

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 357/2016

Yogeshwar Bhagwanprasad Sharma,
Aged about 52 years, Occ. Service,
R/o Plot no.17/D, Dhongawali Nagar,
Pimla Road, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through the Secretary Department of Health Services,
Mantralaya, Mumbai-32.
- 2) Director, Health Services,
Directorate "Arogya bhavan", St. Georges Hospital Campus,
P. Dimelo Road, Mumbai-1.
- 3) Joint Director of Health Services, Nagpur Division,
near Diksha Bhoomi, Nagpur.
- 4) District Civil Surgeon, Meyo Hospital, C.A. Road,
Nagpur.
- 5) Mrs. Suhasini Vajpai, aged major, Occ. Service,
C/o Joint Director of Health Services, Nagpur Division,
Nagpur.
- 6) Mrs. Kranti Choure,
Aged major, Occ. Service,
C/o Joint Director of Health Services, Nagpur Division,
Nagpur

Respondents

Shri R.V.Shiralkar, Advocate for the applicant.

Shri A.M. Ghogre, P.O. for the respondent no. 1 to 4

Shri M. Bajpai, Id. Advocate for R-5

Shri Sachin Zoting, Id. Advocate for R-6.

With

ORIGINAL APPLICATION NO. 401/2016

Mukund s/o Marotrao Darlinge,
Aged about 51 years,
Occ. Service,
R/o Central Avenue Gandhi Putla Chitar Oli
Square, behind Sharda X-ray Clinic, Nagpur-440032.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Public Health Department, G.T. Hospital Complex Building,
10th floor B-Wing, New Mantralaya, Mumbai-01.
- 2) Directorate of Public Health,
Govt. of Maharashtra,
Sent Georges Hospital Compound,
CST, Mumbai-01.
- 3) Deputy Director of Health Services,
Nagpur Region, Mata Kacheri
Compound, Sraddhanand Peth, Nagpur.
- 4) Civil Surgeon,
General Hospital Central Avenue,
Nagpur-440 018.
- 5) Mrs. Kranti Choure,
Aged major, Occ. Service,
R/o Ophthalmic Officer,
Primary Health Centre,
Chincholi, Dist. Nagpur.
- 5) Mrs. Suhasini Vajpai,
aged major, Occ. Service,
R/o Ophthalmic Officer,
Daga Lady Hospital, Nagpur.

Respondents

Shri N.D. Thombre, Advocate for the applicant.

Shri A.M. Ghogre, P.O. for the respondent no. 1 to 4

Shri Sachin Zoting, Id. Advocate for R-5.

Shri M. Bajpai, Id. Advocate for R-6

Coram :- Hon'ble Shri S.S. Hingne, Vice Chairman.

Dated :- 06/01/2017.

COMMON ORDER -

Heard Shri R.V. Shiralkar, Id. Counsel for the applicant, Shri A.M. Ghogre, Id. P.O. for R-1 to 4, Shri M. Bajpai, Id. Counsel for R-5 and Shri Sachin Zoting, Id. Counsel for R-6 (in O.A.No.357/2016) and Shri N.D. Thombre, Id. Counsel for the applicant, Shri A.M. Ghogre, Id. P.O. for R-1 to 4, Shri Sachin Zoting, Id. Counsel for R-5 and Shri M. Bajpai, Id. Counsel for R-6 (in O.A.No.401/2016).

2. The O.As. are heard and decided finally at the admission stage with the consent of learned counsel for parties. Both the cases are decided by one order since arising out of the common order and parties are also same.

3. The applicants the Ophthalmic Officer have challenged the transfer order dated 31-05-2016. The respondents issued the general transfer order on 31-5-2016. On the very day the other transfer order is issued making some changes. The applicants

got the convenient posting under the formal order but they were displaced by the latter which is they have impugned.

4. According to the applicants there was no reason to issue two orders on the same day. Not only that but second order is issued after some days but it is shown anti-dated to have been issued on 31-5-2016. It is also the respondents' stand that second order is issued to accommodate the respondent and other employees.

5. Undisputedly all the concerned employees were due for transfer. It is immaterial if period of tenure of each differs but fact remains that they were due for transfer. The learned P.O. has argued that since one respondent was 50% handicapped and other has also made out a case, but said aspects were not considered while issuing first order and therefore the second order is issued on the very day. The learned P.O. further urged that such order is not open to challenge under any provisions of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short 'Transfer Act'). The submission cannot be thrown away easily.

6. The learned counsel for the applicant vehemently urged that the second order is nothing but manipulation by the employees who approached to the department. However, except the stray

sentence in the pleadings there is no material worth the name to hold that there is some and substance in the submission of the applicants. No doubt the fact, of issuance of second order that too on the very day can create doubt in any mind indicating some foul play. However, how so ever strong such suspicion may be, in the absence of cogent and clinching material it cannot take place of the proof. It is hard to hear that at the instance of such persons who are working at the lowest rung can move the matter from pillar to post and get the changes without any loss of time. Such administration creates doubt in the mind of the employees but as observed earlier in the absence of details and particulars the assumption and presumption carry no weight.

7. It is also urged that the employees who had not joined the new post, in the subsequent orders they are shown to have been transferred from the posts where they had not joined. Such irregularities demonstrate the lack of administration but cannot assume any importance to affect the legality of the order.

8. It is also argued that the applicants worked in naxalite / tribal areas for years together and therefore they deserve a posting of their choice. However, according to the learned P.O. the cases of the respondents / employees are also considered on the basis of the G.Rs. issued to protect the interest of handicapped etc. It

is also urged that the respondents have not worked in naxalite/ tribal areas but for such reasons transfer orders cannot be rendered illegal, unless it is shown that there was a malice for one and undue favour to the other with a some discrimination or ulterior motive.

9. The points of joining and relieving are also raised. It is well settled that joining and relieving hardly can carry any significance to decide the legality and validity of the transfer order. If any importance is attached to such aspects it will tantamount to give the power of the verdict to the authorities/ departments.

10. Further contention is that the transfers of may employees are shown on request and very few are shown on administrative ground. However no sufficient and satisfactory material is putforth on record to show that there is a substance in the submission. Moreover, it appears that though these persons including the respondents and the applicant who were due for transfers, it is shown that they are transferred on request. This demonstrates that the remarks column does not depict the factual position. The employee when becomes due, opts for transfer, but his transfer does not fall under the head "on request". In this view of the matter, no much credence can be attached to the point canvassed.

11. It is also submitted that illness of the family member, husband of R/5 as alleged which is too old but any such sporadic aspect cannot be decisive one.

12. It is also contended the second order of the transfer is issued after some days, otherwise the other employees would not have been allowed to join on basis of first order. As observed earlier if any irregularity occurs, cannot be sufficient to determine the legality of transfer order.

13. It is also urged that when the transferred employee had gone to join he was asked to bring movement order from the higher officers and undisputedly there is no such practice in vogue as admitted by the respondents. However when the second order is alleged to have been issued it was most natural for the subordinate officers to ask the movement orders from higher authorities to avoid the further complications. To maintain the official discipline it was most natural for the subordinate officer to have the approval or clarification to the joining of the employees based on the first order. Therefore, only because the movement order asked for, no ill motive can be attributed to the officers so as to hold the malice for the applicant and favouritism to the respondent / employees.

14. If the case in hand is tested on the anvil of the legal provisions of the Transfer Act it is manifest that no breach of provisions is committed so as to render the transfer order illegal. The above referred aspects cannot render the order invalid. Meaning thereby the cases propounded by the applicants are devoid of merit. Consequently, the O.As. are rejected with no order as to costs.

(S.S.Hingne)
Vice-Chairman.

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