

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.906 OF 2019

Smt. Shilpa Sagar Magdum.)
Age : 38 years, Working as Executive)
Engineer, Dudhganga Canals,)
Division No.1, Warna Bhavan Building,)
Kolhapur and residing at R/o. 122,)
C-Ward, Magdum Building, Laxmipuri,)
District : Kolhapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai – 400 032.)
2. Shri Amol Anandrao Naik)
Aged Adult, Posted on promotion as)
Executive Engineer, Minor Irrigation)
Division, Zilla Parishad, Satara)
(stated to be still without posting))...**Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for Applicant.

Shri A.J. Chougule, learned Presenting Officer for Respondent No.1.

Smt. Punam Mahajan, learned Advocate for Respondent No.2.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 21.07.2020

JUDGMENT

1. The Applicant was working as Executive Engineer at Kolhapur. By order dated 11.09.2019, she was transferred from Kolhapur to Pune. The Applicant has challenged the said order dated 11.09.2019 in the present O.A. contending that it is in contravention of Maharashtra Government Servants (Regulation of Transfers and Prevention of Delay in Discharge of Official Duties) Act, 2005' (hereinafter referred to as 'Transfer Act 2005' for brevity).

2. After filing of Original Application, certain developments had taken place, whereby the Applicant is transferred at Koynanagar in place of Shri Kumar H. Patil by order dated 12.03.2020. However, in the said order, it is stated that the Applicant will be allowed to join only after passing of transfer order of Shri Kumar H. Patil.

3. Today, learned Advocate Shri Arvind V. Bandiwadekar raised grievance that despite order dated 12.03.2020, the Applicant cannot join at Koynanagar because the Government has not passed the transfer order of Shri Kumar H. Patil. He further submits that the Applicant is ready and willing to join at Koynanagar. He further submits that the Applicant is not willing to challenge the order dated 12.03.2020 and will join at Koynanagar.

4. Now, the difficulty is of not passing transfer order of Shri Kumar H. Patil which caused delay in joining of the Applicant at Koynanagar.

5. Learned P.O. Shri A.J. Chougule on instructions from Shri Gangarkar, Under Secretary (Services) fairly stated that necessary order of transfer of Shri Kumar H. Patil will be passed by Respondent No.1 at the end of July, 2020, and thereafter, the Applicant can join at Koynanagar. As such, in view of statement made by learned P.O. that the grievance of the Applicant about non-joining is taken care of O.A. deserves to be disposed of.

6. Before parting with the order, it is necessary to highlight certain aspects of the matter which needs serious consideration by Principal Secretary, Water Resources Department, Mantralaya. The Applicant was transferred by order dated 11.09.2018 from Kolhapur to Pune. However, she did not join. There is no stay to the transfer order by this Tribunal. Despite this position, the Applicant did not join at Pune and appears to have made some representations to the Government for modification of posting order. Accordingly, the transfer order was modified by order dated 12.03.2020 and Applicant was posted at Koynanagar. As such, for more than 10 months, the Applicant who is working in the cadre of Executive Engineer was out of work and now the question will come up before the Department about Pay and allowances for the said period. Indeed, in order dated 11.09.2019, it is stated that in the event, the Applicant failed to join at place of posting, it will be construed as misconduct and D.E. will be initiated.

7. This Tribunal has come across so many cases where the Government servants who are transferred do not join at the new place and later succeed in getting modification in transfer order. In such situation, the Government needs to think about the entitlement of such employee for Pay and Allowances for the period on which he/she did not join.

8. It is, therefore, necessary that while passing transfer order, the Government should ensure that the employee should join at the place where he/she is transferred, where there is no stay from the Tribunal so that the Government should not be burdened with the liability of payment of Pay and Allowances of the period for which an employee preferred not to join at his/her own. The Respondent No.1 should take note of the aforesaid observation.

9. In view of the above, Original Application is disposed of with no order as to costs.

Sd/-
(A.P. KURHEKAR)
MEMBER-J