

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 425/2018**

Vasant Budhaji Rane,  
Aged about 55, R/o Plot no.24,  
Bante Layout near Sai Mandir,  
Ayodhya Nagar, Nagpur.

**Applicant.**

**Versus**

- 1) State of Maharashtra  
through its Principal Secretary,  
Public Works Department,  
Mantralaya, Mumbai-32.
- 2) Chief Engineer (Electrical),  
Public Works Department,  
PWD Compound, Bandhkam Bhavan 3<sup>rd</sup> floor,  
Marzban Road, Fort, Mumbai-01.
- 3) The superintending Engineer,  
Public Works Electrical Circle,  
PWD Compound, Civil Lines, Nagpur.

**Respondents**

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**Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.**

**Shri S.A.Sainis, P.O. for the respondents.**

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

**Dated :- 19/10/2018.**

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**ORDER**

Heard Shri G.K. Bhusari, Id. counsel for the applicant and  
Shri S.A.Sainis, Id. P.O. for Respondents.

2. In this O.A. the applicant is challenging the legality of the impugned order of transfer dated 15/06/2018, by which the applicant is transferred to Wardha.

3. The applicant is disputing the legality of the transfer order mainly on the ground that it is in violation of the Government G.R. dated 06/08/2002. It is submitted that as per this G.R. the Government servants who were employed in Tribal / Naxalite area were entitled to claim choice posting after completing their tenure of service. It is grievance of the applicant that before his transfer he had made specific representation to the respondents informing that for College education of his daughter and for his medical treatment, Nagpur was suitable place for him.

4. The second submission of the applicant is that another Officer Shri Manish Patil was due for transfer. There were several complaints against him, but he was not transferred though he was due for transfer and to adjust him at Nagpur, the applicant came to be transferred to Wardha and this was unfair act of the respondents. The third contention of the applicant is that Nagpur is his native place, his date of retirement is in the year, 2021, therefore, he had right to request for choice posting, but his request was turned down for some unknown reasons. On the basis of above challenges to the transfer

order, it is submitted that the impugned order be set aside and the applicant be transferred to Nagpur.

5. The application is challenged by the respondents vide reply which is at Page no.54. It is submission of the respondents that as per the directions in the Government G.R. the options were called from the applicant and his options were forwarded to the Civil Services Board and after consideration as per the directions of the Board, the applicant is transferred to Wardha, consequently, there is no violation of the Government G.R. and there is no illegality in it. The second submission is that three options were given by the applicant which were Nagpur, Bhandara and Wardha, as the applicant is posted at Wardha it is a choice posting and consequently there is no substance in the claim that the Government G.R. is violated.

6. The next submission of the respondents is that post was not vacant at Nagpur to adjust the applicant, therefore he was posted at the nearest station. It is further submitted that as per the service record of the applicant his home town is Chandrapur and not Nagpur, therefore, no error is committed by the respondents in implementing the directions given by the Civil Services Board for transferring the applicant to Wardha. It is also contended by the respondents that later on the applicant complied the transfer order, he resumed the duty

at Wardha, therefore, there remains no substance in this application. It is now infructuous.

7. In view of the rival submissions the point for determination is whether the impugned order of transfer is in contravention of the Government G.R.

8. After reading the O.A., it seems that the main attack of the applicant is that Shri Manish Patil was also due for transfer, but he was retained at Nagpur though there were several complaints against him and only to show undue favour to Manish Patil, the applicant was posted at Wardha and this was unfair act. In this regard, I would like to point out that Shri Manish Patil is not party to this proceeding, he is not before the Tribunal, therefore, at this stage this Tribunal cannot jump to the conclusion that there were complaints against Shri Manish Patil. The legal position is that the department has to do its official business and it is right of the department to decide which employee is suitable in a particular place. Therefore merely because Shri Manish Patil was retained at Nagpur, it is not possible to infer that the transfer is in violation of the Government G.R.

9. So far as the Government G.R. is concerned, it seems that the material direction on page no.5 of the G.R. to call option of the employee serving in tribal area is complied with as options were called from the applicant and accordingly three options were given by the

applicant of his choice. The learned counsel for the applicant submitted that it was duty of the respondents to transfer the applicant to the first option Nagpur as there was vacant post at Nagpur. After reading the G.R. it seems that it was in mind of the Government that option be given to the employee to suggest three options of his choice and it was for the department to appoint the employee at any of options for smooth administration. After reading last clause of page no.5 of the G.R. duty is imposed on the department, whenever employee could not be transferred to his choice posting to report the matter to the higher authority, and his options would remain in force for a period for three years and the department to consider the option during period of three years. On perusal of the transfer order which is at page no.12, it seems that Shri Manish Patil was Personal Assistant at Nagpur Electrical Division and after his transfer he was posted as Deputy Engineer, Electrical Sub Division No.1, Nagpur. Though it is contented by the applicant that two posts were lying vacant, but there is nothing positive to accept this submission because only one person who was due for transfer was retained at Nagpur.

10. It is submitted by the respondents that this application become infructuous because the applicant resumed duty at Wardha, but in view of the law laid down in case of **S.C. Saxena Vs. Union of India & Ors., 2006 SCC (L&S),1890**, it is not possible to accept this

submission, on the contrary one has to accept that the applicant has shown his bonafide in resuming the duty. The law is settled that even after joining the duty at the transfer post, the employee can challenge his transfer order and he may pray for the relief.

11. In view of the above position, at this moment it is not possible to direct the respondents to post the applicant at Nagpur as there is no clear evidence about the vacancy at Nagpur, but considering the provisions in the G.R. as the option of the applicant would remain in force for a period of three years, the department is duty bound to consider it. In view of the above observations, in my opinion, if direction is given to the respondents to forward the option given by the applicant for his posting at Nagpur be forwarded to the higher authority for due consideration, it will serve the ends of Justice. The Higher Authority may consider/ whether post is vacant at Nagpur and if there is vacancy may give him the solace. Hence, the following order :-

### **ORDER**

The O.A. is partly allowed. The respondents are directed to forward the request of the applicant for his posting at Nagpur for the

suitable decision and the Competent Authority shall decide this matter within a period of three months.

**Dated :-19/10/2018.**

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

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