

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 79/2016

Devanand Rambhu Lakhe,
Aged about 50 years,
R/o Plot No. 36, Prerna Colony,
Katol Road, Nagpur.

-----**Applicant.**

Versus

1. Govt. of Maharashtra,
Through its Secretary,
Dairy Development Deptt.
Mantralaya, Mumbai.
2. The Dairy Development Commissioner,
Administrative Building, Khan Abdul
Gafar Khan Marg, Worli Sea Phase, Mumbai.
3. The Regional Dairy Development Officer,
Telangkhedi Road,
Civil Lines, Nagpur.
4. Shri P.W. Armorikar,
Shift Manager, Govt. Milk Scheme,
Wardha.

----- **Respondents.**

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1. Shri S.M. Khan, Advocate for the applicant.
 2. Shri P.N. Warjurkar, Presenting Officer for the Respondents 1 to 3.
 3. Shri Bharat Kulkarni, Advocate for R/4.
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CORAM : B. Majumdar : Vice Chairman
DATE : 27th April, 2016

ORDER

The applicant is a Shift Manager, Group-C, in the Govt. Milk Scheme. He is aggrieved with an order transferring him to Nandura, Distt. Buldana.


2. The applicant was initially posted at Chandrapur from 31/5/2008. Vide order dtd. 24/9/2012 he was transferred to Gondia. Aggrieved that he has once again been posted to a Naxalite/Tribal area, he filed O.A. No.784/13. The Tribunal on 25/2/2013 disposed of the O.A. by quashing the above order and directing the respondents to consider granting him the posting of his choice. The applicant thereafter was posted to Wardha in June, 2013. Vide order dtd. 2/2/2016 issued by the Dairy Development Commissioner (R/2), the applicant was posted at Nandura, Distt. Buldhana. The applicant has challenged the legality of this order in this O.A.

3. On 3/2/2016 the applicant was relieved by Shri P.W. Armorikar (R/4) who was posted in his place. On

21/3/2016 R/2 submitted a proposal to Govt. for grant of approval to the impugned order dtd. 2/2/2016.

4. The applicant submits that as he is a Group-C employee, the period of his normal tenure is 6 years. Hence the impugned order dtd. 2/2/2016 is a mid-session and mid-term order. For this purpose the respondents are required to comply with the provisions of Section 4 of the Transfer Act. He also submits that R/4 was transferred to Wardha in place of the applicant without completing his tenure.

5. The respondent, Govt., (R/1), the Dairy Development Commissioner (R/2) and the Regional Dairy Development Officer, Nagpur (R/3) in their affidavit-in-reply submit that the impugned transfer order was issued by R/2 in compliance with the provisions of the Section 4(4)(ii) of the Transfer Act. The transfer was required as there were complaints against the applicant made by R/3 and the same were verified before the impugned order was issued. The



respondents also submit that a proposal to approve the order of transfer was submitted to the Govt. on 21/3/2016.

6. R/4 in his reply submits that he had never made a request for transfer to Wardha and this was done on administrative grounds. He had already joined in place of the applicant on 4/2/2016 and as the transfer order is implemented, the present O.A. does not survive.

7. Shri S.M. Khan, Id. Counsel for the applicant, Shri P.N. Warjurkar, Id. P.O. for R/1 to 3 and Shri Bharat Kulkarni, Id. Counsel for R/4 basically reiterated the submissions made by the respective parties.

8. I find that it is undisputed that R/2 is competent to transfer Group-C employees like the applicant. As per Section 3 of the Transfer Act as the applicant belongs to a non-secretarial service in Group-C, his normal tenure is of 6 years. The impugned transfer order is issued in the month of February. Thus clearly it is both mid-session and mid-term. As per the provisions of Section 4 of the Transfer Act, for such

a transfer, the relevant order can be issued only after fulfilling two conditions, that exceptional circumstances or special reasons for transfer are recorded in writing and prior approval of the next higher transferring authority is obtained. Undisputedly, R/2 approached the Govt. only after issuing of the impugned order. Thus he sought ex-post facto sanction to the order. There is no provision in the Transfer Act for grant of ex-post facto sanction in the context of Section 4. Thus the impugned order is clearly illegal and is required to be quashed and set aside. The O.A. therefore stands disposed of in terms of the following directions :-

- a) The O.A. stands allowed.
- b) The impugned order dtd. 2/2/2016 transferring the applicant to Nandura, Distt. Buldhana is quashed and set aside.
- c) The respondents are directed to post the applicant as a Shift Manager at Wardha.
- d) The respondents will grant suitable alternative posting to R/4 once the applicant is posted back to Wardha.



- e) Action as above will be taken within 6 weeks of receipt of this order.
- f) No order as to costs.

Sd/-
(B. Majumdar)
Vice-Chairman.

Skt.