

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 801 /2016

Ku. Rajani Vinayakarao Deshmukh,
Aged about 52 years, Occ. Service,
R/o Burande Layout, Deshmukhwadi,
Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Skill Development and Entrepreneurship Department,
Mantralaya, Mumbai-32.
- 2) The Joint Director,
Vocation Education and Training,
Regional Office, Civil Lines, Nagpur.

Respondents

Shri J.R. Kidilay, Advocate for the applicant.

Shri S.A. Deo, Id. C.P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGEMENT

(Delivered on this 17th day of April,2017)

Heard Shri J.R. Kidilay, Id. counsel for the applicant and
Shri S.A. Deo, Id. CPO for the respondents.

2. The applicant was appointed under the category of
physically handicapped in the respondents / department as Junior

Clerk on 30/5/1999. She was posted at Pulgaon, District Wardha. The applicant was due for transfer and she requested that she be adjusted at Wardha since she is handicapped and was regularly getting treatment relating to her disability from Wardha and Yavatmal. On 25/5/2016 the applicant met an accident and therefore she was on medical leave for two months. On 31/5/2016 the respondent no.2 issued transfer order whereby the applicant has been transferred at Arvi and she was also relieved on 6/6/2016. The applicant made representation on 8/6/2016 to the respondent no.2 and requested that the post at Wardha is still vacant and therefore she shall be adjusted at Wardha. The respondents however did not take any action and therefore this application. The applicant has prayed that the transfer order dated 31/5/2016 issued by respondent no.2 transferring the applicant from the office of Principal, Industrial Training Institute (ITI), Pulgaon to office of the Principal, Industrial Training Institute (ITI), Arvi be quashed and set aside and the respondents be directed to consider the applicant's representation for transfer at Wardha.

3. The respondent no.2 filed reply-affidavit and justified the transfer. It is however stated that there were 6 posts at Wardha out of which 5 posts are already filled in. Whereas at Arvi there are two posts and both were lying vacant and therefore in the administrative exigency the applicant was considered for Arvi. The applicant filed

rejoinder and stated that she met an accident on 25/5/2016 and sustained fracture to her right lower limb which was already polio affected. She therefore requires treatment from ortho expert. She is also getting treatment from Dr. Ajit V. Phadke of Yavatmal and has to frequently go to Yavatmal. The respondent no.2 filed reply to the rejoinder and submitted that when the applicant can go to Yavatmal from Wardha, there is no reason as to why she cannot travel from Arvi to Wardha for treatment. It is further stated that the applicant has almost completed 17 years and was time and again adjusted for her posting at Wardha.

4. The learned counsel for the applicant admits the fact that the applicant has completed her tenure at Pulgaon and therefore she was due for transfer and was accordingly transferred at Arvi. He however submitted that the applicant being disabled person is entitled to have benefit of the provisions of the Rights of Persons with Disabilities Act,2016. He invited my attention to section 20 (5) of the said Act. Section 20 states about non discrimination in employment. Section 20 (5) states that the appropriate Government may frame policies for posting and transfer for employees with disabilities.

5. The learned counsel for the applicant has invited my attention to one G.R. dated 15/12/2004 (A-1,P-33). The said G.R. reads as under:-

^'kkI u ifji=d&

'kkI dh; I srhy via deþk&; kR; k cnY; k I gkumkurtpk n"Vhdksu Bduu R; kR; k jkgR; k fBdk.kktoG dj.; kckr I mHkkZkhu dz1 P; k ifji=d&Uo; s I puk ns; kr vKY; k gkR; k-rFkfi ; k I pukph 0; ofLFkr væyc tko.kh gkr ukgh vl sfun'kLukl vKY; keGsl mHkkZkhu dz 2 P; k ifji=d&Uo; j ea-ky; hu foHkkx o R; kR; k fu; æ.kk[kkyhy foHkkx iæf[k @ dk; kÿ; iæf[k ; kauk i tlgk I puk ns; kr vKY; k gkR; k dh] 'kkI dh; deþk&; kR; k cnY; kpsfofu; eu dj.; kl kBh 'kkI ukusfnukad 16 tkus[kjh] 2004 jksth iz[; kfi r dsyY; k v/; kns kkl v/khu jkguu 'kkI dh; I srhy via deþk&; kR; k cnY; kl iz kkl dh; I ks huil kj 'kD; vl Y; kl R; kR; k jkgR; k fBdk.kktoG djko; kr-

vkrk ; k vuqkækus I qkkfjr I puk ns; kr ; s vlgR dh] 'kkI dh; I srhy via deþk&; kR; k cnY; k] 'kkI ukusfnukad 16@1@2004 jksth rI p fnukad 2 tny]2004 jksth iz[; kfi r dsyysv/; kns k@cnY; kpsfu; e] ; krhy rnrmlh ck/kk ; skkj ukgh ; k vVhpsv/khu jkguu R; kR; k jkgR; k fBdk.kktoGhy dk; kÿ; kr inkBkh mi yC/krk vkf.k iz kkl dh; I ks y{kkR ?kduu djrk ; rhy-**

6. Perusal of the aforesaid G.R. shows that the Govt. has taken policy decision to adjust the disabled persons nearby their place of residence. However while considering such facts the provisions of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short 'Transfer Act') are not to be overlooked and administrative convenience also is to be considered.

7. The respondent no.2 has filed on record the reply-affidavit as well as rejoinder from which it seems that the applicant joined the service and was posted in ITI, Wardha where she served from 5/6/1999 to 9/7/2001, i.e., for two years and one month and thereafter at District Vocational Education & Training office, Wardha from

9/7/2001 to 20/6/2009, i.e., for 7 years and 11 months and thereafter from Hardayal ITI, Pulgaon (Dist. Wardha) from 21/6/2009 to 6/6/2016, i.e., for six years and 10 months. Thus she has completed 10 years' posting at Wardha and six years and 10 months posting at Pulgaon. Her posting at Pulgaon was on her request.

8. The respondent no.2 has further stated in the reply-affidavit that the applicant had shown Rohana, Tq. Arvi as her home town and therefore she was transferred at Arvi. It is further stated that though 6 posts were available at Wardha, 5 posts were already filled in and at Arvi there were only two posts available and both were vacant and therefore in the administrative convenience it was necessary to appoint the applicant at Arvi. The reasons given in the reply-affidavit seems to be genuine. No malafied are shown alleged against the applicant and therefore considering these facts though the applicant is handicapped it seems that the respondent no.2 has tried to adjust her as far as possible at her place of choice, but the administrative exigencies did not allow the respondent no.2 to adjust the applicant at Wardha and I absolutely find no reason to interfere in such transfer. The adjustment of handicapped an employee nearby native place cannot be detrimental to administrative exigencies and it cannot be as of right. The word "as far as possible" has been used in the G.R. and the same is subject to the provisions of the Transfer Act

and administrative exigencies, I do not find any illegality in the transfer order in respect of applicant.

9. The learned counsel for the applicant submits that the applicant has met an accident and she was on medical leave when the impugned order of transfer was filed. It has come on the record that the applicant has proceeded on medical leave before issuance of the impugned transfer order and admittedly she was relieved ex-party. She has also filed representation to consider her case for transfer at Wardha. The copies of such representations are placed on record by the applicant and the same are at Exh.-Annex-10 collectively at P.B. P-28 to 32 (both inclusive). Considering the fact that the applicant has met an accident, she got fracture. Her right leg is polio affected and considering the fact that she has to undergo medical treatment, I feel that the competent authority may consider her representation with a proper perspective without being influenced by any of the observations made in this order and without being prejudiced against the applicant. However, it is necessary for the applicant to comply the order of transfer. The representation submitted by the applicant can be considered at the time of annual general transfers of 2017 or if such orders are already passed then within one month from the date of this order, provided the applicant immediately joins at Arvi. Hence following order :-

ORDER

(i) The O.A. is partly allowed. The applicant's prayer for quashing and setting aside the impugned transfer order dated 31/5/2016 issued by respondent no.2 is rejected.

(ii) The respondents are directed to consider the representation filed by the applicant for her transfer at Wardha provided the applicant joins her posting at Arvi. A decision on her representation may be taken at the time of general annual transfers of 2017 or within one month from the date of this order whichever is later. No order as to costs.

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

dnk.