

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 494/2016

Prafulla Mahadeorao Lole,
Aged about 55 years,
R/o Anjangaon Surji,
Tq. Anjangaon Surji,
Distt. Amravati.

-----**Applicant.**

Versus

1. The State of Maharashtra,
Through its Secretary,
Municipal Administration, Mantralaya, Mumbai.
2. The Collector, Amravati.
3. The Municipal Council,
Anjangaon Surji Tq. Anjangaon Surji,
Distt. Amravati through its Chief Officer.
4. The Director of Municipal Administration,
Govt. Transport Building,
3rd Floor, Sir Pochkhanwalal Marg,
Mumbai.
5. The Regional Director of Municipal
Administration, Amravati. -----

Respondents

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1. Shri R.L. Khapre, Advocate for the applicant.
 2. Shri M.I. Khan, Presenting Officer for the Respondents Nos. 1, 2, 4 and 5.
 3. None for R/3.

CORAM : S.S. Hingne: Vice Chairman
DATE : 9th January, 2017

ORDER

The applicant/Civil Supervisor, Grade-III, has taken the exception of the order dtd. 15/7/2016 (Annex.A-9, page-43) and filed the O.A. alleging it to be transfer . According to the respondents, it is a deputation.

2. Heard Shri R.L. Khapre, Id. counsel for the applicant and Shri M.I. Khan, Id. P.O. for Respondent Nos. 1, 2, 4 and 5. None for Respondent no. 3 .

3. The applicant was transferred from Chandur Bazar to Anjangaon Surji vide order dtd. 30/5/2015 (Annex.A-7, page-38) and since then he is working there. The challenge to the impugned order dtd. 15/7/2016 is on the ground that it is a mid-term and mid-tenure without compliance of 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). The respondent no. 3 has come with a dual stand that it is deputation and not a transfer and secondly it is contended

that he is posted there because there are several complaints against him and he has submitted the false medical certificates and indulged in the misappropriation etc.

4. At the outset it is to be decided as to whether it is a transfer order or order of deputation. The impugned order says that the applicant will work as a full time employee at Chandur Bazar. However, he will be continued to be an employee of the Municipal Council, Anjangaon-Surji and will draw the salary from the Anjangaon-Surj Municipal Council. The order says that this is an additional charge given to the applicant. However, he was to be relieved from Anjangaon-Surji. The order further says that the new improved orders are passed. The order nowhere says that it is a deputation. It is also nowhere mentioned that the order is issued as per the provisions under the Maharashtra Civil Services Rules.

5. As observed earlier, the respondents' stand is dual. In one breath they say that it is a deputation and in the second they say that there are several complaints against

the applicant and therefore transfer was necessary. From the above material, the order cannot be labelled as a order of deputation as it has no trappings of the deputation. As in the order the posting is changed, it has therefore to be held as a transfer order.

6. The applicant has come with the case that he is a cancer patient and handicapped person (handicapped certificate at Annex-A-2) and he has filed medical certificates to the effect on record. (Annexs. A-3 and A-4) . According to the respondents the medical certificates are old and false. Apart from that it is also the respondents' case that there are several complaints against him of mis-appropriation and illegalities and he has misused his position though he is posted at his home town on the sympathetic ground. The medical certificates are old and he is not suffering from any ailment. The case cannot be decided on the basis of this material and therefore it is not necessary to delve upon the authenticity of such documents. The aspect can be left open

to the authority to decide and deal with the matter according to the law on that point.

7. It is also urged that there is no person to man the post at Chandur Bazaar and therefore the applicant is posted there. Needless to mention that the concerned department is the best authority to decide the official and administrative needs and for that to make the changes and post the employees there to meet the administrative exigencies. The Tribunal should be loathe to interfere on that ground. Therefore the respondents' need may be genuine but whatever steps are to be taken should be taken according to law.

8. The order being issued on 15/7/2016 and before completion of the tenure of the applicant, the compliance under Section 4(4)(5) of the Transfer Act is required. The order is completely silent about the compliance. Not only that no material is put forth showing the compliance. Consequently the order cannot be legal and valid.

9. No doubt on factual aspects, the case cannot be decided. However, on other side on legal points as considered above, the order cannot be termed as a legal and valid and deserves to be quashed.

10. Consequently the O.A. is allowed. The order dtd. 15/7/2016 is quashed. However, it is made clear that Respondent No. 3 is at liberty to take any recourse to meet exigency, according to the law and this order will not stand as a hurdle in the way. No order as to costs.

**(S.S. Hingne)
Vice-Chairman.**

Skt.