

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO. 396/2016.

Prakash Madhukarrao Deshmukh,
Aged about 54 years,
Occupation- Service,
R/o Taragannagar, Old Shegaon Naka,
Amravati.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Public Works,
Mantralaya, Mumbai-32.
2. The Chief Engineer,
Public Works Division, Camp Road, Amravati.
3. The Superintending Engineer,
Public Works Circle, Amravati.
4. The Executive Engineer,
Public Works Division, Amravati.
5. The Sub-Divisional Engineer,
Road Project Sub-Division No.3,
Amravati.

Respondents.

Shri A.P. Tathod, the learned counsel for the applicant.
Shri P.N. Warjekar, the Ld. P.O. for the respondents.

Coram:- The Hon'ble Shri S.S. Hingne,
Vice-Chairman

Dated: 16th January 2017.

ORDER

The applicant, a Sectional Engineer has challenged the transfer order dated 31.5.2016 (A.4 P.17) by which he is transferred from Amravati to Ner.

2. Heard Shri AP. Tathod, the learned counsel for the applicant and Shri P.N. Warjekar, the learned P.O. for respondents.

3. The applicant was due for transfer and it is a general transfer order. The order is issued in compliance of the provisions of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as, "Transfer Act"). However, applicant's grudge and grievance is that, difficulties of other employees are considered and their request is accepted and they are retained and some employees are even retained for years together. However, applicant's mother is ill and bed ridden and cannot move. Despite this, his request is not considered.

4. No doubt, such aspect is to be considered by the department. However, the applicant has pointed out several instances how the orders are issued being without laying down any guidelines and just to favour some employees.

5. Needless to mention that when the general transfers are to be issued, there should be some procedure regulating and

streamlining the transfers which should be uniformly followed so that there cannot be any grudge and grievance or sense of favour or disfavor to some and injustice to the other employees.

6. The Transfer Act is silent on such points. In several cases, transfer orders are being challenged and most of the time of the Tribunals is spent to decide such matters. The matters are decided taking into consideration the legality and validity of the order, testing the same on the touchstone of the provisions of the Transfer Act. However, considering the spate of the cases in Courts and since there are no guidelines issued by the departments, it is necessary that there should be some guidelines regulating and observing such guideline, the transfer be made. For instance, when the employee's *en mass* are to be transferred, seniority at the station or seniority in service should be considered and then transfer orders should be issued. There should be some guidelines to consider the work load at a particular station, so also the qualities of a particular employee be considered so that his services can be well utilized considering the need at a particular place. So also personal difficulties of the employee should be considered. If he is working on retention at a particular place or posting at a particular place, educational difficulties of the children, so also the domestic difficulties, physical ailment also should be considered and all these matters should be reflected in black and

white. If it is followed, it can minimize the grievance of the employees that no favour is shown to anybody. So also to a particular employee should not be placed at the same place repeatedly. It also transpires that several employees are sent on deputation ignoring the G.Rs that the employee should be sent on deputation for a long period. The employees are sent on deputation with a short break and the provisions of the G.Rs are correctly flouted. All needs to be checked, to have good governance and good administration.

7. At present no such guidelines are placed for perusal to show that the same are being observed. With that view only, to have a transparency in the transfer matters and remove the sense of favour or disfavor and injustice malice, in the minds of the employees and to have smooth and good administration, the Hon'ble Supreme Court has laid down guidelines in case of **T.S.R. Subramanian and others V/s Union of India and others (2014) SCC (L&S) 296** and the Civil Services Board are established. However, it reveals from the record that all such material are not placed before the Civil Services Board and, therefore, the Civil Services Board have also no occasion to consider. To follow the guidelines laid down by the Apex Court of the land in true letter and spirit, it is necessary to do all this. Several matters are filed in the Tribunals, challenging the transfers and much time of the Govt. offices and Govt. servants and

Tribunals is spent for that and as such it is necessary that all these need to be checked.

8. Reverting back to the facts of the case, it reveals that the applicant was due for transfer. But his mother is completely bed ridden and, therefore, he had asked for retention. It reveals from the minutes of the Civil Services Board that several employees merely on asking they are retained. Cases of some employees are recommended by the political figures and they are considered only on that ground and extension is given. Name of the applicant is at Sr. No.16 (P.46). The names of 13 employees figured on that page in the list. Out of them, all are accommodated barring the applicant. His case is also recommended by the political figure. But that was not considered. No reasons are given in any case. This shows that without mentioning any reason and without considering the grounds on which the employees are transferred or retained and orders are issued. Such procedure definitely give rise of sense of injustice to the employee. Somewhere it needs to be checked.

9. One fails to understand as to why applicant's case was not considered and cases of rest of the employees are accepted. Earlier the applicant was transferred and he had challenged the transfer order in O.A. No. 255/2015 (P.9) and that application was allowed, because the transfer was made at the instance of the

complaint and one political figure. But as the applicant was due for transfer, it was observed in the order that the respondents are at liberty to transfer the applicant complying the provisions of the Transfer Act. It is urged by the learned counsel for the applicant that therefore, for such reasons, the applicant is transferred, cannot be ruled out.

10. The learned counsel for the applicant relied on the observations made in the case of **State of Maharashtra V/s Ashok Ramchandra Kore and another reported in 2009 (4) Mh.L.J. 163 and Rajendra Singh etc. V/s State of U.P. and others reported in 2009 (5) ALL MR 514 (S.C.)**. No doubt, the provisions of the Transfer Act are in force, but Their Lordships observed that when the order is vitiated with malafides or other considerations, it cannot be said to be legal order. There cannot be a cogent material of malafides and favour. But the absence of reasons and ground in case of all employees are not given and their requests are considered, but the applicant's alone request is not considered, it can be said that applicant's contention cannot be thrown away easily. No doubt, applicant's stay is longer but other employees are having more period of stay than the applicants. The applicant prays only retention till general transfer of 2017. Now only four months period is left. In the above state of affairs, if applicant's request is considered, no injustice can be caused to anybody.

11. Having regard to this, it appears that such order needs to be quashed so that all these aspects will be considered by Govt. and henceforth transfer orders will be issued and the public interest will be served, which will be helpful for good governance. It is now need of time that the aspects of transfers need to be streamlined as narrated above which can be done, if the Govt. lays down exhaustive guidelines regulating the transfers. The same cannot be done unless any order is cancelled on such ground.

12. Consequently, the O.A. is allowed in the following terms:

- (i) The impugned order of transfer of the applicant is quashed.
- (ii) No order as to costs.
- (iii) The copy of the order be sent to the Hon'ble Chief Secretary to take necessary steps.
- (iv) The respondents are at liberty to transfer the applicant in general transfer of 2017.

(S.S.Hingne)
Vice-Chairman

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