

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 716/2018

Deepak S/o Raghuttamrao Limse,
Aged about 52 years,
Occ. Presently working as District Sainik Welfare Officer,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Department
of General Administration,
Mantralaya, Mumbai-32.
- 2) The Collector, Nagpur.
- 3) Smt. Shilpa Maruti Kharapkar,
C/o M.G. Ninawe, 33-B, Bhusaheb Survey Nagar,
Jaitala Road, Nagpur0440 022.
- 4) The Director,
Department of Sainik Welfare Maharashtra
State, near National War Memorial, Ghorpadi (Raigad),
Pune-411 002.

Respondents.

Shri N.R. Saboo, Advocate for the applicant.

Shri P.N. Warjurkar, P.O. for respondent nos. 1 and 2

Shri S.M. Khan, Advocate for respondent no.3

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

JUDGMENT

(Delivered on this 20th day of November,2018)

Heard Shri N.R. Saboo, learned counsel for the applicant, Shri P.N. Warjurkar, learned P.O. for respondent Nos. 1 and 2 and Shri S.M. Khan, learned counsel for respondent No.3.

2. The applicant is challenging transfer orders dated 10th September,2018 issued by the Deputy Secretary, GAD, Government of Maharashtra. The applicant was posted vide order dated 6th June,2016 as District Sainik Welfare Officer at Nagpur and by the impugned order he was transferred to Chandrapur, before expiry of the normal tenure. The transfer is attacked on the ground that it is malafide exercise of the jurisdiction by the authority and the applicant is transferred without following the procedure under Section 4 (4) & (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfer Act"). It is contended that the impugned order is illegal because there was no administrative exigency or urgency for his premature transfer and he was transferred only to create a vacant post to adjust the respondent No.3.

3. The respondents have justified the action. It is submitted that as the applicant has completed major tenure of his service at

Nagpur, therefore, for administrative grounds he was transferred to Chandrapur. It is denied that there was no reason for transfer of the applicant and the applicant is transferred only to show favour to the respondent No.3.

4. In order to decide the controversy, it is necessary to read Section 4 (4) & (5) of the Transfer Act.

“(4) Tenure of transfer -

(4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May:

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely :-

(i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;

(ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority ;

(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior (approval of the immediately superior) Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post.”

5. After reading Section 4(5) of the Transfer Act, it must be said that it is mandate of the statute that the competent authority may in special cases after recording reason in writing with prior approval of immediately Superior of the Transferring Authority, transfer a Government servant before completion of the normal tenure. The learned P.O. has submitted that the proposal was forwarded by the Transferring Authority and it was placed before the Hon'ble Chief Minister of Maharashtra State and after considering the same the proposal was approved and direction was given to post the respondent No.3 at Nagpur after transferring the applicant to Chandrapur.

6. Thus, prima facie it is demonstrated that the Transferring Authority referred the matter to its Superior Authority who was the Hon'ble Chief Minister of Maharashtra State, but after perusal of the transfer order and the proposal which is at Page No.55 of P.B. it appears that no special reason is mentioned in this proposal to transfer the applicant.

7. As a matter of fact the papers received by the learned P.O. along with letter dated 10/10/2018 are filed and these papers are at Page Nos. 47 to 55 of the P.B. After reading Page No.49 it seems that the respondent No.7 was selected by the MPSC and her name was recommended to the Government of Maharashtra for her

appointment as District Sainik Welfare Officer. On page No.52 in paragraph No.10 the Government of Maharashtra has explained the procedure how to fill the vacant post by appointing newly selected Government servants. It is mentioned that the data be collected about the vacancy of the posts from all Revenue Divisions and information be given to the selected candidates to give options for their postings in the Revenue Division. In para No.10 (6) it is mentioned that if option is given by the candidate and the post is not vacant in the Revenue Division then such candidate may be posted in another Revenue Division as per rotation.

8. It is pertinent to note that in this proposal at page No.54 name of respondent No.3 is at Sr.No.7, she gave option for her posting at Nagpur, she was entitled to Nagpur Revenue Division and she was recommended to be posted at Chandrapur. On the last page there is endorsement of the Hon'ble Chief Minister and the Hon'ble Chief Minister directed to transfer the applicant from Nagpur to Chandrapur for the reason that he was posted repeatedly at Nagpur for more period.

9. In para-14 of the proposal at page No.55, it was mentioned that some District Sainik Welfare Officers were posted in one Revenue Division / District frequently and continued after expiry of the tenure, therefore, they be transferred to other place for giving posting to newly

selected candidates. This note was approved by the Hon'ble Chief Minister.

10. In the above background, it is necessary to see whether the applicant was frequently posted at Nagpur and he was continued to work at Nagpur for a period more than the normal tenure. It appears that in year 2000 the applicant was posted as District Sainik Welfare Officer at Buldhana he worked there till 2004. In year 2004 the applicant was transferred to Akola, he worked there till 2008 and in 2008 the applicant was transferred to Nagpur, he worked there till 2012, then the applicant was transferred in year 2012 to Bhandara. Thereafter, on 06/06/2016 the applicant was again transferred to Nagpur and when impugned order was passed, the applicant was working as District Sainik Welfare Officer, Nagpur. It is apparent that this was second posting of the applicant at Nagpur, but the applicant had not completed the normal tenure of three years. Thus, it seems that it was not a case that the applicant had completed the normal tenure of three years at Nagpur and he was continued to work at Nagpur though he was due for transfer. In this situation, it is difficult to accept that the applicant was due for transfer as he had completed the normal tenure at Nagpur.

11. After perusing the proposal which was placed before the Hon'ble Chief Minister it seems that no specific reason was mentioned

why it was necessary in the interest of the department to transfer the applicant from Nagpur to Chandrapur. As a matter of fact in the proposal in para-12, it is mentioned that none of the selected candidates had given option of Revenue Division, therefore the office prepared the table in para-12 marked "A" and it was mentioned that the respondent No.5 could be posted in Nagpur Division at Chandrapur District. After perusing the entire proposal and endorsement made by the Hon'ble Chief Minister, it is difficult to accept that there was any special reason or administrative exigency for transferring the applicant from Nagpur before completion of the normal tenure of three years.

12. The Transfer Act, 2005 does not say that the Government servant shall not be posted at a same station twice in his career. It is mandate of the Act that the normal tenure of the government servant is three years and if it is desire of the Government to transfer a Government servant before expiry of normal tenure of three years, then it is mandatory to follow the requirements under Section 4 (4) & (5) of the Transfer Act. As per Section 4 (5) of the Transfer Act, the authority competent to transfer was bound to record special reasons in writing and place the special reasons before the immediately Superior Authority for the approval. In present case it is nowhere mentioned in the proposal why it was necessary to transfer the applicant from

Nagpur before expiry of his normal tenure. Similarly it was not mentioned in the proposal that the applicant had not completed the normal tenure.

13. The respondent No.3 has placed reliance on the Judgment in case of **Rajendra Shankar Kalal Vs. the State of Maharashtra & Ors.** in Writ Petition No.8898/2010 decided on 30/11/2010. In case before the Hon'ble High Court the facts were that the person was transferred from one office to another office situated in a same town. The Hon'ble Division Bench observed that in strict sense it was not transfer, but it was internal office arrangement. The respondent No.3 has also placed reliance on the Judgment in O.A.Nos. 511,512,514,515,516 & 523 of 2017 decided on 7th September, 2018. In those matters the distinguishing factor was that the applicants in those matters completed 18 to 25 years service at Mumbai, Thane etc. and therefore that view was taken. In present case the crucial test is whether the transfer of the applicant is vitiated for non compliance of Section 4 (5) of the Transfer Act. The learned counsel for the applicant has placed reliance on the Judgment in case of **Pradeep Kumar S/o Kothiram Deshbhratar Vs. State of Maharashtra & Ors., 2011 (5) Mh.L.J.,158.** In case of premature transfer it is held by the Hon'ble Division Bench that the Transferring Authority must record reasons for permitting such transfer and it must

be in the interest of the administration. It should not be to fulfil the wish or whim of any particular individual and it cannot be ordered as a special case to please the particular individual for mere asking.

14. In present case it seems that as the normal tenure of the applicant at Nagpur was not completed, for this reason, the transfer was premature and therefore, in the absence of any special reason mentioned in the order of transfer, conclusion cannot be drawn that it was in the interest of the administration. In view of this discussion, I hold that the transfer of the applicant from Nagpur to Chandrapur was illegal so also the posting of respondent No.3 at Nagpur was illegal. Hence the following order :-

ORDER

The O.A. is allowed. The posting of respondent No.3 in place of applicant at Nagpur as District Sainik Welfare Officer and the order dated 10/09/2018 transferring the applicant to Chandrapur are hereby set aside. No order as to costs.

Dated :- 20/11/2018.

*dnk.

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