

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT NAGPUR**

**ORIGINAL APPLICATION NO. 501 OF 2019
WITH
CIVIL APPLICATION NO. 309 OF 2019
(Subject: - Transfer)**

DISTRICT : - NAGPUR

Shri Subodh S/o. Jaikrishna Belekar,
Aged 48 years, R/o Nalanda Nagar,
Nari Road Plot no. 17,
NAGPUR-26.

.. APPLICANT.

V E R S U S

- 1) **The State of Maharashtra,**
Through its Secretary,
Soil & Water Conservation Department,
Mantralaya, Mantralaya,
MUMBAI 32.
- 2) **The Commissioner, Soil & Water
Conservation (M.S.) (vk; Ør] en o tyl ðkj.k)**
Kanchanwadi, AURANGABAD 431 002.
- 3) **The District Water Conservation Officer,**
Irrigation Complex Ajani, NAGPUR.
- 4) **Smt. A.U. Hardas,**
Sr. Clerk, District Water
Conservation Officer, Ajani,
NAGPUR.
- 5) **Shri P.V. Khode,**
Sr. Clerk, Additional Commissioner,
Soil & Water Conservation,
Regional Zone, Ajani, NAGPUR
(vlij vk; Ør] en o tyl ðkj.k i knf'kd {ks= ulxi j) .. **RESPONDENTS.**

APPEARANCE : Shri Bharat Kulkarni, learned counsel for the applicant

: Shri A.M. Khadatkar, learned Presenting Officer for the respondent Nos. 1 to 3.

: Shri R.V. Shiralkar, learned counsel for respondent Nos. 4 & 5.

CORAM : HON'BLE SHRI Anand KARANJKAR, MEMBER (J)

RESERVED ON : 9TH OCTOBER, 2019.

PRONOUNCED ON : 22ND OCTOBER, 2019.

J U D G E M E N T

Heard Shri Bharat Kulkarni, learned counsel for the applicant, Shri A.M. Khadatkar, learned Presenting Officer for respondent Nos. 1 to 3 and Shri R.V. Shiralkar, learned counsel for respondent Nos. 4 & 5.

2. It is the case of the applicant that the applicant was working at Gondia from 8th December, 2014 in Naxlite area, therefore, he exercised his right and requested the respondent Nos. 1 & 2 to give him choice posting at Nagpur. It is submitted that vide order dated 31st May, 2019, the applicant was transferred to the office of Regional Soil & Water Conservation Officer, Nagpur. It is submitted that in

pursuance of this order the District Water Conservation Officer, Gondia, relieved the applicant from his duty on 10.06.2019 and the applicant visited the office of the Regional Soil & Conservation Officer, Nagpur to resume the duty as per his transfer order. It is grievance of the applicant that the office was reluctant to allow him to join duty, but the applicant resumed the duty on 17.6.2019 and he regularly signed the muster roll and thereafter the muster roll was not made available by the respondent No. 3 to the applicant.

3. It is the submission of the applicant that 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 (for short "the Transfer Act of 2005") that the Respondent No. 2 modified the order dated 31.05.2019 and issued the order impugned dated 28.06.2019 and transferred the applicant from Nagpur to the Kalmeshwar Sub Division, District Nagpur. It is the contention of the applicant that only to accommodate the respondent Nos. 4 & 5, this exercise is done without following the due procedure in law. It is submitted that the impugned transfer order is apparently illegal, as the procedure laid down in Sub-section (5) of Section 4 is not complied with.

4. Respondent Nos. 2 & 3 have submitted their affidavit in reply at Page No. 15 of the paper book of O.A.. It is the submission of the respondent Nos. 2 & 3 that the applicant came to join duty on 17.06.2019 but he was verbally informed not to join the duty. The applicant was also told on 18.6.2019 to produce the transfer order and the relieving order / letter. It is submitted by the respondent Nos. 2 & 3 that the applicant has illegally signed the muster roll. He was informed not to sign on the muster roll as he was not permitted to join the duty and thereafter from 25.06.2019 muster was not made available to the applicant.

5. According to the respondent Nos. 2 & 3 the respondent No. 4 viz. Smt. A.U. Hardas, was working in Sub Division Arvi, District Wardha since 01.01.2016 and considering her experience and as she had worked on the establishment of respondent No. 3, her services were required, by the office and she was working on deputation at Nagpur. It is contended that on representation made by the respondent No.4, the respondent No. 2 modified the transfer order and transferred the applicant to Kalmeshwar Sub Division, District Nagpur. It is submitted by the respondent Nos. 2 & 3 that there is no illegality in the transfer order and, therefore, the present Original Application is liable to be dismissed.

6. The respondent Nos. 4 & 5 have filed their affidavit in reply at page No. 32 of the paper book of O.A. It is the contention of the respondent Nos. 4 & 5 that entire Gondia district is not naxalite area, therefore, the applicant was not entitled for choice posting. Second contention of the respondent Nos. 4 & 5 is that the applicant was not relieved by the Gondia Office till 17.06.2019, therefore, the joining report dated 17.06.2019 is illegal. According to the respondent Nos. 4 & 5 as per order dated 28.06.2019, the respondent No. 4, Smt. A.U. Hardas, was relieved and she joined the duty on 29.06.2019 and, therefore, no post / place is available for the applicant to resume the duty. It is submitted by the respondent No. 4 that vide order dated 13.06.2018, respondent No. 4, Smt. A.U. Hardas was send on deputation and she was working at Nagpur, and she made representation for her transfer to Nagpur, which was considered by the respondent No. 2. It is the case of the respondent No. 5 viz. Shri P.V. Khode, that he came to be promoted by an order dated 17.04.2017 as Senior Clerk and posted at Kalmeshwar on the same day i.e. on 17.04.2017. Respondent No. 5 was also deputed to work at Nagpur vide order dated 02.05.2017 and his wife was also working at Nagpur in the District Collector Office. Therefore, on this ground the respondent No. 3 recommended the transfer of respondent No. 5

to Nagpur. According to the respondent Nos. 4 & 5, the subsequent order is legal and there is no violation of statutory provision.

7. There is no dispute that vide order dated 31.5.2019 the applicant was transferred and posted in the office of Regional Soil & Water Conservation Officer at Nagpur. Learned counsel for the applicant invited my attention to Annexure 'A-4'. There is note below Annexure 'A-4', page-72, that the applicant was relieved from Gondia on 10.06.2019. It seems from the facts that since 2014 the applicant was working at Gondia in Naxlite area and in fact, as per Government Resolution he was entitled for the choice posting. Choice was given by the applicant, it was considered and accordingly the applicant was posted at Nagpur. The applicant has demonstrated that vide Annexure "A-4", page-72 he was relieved by the District Water Conservation Officer, Gondia, on 10.06.2019, therefore, there remains no substance in the case of the respondents that the applicant was not relieved by his office for resuming duty on 17.06.2019.

8. After perusal of the order dated 28.06.2019, it appears that in this order, it is nowhere mentioned why it was necessary to transfer the applicant from the office of Regional Soil & Water Conservation Officer, Nagpur to Sub Division Kalmeshwar. The law is settled that

the normal tenure of a Government servant is three years, but he may be transferred before completion of the normal tenure under the circumstances, which are specified under Sub-Section (4) & (5) of Section 4 of the Transfer Act of 2005. The transfer order is completely silent in this regard. This order is not disclosing the reasons why it was necessary to transfer the applicant to Kalmeshwar before expiry of one month from the date of issuance of first transfer order.

9. It appears from the facts and circumstances that the respondent No. 4 was working at Arvi, but she was deputed at Nagpur. Similarly, the respondent No. 5 was promoted in 2017 and posted at Kalmeshwar, but he was brought at Nagpur on deputation from 02.05.2017. Both the respondent Nos. 4 & 5 were not recommended for the transfer by the Civil Services Board and, therefore, they were not considered, but the case of the applicant was recommended for transfer. It was considered and he was transferred to Nagpur. Thus, it seems that only to show undue favour to the respondent Nos. 4 & 5, this entire exercise is done by the respondent No. 2 in issuing the order transferring the applicant from Nagpur to Kalmeshwar. It appears from the facts and circumstances of the case that the applicant was already relieved on 10.06.2019 by his controlling officer, consequently, the applicant visited the office of the respondent No. 3

to join the duty, but hurdles were created by the respondent No. 3. Respondent No. 4 has filed document (Annexure 'R4-7', page-56 of paper book of O.A.). This document is a letter written by the respondent No. 3 to the respondent No. 2. In this letter it is specifically mentioned that the respondent No. 4 was experienced employee and her services were necessary for the office, consequently, the respondent No. 3 requested the respondent No. 2 to transfer the applicant to any other place either Arvi or Kalmeshwar. On the basis of this, inference is to be drawn that on 13.06.2019 when this letter was written by the respondent No. 3 to respondent No. 2, the respondent No. 3 was aware that the applicant was transferred to his office at Nagpur and in spite of it the respondent No. 3 did not give permission to the applicant to resume the duty at Nagpur. This material is sufficient to draw the inference that only to show favour to the respondent No. 4 this letter was written by the respondent No. 3 to the respondent No. 2 and applicant was not permitted to sign on the muster alleging that relieving order was not produced by him. If entire facts are considered together then inference is to be drawn that the transfer order of the applicant from Nagpur to Kalmeshwar is actuated by malice only to show favour to the respondent No. 4. In addition it must be said that the subsequent transfer order is in violation of the

Sub section 5 of Section 4 of the Transfer Act of 2005, as the transferring authority did not place this matter for approval before his superior authority. I have already pointed out that no reason is mentioned in the subsequent transfer order why it was necessary to transfer the applicant from Nagpur to Kalmeshwar, therefore, this order is apparently illegal, it cannot be justified. In the result, the present Original Application is allowed in terms of prayer clause I & II, which reads as under: -

“[I] Quash and set aside the order dated 28/06/2019 of R. No. 2, transferring the applicant from Nagpur to Kalmeshwar within 10 days of joining Nagpur is illegal.

[II] Direct the R. No. 2 and 3 to continue the applicant at Nagpur under R. No. 3 in the vacant post on which he has given choice posting, in the interest of justice.”

10. Since the Original Application No. 501/2019 allowed, therefore, nothing survives in the C.A. No. 309/2019, hence it is disposed off.

There shall be no order as to costs.

(Anand KARANJKAR)
MEMBER (J).

PLACE : NAGPUR

DATE : 22nd OCTOBER, 2019

O.A.NO.501 of 2019 SB-HDD