

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

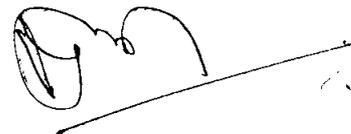
ORIGINAL APPLICATION NO.307 OF 2016

DISTRICT : PUNE

Mr. Bhagwan Rajabhau Khedkar.)
Age : 52 Yrs, Occu. : Service, Residing at)
B-5, Sai Savera, Hadapsar, Pune 28.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Desk Officer,)
Water Resources Department,)
Mantralaya, Mumbai - 400 032.)
2. Executive Director.)
Maharashtra Krishan Valley)
Development Corporation, Pune)
Having office at Sinchan Bhavan,)
Barne Road, Mangalwar Peth,)
Pune 400 011.)
3. Chief Engineer.)
Water Resources Department, Pune)
Having office at Sinchan Bhavan,)
Barne Road, Mangalwar Peth,)
Pune 400 011.)
4. Superintending Engineer, Pune)
Irrigation Circle, Pune)
Having office at Sinchan Bhavan,)
Barne Road, Mangalwar Peth,)

2


Pune 400 011.

5. Executive Engineer.)
 Pune Irrigation Division, New)
 Administrative Building, 2nd Floor,)
 Pune 400 001.)
6. Sub-Division Officer.)
 Bhamaskhed, Irrigation Management)
 Sub-Division, Kanjvihire,)
 Tal. : Khed, District : Pune.)
7. Shri Devghan Maruti.)
 Bhajnowade, having office at)
 Bhamaskhed, Irrigation Management)
 Sub-Division, Kanjvihire,)
 Tal.: Khed, District : Pune.)...**Respondents**

Mr. B.R. Deshmukh, Advocate for Applicant.

Mr. N.K. Rajpurohit, Chief Presenting Officer for Respondents 1 to 6.

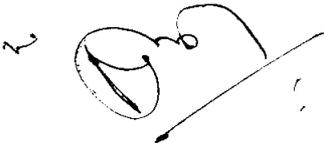
None for Respondent No.7.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 17.03.2017

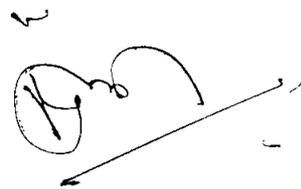
JUDGMENT

1. This Original Application (OA) seeks to challenge the order dated 2.4.2016 and 19.10.2015 made by the 1st and the 6th Respondent respectively whereby the posting of the Applicant was in the manner of speaking changed and



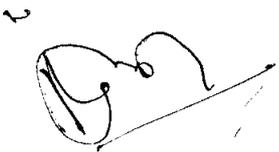
in respect of one particular post which he was holding the charge of, he was directed to hand it over the same to the 7th Respondent. The 1st Respondent is the State of Maharashtra in Water Resources Department, the 2nd Respondent is the Executive Director, Maharashtra Krishan Valley Development Corporation and the 3rd Respondent is the Chief Engineer of Water Resources Department, the 4th Respondent is the Superintending Engineer, Pune Irrigation Circle, the 5th Respondent is the Executive Engineer, Pune Irrigation Division, the 6th Respondent is the Sub Divisional Officer, Bhamaskhed Irrigation Management Sub Division, Kanjvihire and the 7th Respondent as already mentioned above is a private Respondent in whose favour, the Applicant was directed to handover one of the charges that the Applicant held.

2. The Applicant and the 7th Respondent are Sectional Engineers. On 5.4.2016, this OA was placed before the Hon'ble Vice-Chairman of this Tribunal for consideration of interim relief. At that point in time, the private party Respondent had not been served while the Respondent Nos.1 to 6 were represented by the learned PO Mr. A.J. Chougule.



3. The Applicant was posted at that point in time vide the order dated 30.5.2015 at Kanjvihire as Sectional Engineer in Khed Irrigation Section-I at Rajguru Nagar. In respect of this particular charge, directions were given by the Respondent No.6 – S.D.O, Kanjvihire to hand it over to the Respondent No.7. It was recorded in the interim order that it was claimed that the said order was made after following the procedure prescribed by Sections 4(4) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act). However, by that order, no posting was given to the Applicant. That order was sought to be got stayed. This Tribunal did not make any order against the 7th Respondent who had not been served but the official Respondent Nos.1 to 6 were directed to maintain status quo as on the date, the order was made i.e. 5.4.2016. The Applicant, therefore, continued to be holding the post of Sectional Engineer in Khed Irrigation, Section-I at Rajguru Nagar by virtue of the said interim order.

4. I have perused the record and proceedings and heard Mr. B.R. Deshmukh, the learned Advocate for the Applicant and Mr. N.K. Rajpurohit, the learned Chief



Presenting Officer (CPO) for the Respondent Nos.1 to 6. None appeared for the 7th Respondent.

5. The Applicant has in a few initial Paragraphs upto Para 6.5 pleaded the facts with regard to his meritorious performance. Although that aspect of the matter in this transfer related OA may not be quite relevant, but I am prepared to proceed on the assumption that the Applicant is a meritorious Sectional Engineer.

6. It would appear from the record that the Applicant came to be posted at Sangavi since 10.6.2010 to 9.6.2015, a copy of an order is to be found at Exh. 'B' (Page 38 of the PB) and is dated 31.5.2014. The Applicant came to be transferred thereunder from the said posting at Sangavi to Baramati Sub Division. Now, at this stage itself, it needs to be mentioned that there have been instances and which are indisputable whereby the official orders of transfer came to be issued, but they could not be implemented and I am at a complete loss to appreciate as to why and how, it could be so. As an employer in the matters related to the service condition of transfer, if decisions are taken in accordance with the law and rules, then needless to say that they are required to be complied with. Only in case of one Mr. Memane whose matter was



pending before this Tribunal for no other posting, there should have been any problem with regard to the effectuation of the order.

7. The order of transfer of the Applicant to Baramati was made on 31.5.2014, but it appears from Exh. 'C' (Page 42 of the PB) that even till 30.4.2015, that order was not effectuated. By that order, it was mentioned that, though those orders were made in the general transfers of 2014, but the three Sectional Engineers named there including the Applicant, had not been relieved till then and the Executive Engineer, Nira Devoghar Project addressed a communication to the Assistant Executive Engineer of the said Project to relieve the Applicant and the two others forthwith.

8. In Para 6.8 of the OA, the Applicant has pleaded that in as much as there was no vacancy in Baramati Sub-Division, the 3rd Respondent made an order on 30.5.2015, a copy of which is at Exh. 'D' (Page 43 of the PB) and thereby, the Applicant was transferred from Sangavi to his present posting at Kanjvihire which I was told falls within Taluka Khed of Pune District. There is an endorsement in Marathi on the lower left side of this particular document



stating *inter-alia* that the Applicant be posted at Kanjvhire vice Mr. Memane whose name has figured hereinabove.

9. At Exh. 'E' (Page 45 of the PB), there is an Office Note under the signature of the Deputy Executive Engineer directing the Applicant to be posted vice Mr. Memane, Sectional Engineer. There is a second Office Note on the same page which mentions that the Applicant should take charge of the post of Mr. Memane in Section-I, Khed, Rajguru Nagar. The exact Marathi words (addressed to the Applicant) are, "आपण श्री. मेमानने शा.अ. यांच्या पदोन्नतीने रिक्त होणा-या सिंचन व्यवस्थापन, शाखा क्र.१, खेड (राजगुरु नगर) या शाखेचा कारभार स्विकारून कामकाज पहावे."

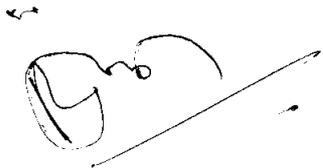
10. At Exh. 'F' (Page 46 of the PB), there is an order issued by the Executive Engineer, Irrigation Division, Pune - 1 addressed to Assistant Engineer Grade-I, Irrigation Division, dated 3rd July, 2015. It was therein mentioned that the Applicant was given the post which would be rendered vacant as a result of Mr. Memane's promotion, but that would take some time, and therefore, the Applicant be given for the time being the charge at Khed Irrigation Division and after the vacation of that post, by Mr. Memane on his promotion the Applicant being given regular charge for that post.



11. At Exh. 'G' (Page 47 of the PB), there is a communication issued by the SDO, Kanjvihire to Executive Engineer, Irrigation Department, Pune about the Applicant's posting. It was therein mentioned that although the Rajguru Nagar charge was given to the Applicant after the said post fell vacant, as a result of Mr. Memane's promotion, but actually that could not materialize because of the pending matter of Mr. Memane and Mr. Memane was then on 22nd February, 2016 relieved in the afternoon and the Applicant had on permanent basis accepted the charge of Rajguru Nagar with additional charge of Khed Irrigation Section.

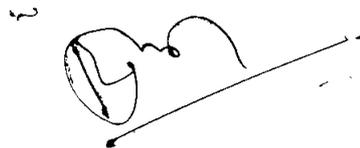
12. At Page 48 (Exh. 'H' of the PB), there is a communication from the Applicant indicating that he had taken the charge of the post from Mr. Memane in Khed Irrigation Section.

13. At Page 49 (Exh. 'I' of the PB), there is a communication from Assistant Superintending Engineer, Pune Division Department to Executive Engineer of the same Department whereby the Respondent No.7 was to take charge of the Khed Irrigation Section-I. The order in respect of the said Respondent No.7 is at Exh. 'J' (Page 51 of the PB) whereby the Applicant was in effect directed to



hand-over the charge of Khed Irrigation Section No.1, Taluka Khed, District : Pune. It appears that the name of the Applicant is not mentioned specifically, but the cumulative effect of the discussion thus far would make this position very clear, and therefore, the Applicant is aggrieved by this particular order and is up before me herein. According to the Respondent No.7, the Applicant cannot make any grievance thereabout because after-all, he held an additional charge which was given to the said Respondent No.7. It does not amount to transfer in the sense, the said phrase is understood in the realm of Transfer Act. Respondents 1 to 6 have also supported their action by way of the Affidavit-in-reply filed by Mr. S.B. Memane, Sub Divisional Officer.

14. It is an indisputable fact position that as of now, the Applicant is holding the charge of both the posts viz. at Khed and Khed-I. Mr. Deshmukh, the learned Advocate for the Applicant told me that the Applicant was prepared to hand-over the charge of Khed Irrigation Section, New Rajguru Nagar and he wanted to retain Khed Irrigation, Section-I which was also mentioned in the interim order by the Hon'ble Vice-Chairman.

A handwritten signature in black ink, consisting of a stylized 'B' followed by a flourish and a horizontal line extending to the right.

15. It would appear quite clearly that much of the difficulties have arisen because of lack of proper diligence in the matter of issuing the orders and getting them implemented. I have quite clearly set out the facts in detail which would make it quite clear that if the orders issued were properly implemented in time, the situation would not have escalated. In the context of the above discussion, I am very clearly of the view that whatever this or that party might say, the Applicant would have to be posted at Kanjvihire as Sectional Engineer in Khed Irrigation Section-I, Rajguru Nagar which was the post he was holding at the time, the interim orders were made by the Hon'ble Vice-Chairman. It so happens that regardless of the history preceding and exemplifying the lack of control in the matter of enforcing the orders, the point remains that, once the Applicant took that charge, the other charge would be additional and the 7th Respondent could not have been given a charge, which was given to the Applicant and which legally, he had assumed also. The service condition of transfer is now statute regulated, and therefore, once a proper order of transfer is made and implemented, then the provisions of the Transfer Act apply and the Applicant will be entitled to the security of tenure in respect of that particular post and not in respect of the one that he held as additional charge.



16. This Original Application is disposed of with a direction that the Applicant shall continue to hold the post at Kanjvihire as Sectional Engineer in Khed Irrigation, Section-I at Rajguru Nagar, which he is presently holding as a result of the interim order of this Tribunal and the Respondents shall make the orders accordingly in so far as the 7th Respondent is concerned giving him a posting other than that given to the Applicant. Compliance within four weeks from today. No order as to costs.

Sd/-
(R.B. Malik)
Member-J
17.03.2017

Mumbai
Date : 17.03.2017
Dictation taken by :
S.K. Wamanse.