

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 868 OF 2016

DISTRICT: AURANGABAD

Shri Vishwanath S/o Babunath Nath,
Age: 50 years, Occu. : Service,
(as Superintending Engineer
A'bad), R/o : Flat No. 1,
Bhalchandra Apartment,
Plot No. 58, Surananagar,
Behind Yeshodeep Hotel, Jalna Road,
Aurangabad.

.. **APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Water Resources Department,
M.S., Mantralaya, Mumbai -32.
- 2) The Chief Engineer,
Minor Irrigation
(Water Conservation),
Pune.
- 3) Shri Baban s/o Dagdu Jatale,
Superintending Engineer,
Yavatmal.

.. **RESPONDENTS**

APPEARANCE : Ms. Preeti Wankhede, learned Advocate for the
Applicant.

: Shri M.S. Mahajan, learned Chief Presenting
Officer for the Respondent Nos. 1 & 2.

: Shri Ajay Deshpande, learned Advocate for
Respondent no. 3.

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

J U D G M E N T

(Delivered on this 27th day of January, 2017.)

The applicant Shri Vishwanath Babunath Nath, Superintending Engineer is working in the Minor Irrigation (Water Conservation) Circle, Aurangabad. Vide impugned order dated 2.9.2016, the applicant has been transferred as Superintending Engineer, MSSIDC (Maharashtra Small Scale Industrial Development Corporation), Mumbai. The reason for the transfer has shown on administrative ground as per the provisions of the Section 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act 2005).

2. The learned Advocate for the Applicant submits that the applicant has joined present post at Aurangabad on 21.12.2015 and prior to that, he was working in Mantralaya. He has hardly completed eight months at Aurangabad and was not due for transfer and therefore, the impugned order of transfer is absolutely against the provisions of the Transfer Act 2005.

3. The applicant made representation on 2.9.2016 and requested respondent no. 1 to cancel his transfer but no decision has been taken on his representation and hence, his Original Application.

4. The learned Advocate Ms. Preeti Wankhede, for the applicant submits that the respondent no. 3, who was Executive Engineer, was promoted in the cadre of S.E. vide order dated 30.08.2016 and was posted as Superintending Engineer, Yavatmal Irrigation Circle, Yavatmal (Irrigation Management) and immediately vide order dated 24.11.2016 he has been transferred in place of applicant as Superintending Engineer, Minor Irrigation (Water Conservation) Circle, Aurangabad. It is therefore, stated that the impugned order has been passed just to accommodate the respondent no. 3.

5. The respondent nos. 1 and 2 have justified the impugned order of transfer and submitted that the said has been passed in the administrative convenience. So far as the respondent no. 3 is concerned, it is stated that he was transferred on the recommendation of Mr. Kuche, MLA after following due procedure under Rule 4(5) of the Transfer Act, 2005. The respondent nos. 1 and 2 further stated that the Government has

created new post under Government policy ease of doing business at Single window system viz. Maharashtra Industries Commerce and Investment Facility Centre. The applicant has been transferred in the said post, since he was having experience of office procedure and has worked as Under Secretary in Mantralaya. The respondent nos. 1 & 2 have also placed on record G.R. dated 11.2.2016 for creating such posts.

6. The respondent no. 3 tried to justify his order in place of applicant. The learned Advocate Shri Ajay Deshpande, for respondent no. 3 submits that the applicant himself did not comply with the interim order and managed to stay at Aurangabad, in spite of specific condition Nos. 4 and 5 in the impugned order of transfer and therefore, he managed to continue at Aurangabad illegally. In the impugned order of transfer dated 2.09.2016, it has been specifically directed to the superior officer that it shall relieve the applicant immediately. In paragraph no. 5 of the impugned order dated 2.9.2016, it is stated that in case the applicant did not join immediately and bring pressure on the competent authority are tried to get the transfer cancelled, departmental action shall be taken against him. I am unable to accept the contention of the learned Advocate for the applicant as whether to take action or not for noncompliance of the order is a

matter between the applicant & respondent no. 1 and the respondent no. 3 has nothing to do with it.

7. The applicant has filed rejoinder affidavit and submits that as per G.R. dated 11.02.2016 a person of Superintending Engineer's cadre is required to be posted in Maitri Kaksha. The applicant was not having any experience of the Superintending Engineer and therefore, his experience in Mantralaya on lower post of Executive Engineer in Water Resources Department ought not to have been considered. Vide rejoinder affidavit, the applicant wants to submit that he has not that much experienced for consideration for newly created post.

8. Heard Ms. Preeti Wankhede, learned Advocate for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent nos. 1 & 2 and Shri Ajay Deshpande, learned Advocate for respondent no. 3. I have also perused the affidavit, affidavit in reply, rejoinder affidavit, citations, minutes of the meeting and various documents placed on record by the respective parties.

9. It is admitted that the applicant has been transferred from Aurangabad to Mumbai just within a span of eight months

and therefore, admittedly it is a mid-term transfer. The only material point to be considered is, thus, whether the transfer was necessary in the interest of administration as stated by the respondents?

10. Section 4 of the Transfer Act, 2005 deals with the tenure of transfer however, since the respondents are taking benefit of section 4(4) and (5) of the said Act. The relevant provisions are as under:-

“4. Tenure of transfer.

(1).....

(2).....

(3).....

(4) *The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May:*

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely :-

(i) *to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;*

(ii) *where the competent authority is satisfied that the transfer is essential*

due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority;”

(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior [approval of the immediately superior] Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post.”

11. From the plain reading of the aforesaid Sections referred above, it will be clear that the in special cases, after recording reasons in writing and with the prior approval of the immediately superior Trasferring Authority may pass order of transfer at any time. In the present case, the applicant has been transferred by the competent authority, though he was not due for transfer on a newly created post. The respondent nos. 1 and 2 were therefore, directed to place on record minutes of the meeting, in which the applicant’s transfer was considered.

12. I have perused the minutes of the meeting. Perusal of the minutes of the meeting shows that the Government of

Maharashtra has decided to create a new Section called Maitri Kaksha, in view of the G.R. dated 18.06.2016 and in view thereof, it was necessary to appoint the officers of cadre of Superintending Engineer in the said Maitri Kaksha. The minutes of the meeting shows that the necessary note was prepared for appointing Superintending Engineer. The said list of Superintending Engineer was placed before the competent authority, which is at paper book page nos. 53 to 58 (both inclusive) of the minutes of the meeting. The said list shows the names of as many as 66 officers of the grade of Superintending Engineer. Admittedly, the name of the applicant does not figure in the said list. When the list was kept before the Hon'ble Minister (Water Resources), he seems to have given his opinion as "विश्वनाथ बाबुराव नाथ अ.अ. जलसंधारण औबाद यांचा मंत्रालयीन कामाचा अनुभव विचारात घेता त्यांना देणे योग्य." and on his recommendation the Hon'ble Chief Minister seems to have accepted the recommendation and therefore, the applicant has been transferred in Mantralaya. Said minutes of the meeting nowhere discloses that the impugned order has been passed to accommodate the respondent no. 3. The transfer order of respondent no. 3 has been passed subsequently in view of the transfer of the applicant. The applicant is not coming with a case that the Hon'ble Minister (Water Resources) was having any grudge against the applicant or was having any mala-fides against

the applicant. On the contrary, it seems that the Hon'ble Minister has appreciated the experience of the applicant and his work in the Mantralaya and therefore, impugned order has been passed. The copy of the minutes of the meeting is placed on record for the purposes of identification and marked as Exhibit-'X'.

13. The learned Advocate for the applicant submits that the respondents have not considered the provisions of the G.R. dated 11.02.2016. The said G.R. is part and parcel of minutes of meeting. The learned Advocate for the applicant also submits that the applicant was promoted just eight months back to the post of Superintending Engineer and has never worked in concerned department and further that his consent was not obtained for changing his region. His experience in the Mantralaya was on the post of Executive Engineer and not on the post of Superintending Engineer. In my opinion, an administrative experience of the Executive Engineer/Deputy Engineer in Mantralaya can be ten times more than the officers working in field as he has to deal with administration of entire State. I am unable to accept the arguments put forth by the learned Advocate for the applicant for the simple reason that it is for the administrative officer to consider such niceties and the Tribunal is not expected to

interfere in the administrative decision taken by the competent authority, when the concerned Minister of the department thought it proper to give responsibility to the applicant in the newly created department, considering his experience in the Mantralaya and the said opinion has been approved by the Hon'ble Chief Minister. I do not find any reason to interfere in such decision. The said decision has been taken in the administrative convenience and therefore, the individual convenience, if any, caused to the applicant can be very well ignored.

14. The learned Advocate for the applicant has placed reliance on the judgment delivered by the Hon'ble Bombay High Court reported in **2011(5) Mh.L.J. page 158** in the case of **Pradeepkumar s/o Kothiram Deshbhratar Vs. State of Maharashtra and Others.** In this judgment, the Hon'ble High Court has observed that in case of premature transfer, reasons must be recorded for permitting such transfer and must be found to be in the interest of administration. It is further stated that the premature transfer cannot be only the wish or whim of any particular individual and cannot be ordered as special case to place the particular individual for mere asking. I have carefully gone through the said judgment and I am confident that the facts

of the said judgment are not analogous with the present set of facts and therefore, the same is not applicable to the present case.

15. In view of the discussions in foregoing paragraphs, I therefore, do not find any illegality in the impugned order of transfer of the applicant, though the same is premature. The said order has rightly been issued in view of the provisions of the Section 4(4) and (5) of the Transfer Act, 2005. Hence, I pass following order.

ORDER

1. The Original Application stands dismissed.

2. The learned Advocate for the applicant submits that this Tribunal vide order dated 25.11.2016 was pleased to grant interim stay to the transfer order of the applicant, since the applicant was not relieved. The said interim stay is continued till today. Admittedly, the applicant is working even today at Aurangabad. The learned Advocate for the applicant therefore, seeks continuation of said interim stay for two weeks.

(ii) The learned Chief Presenting Officer strongly opposes the said request. It is material to note that the impugned order is passed by the respondents in September, 2016 and till today same is not implemented on the ground that the representation was filed by the applicant and then because of interim stay granted by this Tribunal.

(iii) In fact, I do not find any reason to continue the interim stay. However, in order to give fair opportunity to the applicant, the Respondents are directed not to relieve the applicant for one more week from today i.e. till 03.02.2017.

There shall be no order as to costs.

(J.D. KULKARNI)
MEMBER (J)

KPB/S.B. O.A. No. 868 OF 2016 JDK 2017 TRANSFER