

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO. 857/2012

Shri. Peetambar S/o Shamrao Umare,
Aged 47 years Occupation : Government Service,
R/o : Nirman Nagar, Tukum, Ward No. 1,
Chandrapur.
Tah. and District Chandrapur.

Applicant

- **Versus** -

- (1) The State of Maharashtra
Through its Secretary,
Department of Animal Husbandry,
Dairy Development and Fisheries,
Mantralaya, Mumbai - 32.
- (2) The Commissioner,
Dairy Development (M.S.) Mumbai,
Administrative Building,
Abdul Gaffarkhan Marg, Worli,
Seaface, Mumbai.
- (3) Regional Dairy Development Officer,
Telankhedi Road, Civil Lines,
Nagpur.
- (4) The Dairy Manager,
Government Milk Scheme,
Rayatwari Colony Road,
Chandrapur - 442 401.

Respondents

Shri S. B. Suryawanshi, Advocate for the applicant

Shri A. M. Ghogare, P. O. for the respondents

**Coram : - The Hon'ble Shri B. Majumdar,
Member(A)**

Dated :- February 4, 2013.

ORAL ORDER

Heard Shri. S. B. Suryawanshi, , learned counsel for the applicant and Shri A. M. Ghogare, P. O. for the respondents. The matter is decided at the admission stage with the approval of the concerned parties.

2. The applicant, a Dairy Supervisor (Group C), has filed this O.A. challenging the order dated 26-9-2012 vide which he has been transferred to Gondia. The applicant has been serving in the Chandrapur-Gadchiroli tribal and naxalite affected Districts since 17-6-1997 and thus, he has already completed 15 years in these areas. Vide the impugned order, he has been again posted to Gondia, which is a naxalite area. Consequent to the issue of the impugned order, the applicant came to be relieved on 27-9-2012. However, on 29-10-2012, this Tribunal stayed the impugned order and it is submitted by the learned counsel for the applicant today that the applicant has rejoined his place of

posting at Chandrapur. The applicant's main grievances are that he has been serving in the naxalite/tribal areas of Chandrapur and Gadchiorli for the last 15 years. His son is studying in 11th Class at Chandrapur and it will be difficult for him to get him admitted at this advance stage of his education in the middle of the session. The impugned order is issued in the month of September and as it is a mid-session order, it attracts the provisions of Section 4(5) of the Transfer Act, 2005. It is also the grievance of the applicant that the provisions of the G.R. dated 6-8-2002 for posting of a government servant after his service in a naxalite/tribal area have not been followed.

3. An affidavit in reply on behalf of respondent nos. 2 to 4 has been filed today. According to the respondents, there were cases of irregularities like adulteration of milk which involved the centre at Chandrapur where the applicant is posted and hence as a part of the enquiry into these irregularities, the applicant was required to be transferred out in public interest. Since the applicant's proposed transfer was a mid-term one, ex-post facto sanction was granted by the Government on 15-1-2013. Thus, according to the respondents, even though the impugned order is a mid-session order, due to the reasons as stated above and the fact that the approval of the higher authorities at the

Government level has been taken, it is issued in compliance with the provisions of the Transfer Act.

4. Shri. Suryawanshi, learned counsel for the applicant made a submission that the impugned order cannot be said to be in compliance with the provisions of the Transfer Act, particularly Section 4(4) thereof. Issue of a mid-session transfer order requires the prior approval of the next higher authorities. The respondent nos. 2 to 4 in their reply to the O.A. have made a clear admission that the impugned order came to be issued without getting prior approval of the higher authorities at the Government level and the said approval was granted only as late as on 15-1-2013, that is, after more than three months of the issue of the transfer order. Thus, the respondents have clearly failed in complying with the provisions of the Transfer Act.

5. Shri. A. M. Ghogare, learned P.O. opposed the O.A. by submitting that the applicant had already served three years' tenure at Chandrapur. Even though he had completed more than 15 years in the Gadchiroli and Chandrapur Districts, in view of the enquiry being conducted into the irregularities at the Government Milk Scheme, Chandrapur, it was necessary to transfer the applicant out of the Chandrapur. In this case, the guidelines of the G.R. dated 6-8-2002 are not relevant as the exigencies demanded transfer of the applicant. The transferring

authority has sent a proposal to the Government for transferring the applicant mid-term as per the provisions of Section 4(4) of the Transfer Act. However, the post facto sanction was received in January, 2013. Hence, it cannot be said that the requirements of the Transfer Act have not been complied with.

6. After hearing the arguments on both sides and after going through the records placed before me, I find that it is an undisputed fact that the impugned order came to be issued on 26-9-2012. The applicant being a Group C employee, as per the provisions of (c) of the table attached to Section 6, his competent transferring authority is the Head of the Department and the next higher authority is the Secretary of the Department. As per provisions of Section 4(4), for transferring him mid-session, prior approval of the Department Secretary was necessary. However, it is seen from the records that the approval to the impugned order was granted by the Government only on 15-1-2013, that is, much later after the issue of the order. Thus, it cannot be said that the respondents have complied with the provisions of Section 4(4) of the Transfer Act. It is the applicant's submission that having put in more than 15 years in the naxalite/tribal areas of Chandrapur and Gadchiroli Districts, in terms of provisions of the G.R. dated 6-8-2002, he should have been granted a posting outside of tribal/naxalite area. However, the said G.R. while

underlining the Government's policy to post government employees elsewhere after they have completed 2/3 years in the naxalite/tribal areas, ~~it~~ requires such an employee to submit choices of three different districts. The applicant, however, has not made any representation so far in terms of the G.R. dated 6-8-2002. Hence, prima facie, the respondents cannot be blamed for ^{not} applying the G.R. while transferring the applicant. Be that as it may, as the impugned order has been issued without properly following the provisions of the Transfer Act, it is to be treated as bad in law. I therefore issue order as follows.

- am
- (a) The O.A. is allowed.
 - (b) The impugned order dated 26-9-2012 posting the applicant to Gondia is quashed and set aside.
 - (c) The respondents however, are at liberty to transfer the applicant after strictly following the provisions of the Transfer Act.
 - (d) There are no orders as to cost.

sd/-

(B. Majumdar)
Member(A)

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