

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1006 of 2024 (S.B.)

Sagar Suresh Bawre,
Aged about 36 years, Occupation Service,
R/o Plot No.18, Chintamani Nagari No.1,
Besa Road, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary, Food & Civil Supply,
Mantralaya, Mumbai-400 032.
- 2) The Deputy Commissioner,
Civil Supply, Office of the Divisional Commissioner,
Old Secretariat Building, Civil Lines, Nagpur.
- 3) Smt. Deepali Prabhakar Bramhankar,
O/o the Food Distribution Officer,
Near Central Museum, Civil Lines, Nagpur.

Respondents.

S/Shri D.M. Kakani, G.K. Bhusari, Advocate for the applicant.
Shri A.M. Khadatkhar, learned P.O. for respondent nos.1 and 2.
Shri A.D. Girdekar, learned counsel for resp. no.3 (Caveator).

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 08/10/2024.

J U D G M E N T

Heard Shri D.M. Kakani, learned counsel for the applicant,
Shri A.M. Khadatkhar, learned P.O. for respondent nos.1 and 2 and
Shri A.D. Girdekar, learned counsel for respondent no.3 (Caveator).

2. The learned P.O. submits that two weeks' time is required to file reply. Yesterday this O.A. was heard looking to the urgency mentioned by the learned counsel for applicant, today this O.A. is kept for final hearing with understanding to the counsels both side that O.A. will be decided finally. Respondent no.3 was also well aware about filing of this O.A. Respondent no.3 has filed Caveat Application No.36/2024 on 07/10/2024. He was expecting that the applicant will approach to this Tribunal for cancellation / stay of the transfer order dated 04/10/2024. Hence, heard finally.

3. The case of the applicant in short is as under –

The applicant was working as a Supply Inspector (Food and Civil Supply). In the DPC meeting which was held on 29/08/2023, the applicant was found eligible for promotion along with other 202 employees, but the applicant was not promoted. Therefore, the applicant approached to this Tribunal by filing O.A.No.533/2024. This Tribunal as per Judgment dated 09/08/2024 directed the respondent authorities to promote the applicant along with other similarly situated candidates which was approved by the GAD within a stipulated period as per the condition laid down in Clause no.1.10 of the G.R. dated 01/8/2019 i.e. during the validity period of the select list.

4. The respondent nos.1 and 2 complied the order of this Tribunal dated 09/08/2024. The applicant is promoted on the post of

Inspecting Officer (Food Supply) and posted at Nagpur (B-Zone) (Medical), Food Distribution Office at Nagpur. The applicant has joined at Nagpur, as per order dated 06/09/2024 and as per the joining letter dated 09/09/2024.

5. It is submitted that the applicant was not due for transfer. There was no any reason to transfer respondent no.3 in place of applicant. Respondent no.3 was / is working in Zone-A in the Nagpur City itself. She was not due for transfer. Even though respondent nos.1 and 2 transferred respondent no.3 in place of applicant, therefore, the applicant approached to this Tribunal by filing the present O.A. for the following reliefs –

“ (7) (i) Quash and set aside the impugned order dated 4.10.2024 (Annexure A-2) issued in favour of Respondent No.3 by the Respondent No.1 being illegal and contrary to the provisions of the Government decision dated 9th August, 2018 as well as contrary to the provisions of law;

(ii) Stay the effect and operation of the impugned orders dated 4.10.2024 (Annexure A-1 and Annexure A-2) during the pendency of the Original Application;

iii) Call for the record of the Departmental Promotion Committee proceedings and the note-sheet put up by the Respondent No.1 pointing out therein that the post on which the Respondent No.3 is being transferred on request is not lying vacant. These documents are required for proper adjudication of the matter and to see that how the favourable treatment has been given to the Respondent No.3 by the authorities.”

6. The affidavits-in-reply are not filed. Yesterday it was made clear that the O.A. will be heard finally today. During the course of submission, the learned counsel for applicant has pointed out the Judgment passed by this Tribunal in O.A. No.533/2024. As per the direction given by this Tribunal, respondent nos.1 and 2 promoted the applicant along with others, as per the Government G.R., also which was approved by the GAD. The respondent nos. 1 and 2 promoted the applicant and posted at Nagpur at B-Zone (Medical). The applicant has joined on the said post on 09/09/2024. The applicant was not due for transfer. The post was not vacant, even though respondent nos.1 and 2 transferred respondent no.3 in place of applicant.

7. The learned counsel for applicant has submitted that prima facie the impugned transfer order dated 04/10/2024 is illegal and therefore liable to be quashed and set aside.

8. The learned P.O. submitted that on the request of respondent no.3 the Government has considered and transferred her. The learned P.O. has submitted that with the approval of the Chief Minister, the impugned order is issued in favour of respondent no.3.

9. The learned counsel for respondent no.3 submitted that respondent no.3 made representation to the Government. The Government has considered her request. The Chief Minister has

approved her transfer in place of applicant and therefore there is no illegality in the impugned transfer order.

10. The learned counsel for respondent no.3 and learned P.O. both have submitted that there is a compliance of the Section 4 (4) and 4 (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfers Act,2005"). Hence, the O.A. is liable to be dismissed.

11. From the submission of both the parties, there is no dispute that the applicant was promoted and transferred to Nagpur on promotion at B-Zone (Medical). The respondent nos.1 and 2 has complied the order of this Tribunal in O.A.No.533/2024 dated 09/08/2024. It is also clear that post was not vacant to transfer respondent no.3 in place of applicant. There is also no dispute that the applicant as well as respondent no.3 both were not due for transfer.

12. As per the provisions of the Transfers Act,2005 when the employees are not due for transfer, they cannot be transferred. Normal tenure is given in Section 3 of the Transfers Act,2005. Therefore, the impugned transfer order appears to be non compliance of Section 3 and 4 of the Transfers Act,2005.

13. The applicant was / is already posted in B-Zone (Medical), Nagpur. The respondent no.3 was transferred from Jalgaon to A-Zone in Nagpur City itself, as per the order dated 24/04/2023. Therefore, it is clear that respondent no.3 was not due for transfer. The applicant was also not due for transfer. What was the reason for respondent nos.1&2 to transfer respondent no.3 in place of applicant is not explained.

14. The learned counsel for applicant has pointed out the G.R. dated 09/04/2018. The material part of the G.R. is reproduced below –

“मुदतपूर्व व मध्यावधी बदल्या - मुदतपूर्व व मध्यावधी बदल्या या प्रामुख्याने प्रशासनाची निकड किंवा कर्मचाऱ्यांकडून प्राप्त विनंती अर्ज या कारणास्तव वर्षभर चालू राहणारी प्रक्रिया आहे. तसेच अशा स्वरूपाच्या बदल्या करतांना प्रशासनाची निकड ही एखादे ठराविक रिक्त पद भरणे अशा स्वरूपाचीच असल्यामुळे अशा बदलीसाठी समुपदेशनाची आवश्यकता राहत नाही. त्याचप्रमाणे कर्मचाऱ्याची विनंती बदलीसाठीची मागणी ही एखाद्या ठराविक ठिकाणी बदलीसाठी असल्यामुळे सदर ठिकाणी पद रिक्त असेल तरच संबंधित अर्जाचा विचार करता येतो अन्यथा विनंती अर्ज विचारात घेता येऊ शकत नाही. त्यामुळे अशा बदलीसाठी समुपदेशनाची आवश्यकता राहत नाही. सबब, मुदतपूर्व व मध्यावधी बदल्या या समुपदेशनाच्या धोरणानुसार करण्यात येणार नाहीत. ”

15. The learned P.O. submitted that on request of respondent no.3, she is transferred in place of applicant. It is pertinent to note that nothing is place on record to show as to what type of request was made by respondent no.3 to the Government. Respondent no.3 is already working in Nagpur City, the applicant is also working in the Nagpur City. What was the reason for respondent no.3 to make a

representation. She has not produced any document / representation to show that her request was genuine which was accepted by the Government. Prima facie it appears that the Government has illegally transferred respondent no.3 in place of applicant. The applicant as well as respondent no.3 were not due for transfer. There was no necessity for respondent nos.1 and 2 to issue transfer order dated 04/10/2024. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned transfer orders dated 04/10/2024 (Annex-A-1 and A-2) by transferring the applicant in place of respondent no.3 and by transferring respondent no.3 in place of applicant, are hereby quashed and set aside.
- (iii) No order as to costs.
- (iv) The learned counsel for respondent no.3 submits that this order be stayed for a period of one week. By this order, the impugned transfer orders of applicant and respondent no.3 are quashed and set aside. Therefore, the Judgment cannot be stayed. The respondents to act as per the order passed by this Tribunal.

Dated :- 08/10/2024.

(Justice M.G. Giratkar)
Vice Chairman.

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

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 08/10/2024.