dated 18/4/2019 (Annex-R-1) and in the reply it was submitted by the applicant that he be transferred to at any other place. It is submitted that in view of this arrogant attitude of the applicant, he was transferred. It is further submitted that except Aheri there was no vacant place available in the Division and consequently the Department had no alternative, but to transfer the applicant to Aheri, District Gadchiroli.

8. The learned P.O. accepted that before issuing transfer order at Annex-A-1, the Transferring Authority did not place the matter before his next Higher Authority. Thus it seems that there was non-compliance of Section 4(5) of the Transfers Act,2005. In this regard, it is important to note that in the transfer order at Annex-A-1 there is a reference of the letter received from Project Officer dated 29/5/2019.

This letter is filed by the applicant which is at Annex-A-12 at page no.141. In this letter it is specifically mentioned that the report was made by the Project Officer to the Additional Commissioner, Tribal Development Department, Nagpur informing that in view of indecent behaviour of the applicant, he should be transferred as a punishment to other station. It is pertinent to note that in this regard the law is very much settled that if misconduct is committed by the Government servant, such misconduct should not be condoned, but the disciplinary action shall be initiated against him and the Disciplinary Authority cannot condone or disregard the misconduct only by transferring the Government servant who has committed the misconduct.

9. In the present matter, it seems that nothing is placed on record to show that before arriving to the conclusion that behaviour of the applicant was indecent in the office, any fact finding inquiry was conducted by the Project Officer or the Disciplinary Authority and straight way the Project Officer jumped to the conclusion that the applicant was guilty of indecent behaviour and therefore he recommended the punishment of transfer. In my opinion this approach of the Project Officer and placing reliance on such approach, the subsequent action of the Transferring Authority cannot be not justified in view of the law. As a matter of fact when it was allegation of the Project Officer that misconduct was committed by the

applicant, then it was necessary to conduct fact finding enquiry, to serve charge sheet on the applicant and then in contemplation of the departmental inquiry, the applicant could have been transferred, but it was not done.

10. It is pertinent to note that though it is contended by the learned P.O. that there was no vacant posts except Aheri in the Division, but no reliable material is placed before the Bench to justify this submission. It is important to note that the applicant has already discharged service about 11-12 years in the Naxalite/ Tribal area, the applicant has already crossed the age of 50 years and disregarding this, the applicant was posted in the Naxalite/ Tribal area. Apparently, the transfer of the applicant and his posting at Aheri in Naxalite area is in violation of the G.R. dated 6/8/2002 and G.R. dated 10/12/2012. No doubt these G.Rs. are directory, they are not mandatory, but merely because the G.Rs. are directory the Transferring Authority cannot deny the protection given to the Government servant under these G.Rs. It is important to note that in the reply given by the applicant i.e. at Annex-R-1, it was requested by him to conduct enquiry to find out the truth but it was not done. It is even not mentioned in the transfer order that in contemplation of the departmental inquiry, the applicant was transferred. It also appears that in the transfer order at Annex-A-1, the Transferring Authority

directed that the applicant stood relieved from the duty on 31/5/2009 Afternoon, whereas, it is observed by the Project Officer in order dated 3/6/2019 that the applicant shall handover the charge of his post to the Stenographer. Thus, it seems that it was predetermined to transfer the applicant to the Naxalite area. I have also perused the ACR of the applicant for the period from 1/4/2017 to 31/3/2018. The overall gradation of the applicant was 9.5 out of 10 and this gradation was confirmed by the Reviewing Authority.

11. In view of these facts and circumstances, I am compelled to say that the transfer of the applicant from Bhandara to Aheri was in violation of the law and actuated by malice, it is therefore quashed. The respondents are directed to post the applicant at Bhandara and if it is not possible then the respondents are at liberty to transfer the applicant to other station which is not in the Naxalite/ Tribal area. No order as to costs.

Dated :- 18/09/2019.

*dnk..

(A.D. Karanjkar)
Member (J).

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 18/09/2019.

and pronounced on

Uploaded on : 19/09/2019.