

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.641/2017.

(S.B.)

Ashish Chandrakant Poreddiwar,
Aged about 32 years,
Occ-Service,
R/o Behind Sadiq Company,
At and Post Navegaon,
Tq. & Dist. Gadchiroli.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Revenue,
Mantralaya, Mumbai-400 032.
2. The Collector,
Complex Area, Gadchiroli.
3. The Sub-Divisional Officer,
Gadchiroli.
4. The Tehsildar, Tehsil Office,
Korchi, Dist. Gadchiroli.
5. Shri P.C. Kulsange,
Aged about Major,
Occ-Service,
R/o Tehsil Office, Korchi, Dist. Gadchiroli.

Respondents

Shri N.D. Thombre, Ld. Advocate for the applicant.

Shri A.M. Ghogre, Ld. P.O. for the respondent Nos. 1 to 4.

None appeared for respondent No.5.

Coram:- Shri J.D. Kulkarni, Vice-Chairman (J)

JUDGMENT

(Delivered on this 16th day of March, 2018.)

Heard Shri N.D. Thombre, the learned counsel for the applicant and Shri A.M. Ghogre, the learned P.O. for respondent Nos. 1 to 4. None appeared for respondent No.5.

2. The applicant is a Driver and has challenged his impugned order of transfer dated 31.5.2016 issued by Collector, Gadchiroli (R.2). Vide impugned order at Annexure A-2 page No.30, the applicant has been transferred from the office of the Sub-Divisional Officer, Gadchiroli to the office of Tehsildar, Korchi, District-Gadchiroli and the order has been passed in the interest of administrative convenience and the applicant has been transferred in place of one Shri P.C. Kulsange (R.5). Admittedly, the applicant has joined at the post of his transfer.

3. The learned counsel for the applicant submits that after the applicant has received transfer order, he sought some information under the Right to Information Act and from the said information, it has come to his knowledge that he has been

transferred on complaint. The learned counsel for the applicant submits that since the applicant has been transferred on complaint, it is a punitive transfer and such transfer is against the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the "Transfer Act of 2005"). In support of the claim of the applicant, the learned counsel for the applicant has placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay reported in **2015 (4) ALL MR 336 in case of State of Maharashtra and others V/s Dr.(Miss) Padmashri Shriram Bainade and others.** The learned counsel for the applicant has placed reliance on the observations made by the Hon'ble High Court in the aforesaid case of **State of Maharashtra and others V/s Dr.(Miss) Padmashri Shriram Bainade and others** (supra) in para No.23 of the judgment. The said para 23 reads as under:-

"The transfer is a part of service contract and / or the service jurisprudence. "Transfer is an incidence of service". "Reason to be recorded" cannot read to mean, no reason should not be communicated at any circumstances, especially when it is obligatory on the part of the State to act fairly,

transparently and reasonably. The decision needs to be actuated by consideration based on law and the record and certainly not an extraneous consideration. Unreasoned order is always vulnerable to challenge and stated to be *mala fide*. The State / Authority needs to act bonafide. Therefore, cannot be restricted to mean for and / or with the private record / department. It must be reflected before taking any action / order. Perversity or irrationality, bonafide, legality of reasons difficult to test, if not disclosed at the time of order /action itself. It is normally the unreasoned mid-term order or such orders are vulnerable to challenge. An executive order on undisclosed or unreasoned foundation of alleged misconduct and dereliction of duty is also vulnerable to challenge on the ground of malice of law. Such undisclosed burdened mid term order of transfer affects the status of the employee, it violates the service conditions thus illegal, though it is administrative order. It has civil consequences. The principle of natural justice is applicable. The State Act and not any guidelines govern such State Government transfer order, such transfer order is arbitrary, irrational and violative of Article 14 of the Constitution of India.”

4. The learned counsel for the applicant submits that under the Right to Information Act, the applicant has sought information as to what was the complaint against the applicant that forced the respondent authorities to transfer him and in reply to his application, it was intimated that the copy of the so-called complaint was not traceable and, therefore, the order has been passed without any base.

5. The respondent No.2 has filed affidavit-in-reply and tried to justify the order of transfer. It is stated that there was no need of additional Driver at Headquarters, Gadchiroli. It is denied that the applicant has been transferred to accommodate respondent No.4, who has been transferred in place of the applicant. It is stated that the applicant's work was not upto the mark and there was complaint from respondent No.3 in respect of applicant's work and therefore, the applicant was transferred on account of administrative exigency.

6. The applicant himself has placed on record some documents which show as to how the applicant's transfer came to be effected. Copy of letter written by Assistant Collector / S.D.O., Gadchiroli is dated 30.4.2016 and is at page No.49. This is a

confidential letter issued by the Assistant Collector / S.D.O., Gadchiroli to the Collector, Gadchiroli. The said letter is self speaking and reads as under:-

“महोदय,

उपरोक्त विषयाचे अनुषंगाने सविनय सादर करण्यात येते कि, श्री. आशिष पोरेडीवार हे या कार्यालयात वाहन चालक या पदावर कार्यरत आहेत. सदर वाहन चालक यांची वागणूक कार्यालयातील शिस्तीला धरून नाही. माझ्या शासकीय निवासस्थान येथे दररोज उशिरा येत असतो व त्यांना दूरध्वनीने बोलाविण्यात येते. तसेच विनापरवानगीने कार्यालयात गैरहजर असणे व बेजबाबदारपणे वागणे, गैरहजर राहणे, कार्यालयातील वरिष्ठ अधिकारी यांचे आदेशाचे पालन न करणे ही बाब अतिशय गंभीर स्वरूपाची आहे. तसेच कर्तव्याला धरून नाही असे माझ्या निदर्शनास आले आहे. सदर बाबतीत यापूर्वी कारणे दाखवा नोटीस संबंधितांना देण्यात आले व त्यांना कर्तव्यात सुधारणा करण्याबाबत वारंवार सूचना देण्यात आले आहे. परंतु सूचनांचे पालन होताना दिसून येत नाही. त्यामुळे महाराष्ट्र नागरी सेवा (शिस्त व अपील) अधिनियम १९७९ अन्वये कार्यवाही करण्याबाबत व या कार्यालयातून तत्काळ इतरत्र स्थानांतरण करण्याबाबतचा प्रस्ताव सविनय सादर.”

7. On the basis of the said confidential communication, the Collector, Gadchiroli seems to have transferred the applicant, who was admittedly due for transfer. There is nothing on record to show that, the Assistant Collector / S.D.O., Gadchiroli was having any malice against the applicant. The applicant has

also not pleaded any malice against him in the application. The applicant himself has placed on record copies of the confidential reports in respect of him. Such reports are at page Nos. 58 to 64 (both inclusive). The confidential reports are written by the Assistant Collector / S.D.O., Gadchiroli . One such report is for the period from 9.4.2015 to 6.12.2015 in which general assessment has been made as under:-

“सदर कर्मचारी वरिष्ठांच्या आदेशाचे पालन करत नाही.
कार्यालयीन नियमांबाबत अत्यंत उदासीन आहे.”

8. Another report is for the period from 1.4.2015 to 31.3.2016 also written by the Assistant Collector / S.D.O., Gadchiroli in which similar general assessment has been done in respect of the applicant. One show cause notice has been placed on record dated 16.3.2016 (Annexure A-11) (P.66 of the O.A.), whereby the applicant was called upon to explain certain adverse circumstances against him and it seems that the applicant has sought additional allowance, though he was on leave. These documents are placed on record by the applicant himself. Thus, the Assistant Collector / S.D.O., Gadchiroli might have written confidential letter considering the applicant's attitude and behavior and requested the Collector,

Gadchiroli to transfer him. Such a request cannot be said to be malafide or it also cannot be said to be a complaint which requires any more investigation. If a junior officer confidentially writes to the superior authority about the misconduct of the employee and requests such employee to be transferred for administrative purpose, it cannot be said to be a complaint and acting upon such complaint, cannot be said to be malafide.

9. The learned counsel for the applicant submits that the C.Rs which he has produced on record were received by him under the Right to Information Act and in fact, these reports were not served on the applicant and that the said reports are false. If the applicant is aggrieved by such ACRs, he will be at liberty to file representation for expunging the said ACRs against him. But that does not mean that the order of transfer is illegal or malafide. The said order seems to have been passed in the administrative interest on the C.R. report of the junior officer under whom the applicant was serving. I, therefore, do not find any merit in this O.A. Hence, the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)
16.3.2018.

pdg

