

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.559 OF 2018

DIST. :NANDED

Venkat s/o Naganna Mittewad,
Age.50 years, Occu. : Service as
Executive Engineer,
National Highway Division,
Nanded.

-- APPLICANT

V E R S U S

1. The State of Maharashtra,
Through the Secretary,
Public Works Development,
Mantralaya, Mumbai - 32.
2. The Chief Engineer,
National Highway Division,
Konkan Bhavan, New Mumbai.
3. The Superintending Engineer,
National Highway Circle,
Bandhkam Bhavan, Snehanagar,
Adalat Road, Aurangabad.
4. Mr. S.S. Sahutre,
Age – Major, Occu. Service as
Executive Engineer,
Designed Department (Bridge),
Aurangabad.

-- RESPONDENTS

APPEARANCE :- Shri S.D. Joshi, learned Advocate for the
applicant.
: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondent nos. 1
to 3.
: Shri Ajay S. Deshpande, learned Advocate
for respondent no. 4.

CORAM : **JUSTICE M.T. JOSHI, V.C.**

DATE : **28.9.2018**

J U D G E M E N T

1. The present applicant is challenging the transfer order dtd. 9.8.2018 issued by the res. no. 1 of transferring him from the post of Executive Engineer, National Highway Division, Nanded to Zilla Parishad, Public Works (South) Division, Nanded.

2. Initially the present O.A. was filed by the applicant as the res. no. 4 – Mr. M.S. Sahutre - was transferred to his post with intimation to the applicant that his transfer order would be issued separately. During the pendency of the present O.A., on 9.8.2018 the applicant came to be transferred as detailed above. Therefore, by carrying necessary amendment in the present O.A., the reliefs are sought.

3. The case of the present applicant is that, at National Highway Division his work was outstanding and has been appreciated by issuing certificates in that regard by the Hon'ble Minister of Road Transport & Highway, Government of India and other superiors. However, suddenly midterm and mid-tenure

impugned order came to be passed and hence he seeks quashing and setting aside of the said order.

4. Affidavit in reply of the respondents would show that the applicant was unable to handle the increased workload at National Highway Division, Nanded. He could not exercise control over his subordinates. Therefore, experienced Officer was required to be posted in place of the applicant. Therefore, initially transfer order of res. no. 4 from Aurangabad was passed. As the applicant has refused to hand over the charge of the post, ex-parte charge was taken up the post by the res. no. 4. Later on Civil Services Board granted *ex post facto* sanction to it. Considering the fact that he should not be displaced from Nanded, he is posted as a Executive Engineer, Public Works (South) Division, at Nanded itself. In the circumstances, according to the respondents there is no need to interfere in the impugned order.

5. Shri Joshi, learned Advocate for the applicant has relied on the following citations:-

- (i) (2009) 2 SCC 592 [Somesh Tiwari VS. Union of India and Others.]
- (ii) Judgment of this Tribunal at Aurangabad Bench in O.A. no. 342/2017 dtd. 19.12.2017 [Shri

Jitendrakumar Khanderao Kundile Vs. the State of Maharashtra & Ors.]

(iii) Judgment of this Tribunal at Aurangabad Bench in O.A. no. 952/2017 dtd. 23.2.2018 [Vilas Ganpatrao Shirolkar Vs. the State of Maharashtra & Ors.]

6. Learned C.P.O. for res. nos. 1 to 3, however, submits that since the present applicant is not displaced from Nanded, though technically the impugned order is of transfer, the same need not be interfered. He submits that, though the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 would define the present act as a transfer, the strict interpretation of the same is not required. Even if the transfer is held to be midterm or mid-tenure, still for administrative exigency, the present applicant was required to be transferred and as the post in Zilla Parishad, Public Works (South) Division at Nanded was vacant since long, the impugned transfer order of the applicant has been issued which was sanctioned by the Civil Services Board *ex post facto*, therefore, it cannot be faulted with.

7. Upon hearing both the sides, in my view, the present O.A. needs to be dismissed for the following reasons :-

- (i) Respondents have come to the conclusion that due to extra workload in the National Highway Division at Nanded, the experienced Officer is required to be posted there.
- (ii) Affidavit in reply of res. no. 4 - Mr. S.S. Sahutre, Executive Engineer, National Highway Division, Nanded –would also show that he is not pleased with the said order as he is transferred from Aurangabad to Nanded only he being experienced Officer.
- (iii) The post where the present applicant is transferred was vacant since long and, therefore, , he came to be transferred on the post in Nanded city only and the Civil Services Board *granted ex post factosanction* to the same.
- (iv) In the case of Shri Somesh Tiwari (supra) it was found that the order of transferring the employee from Bhopal to Shillong was mala-fide and, therefore, Hon'ble Supreme Court has directed for payment of salary for the period the said employee did not join the post at Sillong.
- (v) In the present matter no mala-fides are found on record.
- (vi) In O.A. no. 342/2017(Jitendrakumar Khanderao Kundile) (supra) the applicant was transferred from Ambad to Latur.

The said transfer was midterm transfer and on finding that there was no reason for the said transfer, it was set aside.

(vii) In O.A. no. 952/2017 [Vilas Ganpatrao Shirolkar] (supra) the applicant therein was transferred from Latur to Aurangabad midterm on 19.12.2017. Therefore, by placing reliance on the Circular dtd. 11.2.2015 (para 15 of the said judgment), it was found that merely on complaint an employee cannot be transferred.

8. The impugned transfer of the applicant in the present matter is totally different. To repeat, the present applicant is not displaced from Nanded but, merely to bring more experienced Officer at National Highway Division at Nanded, the applicant has been displaced from National Highway Division to Zilla Parishad, Public Works (South) Division at Nanded, which post was lying vacant since long.

9. In the circumstances, the present original application is dismissed without any order as to costs.

10. Shri Joshi, learned Advocate for the applicant submits that the interim relief granted by the Tribunal earlier may be continued for a period of one week from today. Shri Deshpande, learned Advocate for respondent no. 4 has seriously objected for

continuation of the interim relief on the ground that the transfer of the applicant was merely a local transfer. However, in the interest of justice, it is hereby directed that the interim relief granted by the Tribunal earlier to continue for a period of one week from today.

VICE CHAIRMAN

PLACE : AURANGABAD

DATE : 28.9.2018

ARJ-O.A. NO. 559-2018JUS. M.T. JOSHI(TRANSFER)