

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 454/2023 (S.B.)**

Dr. Narendra Bhojram Patil,
Aged 50 years, Occ. Service,
R/o Plot No. 44, Abhay Nagar,
Rameshwari, Ring Road,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Department of Agriculture,
Animal Husbandry,
Dairy Development & Fisheries,
Madam Kama Road,
Hutatma Rajguru Chowk,
Mumbai- 400 032.
- 2) Commissioner, Animal Husbandry,
Opposite Spicer College Road,
Aundh, Pune - 411 067.
- 3) Chief Executive Officer,
Zilla Parishad, Nagpur.
- 4) District Animal Husbandry Officer,
Zilla Parishad,
Nagpur.
- 5) Dr. Rajendra Vinayak Nikhate,
Aged 47 years, Occ. Service,
C/o Frozen Semen Laboratory,
Nagpur.
- 6) Dr. Vilas Babulal Madavi,
Aged : 45 years, Occ. Service,

Panchayat Samiti, Arvi,
Tq. Arvi, Dist. Wardha.

- 7) Dr. Abhay Ashok Bhalerao,
Livestock Development Officer,
Integrated Sample Survey Scheme,
Nagpur.

Respondents

Shri N.S.Warulkar, Id. Advocate for the applicant.

Shri M.I.Khan, Id. P.O. for the respondents 1 & 2.

None for the remaining respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 30th Oct., 2023.

Judgment is pronounced on 03rd Nov., 2023.

Heard Shri N.S.Warulkar, Id. counsel for the applicant and Shri M.I.Khan, Id. P.O. for the Respondents 1 & 2. None for the remaining respondents.

2. Case of the applicant is as follows. Since 08.07.2018 the applicant was working at Veterinary Dispensary, Grade-I, Gumgaon, Tahsil- Hingna, Dist. Nagpur as Live Stock Development Officer. He was due for transfer. He submitted application dated 28.03.2023 (A-1) requesting respondent no. 1 that he be transferred, considering his heart

condition as well as that of his daughter, and the fact that his wife was serving at Nagpur, either to office of Regional Joint Commissioner, Animal Husbandry, Nagpur, office of Integrated Sample Survey Scheme, Nagpur or Veterinary Dispensary, Grade - I, Butibori, Tal. & Dist. Nagpur. Civil Services Board recommended (A-14) that he be transferred to office of Integrated Sample Survey Scheme, Nagpur. The Board further recommended that respondent no. 7 be transferred to Frozen Semen Laboratory, Nagpur. The Competent Authority i.e. Hon'ble Minister, Animal Husbandry approved transfer of the applicant at Panchayat Samiti (extension) Arvi, Tal. Arvi, Dist. Wardha and that of respondent no. 7 at the office of Integrated Sample Survey Scheme, Nagpur (A-15). The Competent Authority, while differing from recommendation of the Board in respect of transfer of the applicant and respondent no. 7, did not record reasons and hence these transfers cannot be sustained.

3. Following developments which occurred after the impugned order of transfer are relevant. The applicant was relieved by order dated 17.05.2023 and he joined on the transferred post at Arvi on 05.06.2023 (A-R-III). By order dated 10.07.2023 the applicant is deputed as Special Task Officer, Vidharba and Marathwada Dairy Development Project, Nagpur (at PP. 186 to 189). It is not in dispute that order dated

10.07.2023 is yet to be implemented and the applicant continues to work at Arvi. It is the apprehension of the applicant that order dated 10.07.2023 may not be implemented in near future because the project has been stalled and may not become functional. This has been disputed by the contesting respondents. These rival submissions need not be gone into since order dated 10.07.2023 is not under challenge. What is required to be considered is sustainability of transfer order of the applicant and respondent no. 7 who has not joined and contested this O.A., though served.

4. In his written submission the applicant has referred to following part of order dated 18.05.2023 passed by this Tribunal:-

The respondents are directed to file short affidavit by giving reasons whether they can transfer the applicant to other nearby place or reason for their opposing the O.A.. At this stage no interim relief is granted. If at all in between any action is taken or any order is passed effecting status of the applicant, it is without prejudice.

5. There is also reference in written submission to order dated 22.06.2023 which states:-

4. The applicant prays that if respondent no. 1 is directed to decide his representation dated 15.05.2023 (Annexure A-8) within the stipulated time, he will get one more opportunity of putting forth his case before the said Authority. In reply it is submitted by learned P.O. that in the reply of respondents 1 and 2 elaborate reasons have been given as to why request of the applicant cannot be considered and hence it is not necessary to direct respondent no.1 to again go into and decide

grievance raised by the applicant in his representation dated 15.05.2023.

5. After considering rival submissions I have come to the conclusion that one more opportunity may be given to the applicant to put forth his case / grievances before respondent no.1 by way of his representation dated 15.05.2023. In case decision of this representation goes against the applicant, the O.A. will be heard finally. Respondent no.1 shall decide representation dated 15.05.2023 (Annexure A-8) within one month from today as per Rules and Regulations.

6. It is the grievance of the applicant that contesting respondents have kept mum about what prevented them from complying with directions contained in orders dated 18.05.2023 and 22.06.2023, and necessary inference from such conduct may be drawn. As mentioned earlier, what is required to be decided is challenge to order of transfer of the applicant and respondent no. 7 which was not as per recommendation of Civil Services Board.

7. It is a matter of record that G.A.D., Government of Maharashtra issued G.R. dated 31.01.2014 (A-12) to comply with directions issued by the **Hon'ble Supreme Court while passing the judgment dated 31.10.2013 (A-R-I) in W.P. (Civil) 82/2011**, and directed constitution of Civil Services Board pursuant to which, for Animal Husbandry Department, Civil Services Board was constituted by issuing G.R. dated 22.04.2014 (A-R-I).

8. Principal contention of the applicant is that the Competent Authority ought to have recorded reasons as to why recommendation of Civil Services Board in respect of transfer of the applicant and respondent no. 7 could not be accepted and this want of reasons will vitiate said transfers.

9. In reply respondents 1 & 2 have pleaded as follows :-

(vi) The applicant has submitted his choice posting in the Nagpur district only and also praying to retain in Nagpur only.

(a) The transfers of the applicant are governed by The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.

(b) This Act does not allow the applicant to submit any choice posting.

(c) The Act does not provide any considerations on health grounds or otherwise in the process of transfer.

(d) The applicant has enjoyed a stay of 25 years in Nagpur Region and 11 years in Nagpur District. The placement record of the applicant is mentioned below:

Date	Place	Distance from Nagpur
01.11.1999	Injewadi, Gadchiroli	150.7 km
08.08.2008	Panchayat Samiti, Wardha	76.5 km
19.08.2012	Panchayat Samiti, Ramtek	48.9 km
07.07.2018	Gumgaon Tal. Hingna, Dist. Nagpur	23.9 km

(e) The applicant is placed in Maharashtra Animal Services Group-A and his services are transferable in all of the 7 Regions of Maharashtra.

(f) Taking into account the placement record tabulated at point above, it is clear that the applicant has been placed in the area of 23.9 km to 150.7 km from Nagpur.

(g) Despite this fact of placement mentioned as above, the applicant is demanding a posting at Nagpur district which he is not entitled for.

(h) Considering the placement of the wife of applicant in Nagpur District, the Civil Service Board has considered the placement of applicant at Arvi, District Wardha i.e. at a distance of 53.4 km from his pre-transfer posting at Gumgaon. It is humbly submitted that Wardha is very well connected to Nagpur with around 36 trains running between these 2 districts, not to mention about the ST buses.

(i) It is further submitted that the applicant has worked at Wardha also for a period of 4 years after it was diagnosed that he has Hypertensive Heart Disease (2001).

According to these respondents the applicant will not be entitled to any relief since there were no malafides nor was any rule breached while transferring him.

10. The applicant has relied on judgment of this Bench dated 20.06.2023. In this case, on facts, it was held that transfer of the applicant pursuant to approval accorded by the Hon'ble Minister which was not as per recommendation of Civil Services Board, could not be sustained.

11. The applicant has further relied on judgment of **Principal Bench of this Tribunal dated 23.07.2020 in O.A. No. 586/2019**. In this case some of the employees, though they were not due for transfer, were accommodated as per their request on the places for which the applicant had given his preference. Facts of both these cases are distinguishable.

12. The contesting respondents have relied on **Union of India & Another Vs. Deepak Niranjana Nath Pandit (2020) 3 SCC 404**. In this case there was nothing to show that the impugned transfer was either malafide or in breach of law. On this ground legality of the impugned transfer order was upheld.

13. Contesting respondents have further relied on **Santosh Nandlal Dalal Vs. State of Maharashtra & Ors. 2016 (1) Mh.L.J. 45 (Bombay High Court)** in this case it is held :-

A. The Court/Tribunal is not expected to act as an Appellate Authority in cases of transfer.

B. If there is nothing to infer favouritism or malafides, the Court/ Tribunal is not expected to interfere in the transfer orders if the transfer order is made after following prescribed procedure.

C. There is discretion vested in the competent authority in the matter of transfer and the Court/Tribunal cannot interfere lightly in the order made by the authority by using discretion.

14. Taking into account the guidelines contained in aforesaid judgments of the Hon'ble Supreme Court and the Hon'ble Bombay High Court, it will have to be held that no interference in the impugned order of transfer is warranted since there is nothing to indicate even *prima facie* that said order was malafide or it was passed in breach of any rule. In the result the O.A. is dismissed. No order as to costs.

Member (J)

Dated :- 03/11/2023

aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 03/11/2023
and pronounced on

Uploaded on : 06/11/2023