

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 450/2018

Sau. Anjali W/o Rajendra Metkar,
Aged about 52 yrs., Occ. Service,
R/o Kanchan Ganga Building,
Opposite Lady Harding, Akola
Tq. & District-Akola.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary,
Health Department,
Mantralaya, Mumbai-32.
- 2) The Director, Medical Education & Research,
Mumbai, Govt. Dental College & Hospital,
4th Floor, Saint George's Hospital,
P.Dimelo Road, Fort, Mumbai-400001.
- 3) The Government Medical College & Hospital,
Akola, through its Dean.

Respondents

Shri A.S.Tiwari, the Id. Advocate for the applicant.

Shri V.A.Kulkarni, the Id. P.O. for the respondents.

Coram :- Hon'ble Shri A.D. Karanjkar, Member (J).

Dated :- 22/10/2018.

ORDER

Heard Shri A.S.Tiwari, the Id. counsel for the applicant and
Shri V.A.Kulkarni, the Id. P.O. for the Respondents.

2. In this O.A., the applicant is challenging the transfer order dated 31/05/2018 by which the respondent no. 2 transferred her from Akola to Nanded Government Medical College. It is case of the applicant that she was serving as Nurse at Government Medical College and Hospital, Akola and without following the Government directions and the statutory provisions she was illegally transferred to Nanded from Akola. The transfer order is attacked on the ground that though the applicant is handicapped person, for causing her inconvenience she is posted at Nanded. It is contended that that as per the statutory provisions she was not due for transfer, as she has not completed the tenure of six years, therefore, her transfer is premature as it is violation of Section 3, Sub Section 1 of the Maharashtra Government Servant Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. The Id. counsel for the applicant invited my attention to the Government Resolution dated 09/04/2018, it is submitted that in Appendix 1, Clause-II, there is a direction to give convenient posting to the physically handicapped persons but disregarding this fact, the applicant is transferred to remote place about 250 K.M. away from Akola. It is submission of the applicant that the impugned order of transfer is illegal and it be quashed and set aside.

3. The Id. P.O. submitted that, there is no flaw in the transfer order and there is no subsistence in the contention that transfer of the

applicant is premature. It is submitted that after expiry of three years service at Akola, the applicant was due for transfer in the year 2016. The applicant was transferred but she is sought relief by approaching this Tribunal and the Government. It is further submitted that the respondents have followed the Government Resolution and considering the convenience of the department suitable posting is given to the applicant.

4. The application is mainly attack by the respondents on the ground that the applicant prayed for interim relief before this Tribunal on 26/06/2018. The Id. Single Bench directed that till 17/07/2018 the department shall not insist the applicant to join at Nanded. It is submitted on 25/07/2018 the applicant approached the respondent no. 3 she submitted application for allowing her to resume duty on 25/07/2018 informing that stay was granted for two weeks on 24/07/2018. Later on as the Dean of the Medical College not allowed the applicant to resume the duty on 25/07/2018 the applicant lodged report at City Kotwali Police Station at Akola on 27/07/2018 against the Dean. My attention is also invited to notice dated 01/08/2018 issued by the applicant to Shri Rajesh Karyakarte, the Dean, Medical College Akola. It was informed that the Dean Medical College committed Contempt of Maharashtra Administrative Tribunal by not allowing the applicant to

Join the duty on 25/07/2018. It is submitted that considering this conduct of the applicant the merits of the case be examined.

In the above background first I would like to consider whether there is substance in the contention of the applicant that her transfer was premature. The learned counsel for the applicant submitted that the employee shall not be transferred before expiry of two normal tenures. In order to examine the submission it is necessary to read section 3(1) of the Transfer Act which is as under.

“Section 3 Tenure of posting.

(1) For All India service Officers and all group A,B and C State Government Servants or employees, the normal tenure in a post shall be three years:

Provided that, when such employee is from the non-secretariat services, in group C, such employee shall be transferred from the post held, on his completion of two full tenures at that office or department, to another office or department.”

After reading Section 3(1) proviso of the Maharashtra Government Servant Regulation of Transfer Act, 2005, it seems that for all India

Service Officer and for all groups A, B & C State Government Servants or employees normal tenure in a post shall be of three years. The proviso to the sub section 1 says that when the employee is from Non-Secretarial services in Group-C such employees shall be transferred from the post held on his completion of two full tenures at the one office or department to another office or department. The meaning of the first proviso is that the department is bound to transfer the employee not working in Non-Secretarial department after expiry of six years. The proviso does not say that the employee shall not be transferred before expiry of two normal tenures.

5. The Id. counsel for the applicant has placed on reliance on the Judgment in case of Ramakant Baburao Kendre Vs. State of Maharashtra & Another, 2012 (1), Mh.L.J. 951. It is the contention of the applicant that the transfer order if it is before the expiry of the tenure than it must disclose some special reasons, when it was necessary and essential to transfer the employee before the expiry of the tenure. With all respect I say that the applicant cannot take benefit of this Judgment for the reasons that in case of Ramakant he was transferred before expiry of period of three years which was the normal tenure as per Section 3(1) of the Maharashtra Government Servant Regulation of Transfer Act, therefore, apparently there is no substance in the contention.

6. So far as the Government Resolution on which applicant is relying is concerned in Appendix-A-1 this is applicable to handicapped employees, it is not mentioned in Appendix A 1 that the physically handicapped employee shall not be transferred or shall be transferred to place which is convenient to him. On the other hand it says that the employee should be transferred as per the convenience of the administration and available post. In present case it is brought to my notice that since 1997 the applicant is working at Akola and too much liberty was enjoyed by her. That considering the convenience of the administration and availability of the vacate post, the applicant is transferred to Nanded.

Now I would like to consider the conduct of the applicant after obtaining the interim relief on 26/06/2018. The interim order was " In view of this, the respondents are directed not to insist the applicant to join at Nanded till 17 July 2018." The applicant was aware of this order, approached office of the Dean, Medical College Akola and asked his permission to allow her to resume duty on 25/07/2018. It was falsely informed that order was passed on 24/07/2018 and two weeks stay was granted. It is pertinent to note that one order was passed by the Id. Single Bench on 23/07/2018 by which order dated 26/06/2018 was continued till next date of hearing and on 06/08/2018 the Id. Single

Bench vacated the interim order dated 26/06/2018, but no stay was granted by the Id. Single Bench at any time in this matter. This conduct of the applicant is definitely very serious, the applicant didn't stop here, thereafter, she visited the City Police Station, Akola on 27/07/2018 and lodged the complaint against the Dean, Medical College, Akola informing that he illegally prevented her for joining duty. Thereafter, the applicant issued legal notice dated 01/08/2018 to the respondent no. 3 in that notice it was contended that the respondent no. 3 was guilty of the Contempt of the Maharashtra Administrative Tribunal, Nagpur. The material documents are produced by the respondents which are in P.B. Pg. No. 113, 115 & 116. It is pertinent to note that the applicant threatened the respondent no. 3 that she would initiate action for the contempt. In view this conduct of the applicant, as there is no breach or violation of the Section 3(1) of the Maharashtra Government Servant Regulation of Transfer Act and no violation of the G.R. consequently I hold that the applicant by her own conduct has shown that she is not deserving for equitable relief on ground of her physical disability. don't find any merits in this application. Hence, the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

Dated :-22/10/2018.

**(A.D. Karanjkar)
Member (J).**

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