

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI
BENCH AT AURANGABAD.

DIST. AURANGABAD.

ORIGINAL APPLICATION NO.395/2016.

(Subject : Transfer)

Dilip s/o Namdeorao Kenekar,
Age 48 years, Occu. Service,
R/o L-4, Shakuntala Niwas,
Near Jain Mandir,
Arihant Nagar, Aurangabad,
Tq. & Dist. Aurangabad (M.S.)

-- **APPLICANT**

VERSUS

1. The State of Maharashtra
Through Secretary, Civil & Food
Supply Department, Mumbai
(Copy to be served
Through Presenting Officer,
M.A.T. Aurangabad)
2. State Consumer Dispute
Redressal Commission,
Maharashtra Mumbai,
Old Administrative College
Building, Room No.1,2,5 & 6,
Hazarimal Somany Marg,
Opposite to Chhatrapati Shivaji
Terminus Mumbai 400 001.
3. State Consumer Dispute
Redressal Commission,
Bench at Aurangabad,
Mahanagar Shopping Complex,
Jai Towers Padampura,
Aurangabad 431 005.

4. Smt. Salve, R.C. Age Major,
Occu. Service, R/o Sy.No.63
Near Pump House, behind
Administrative Building,
Hingoli 431 513.

----- **RESPONDENTS.**

APPEARANCE : Shri Bilolikar, learned Advocate holding for
Shri S. N. Boiwar, learned Advocate for the
Applicant.

: Shri V.R. Bhumkar, learned Presenting Officer for
the Respondents no.1 to 3.

: Shri Ashish Rajkar, learned Advocate for the
Respondent no.4.

CORAM : **Hon'ble Shri JD Kulkarni, Member (J).**

DATE : 02.12.2016.

JUDGMENT

(Delivered on this 2nd day of December, 2016)

1. The applicant Dilip Namdeorao Kenekar is Class IV employee and has challenged his order of transfer dated 5.5.2016 passed by the State Consumer Commission, Mumbai. He was working as Peon at Aurangabad and vide impugned order he has been transferred to Hingoli District on administration reason. In his place one Smt. R.C. Salve has been posted on her request.

2. It is the case of the applicant that he is a Class IV employee and therefore, there is no fix tenure for transfer. Prior to his transfer he has filed representation on 2.2.2016 & 11.2.2016 on his personal grounds. It is stated that, the applicant's mother namely Shakuntala Namdeo Kenekar needs medical help every week. The elder daughter of the applicant has completed H.S.C. and is preparing for MHT-CET and Joint Entrance Examination (J.E.E.) and his younger daughter has completed S.S.C. in March 2016 and she needs further education. The elder brother of applicant has expired in the year 2004 and the applicant has to take care of his brother's widow, sons and daughters.

3. During the pendency of the petition the respondent no.4 Smt. Salve joined in place of the applicant, as she was transferred in his place. Therefore, applicant has challenged the transfer of Respondent no.4 also showing that, it is in violation of Section 3 (2) of the Maharashtra government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (For short Transfer Act of 2005).

4. The respondents no.2 & 3 have justified the transfer of the applicant. It is stated that, the respondent no.2 was constrained to

transfer the applicant as one lady employee in the office of respondent no.3 has made complaint against the applicant. As per said complaint the applicant shouted and ran on her person when she asked for Xerox of office file. The respondent no.3 vide letter dated 9.3.2015 conveyed the misbehavior of the applicant to Respondent no.2 with written complaint of lady staff member Smt. Kamble. Due inquiry was done and the applicant claimed apology and also had undertaken not to commit such mistakes in future, and therefore, the matter was closed. It was however, thought proper to transfer the applicant on administrative ground.

5. As regards Respondent no.4 it is stated that she is a widow of deceased Govt. servant and is having daughters, who are taking education at Aurangabad and she was residing at Hingoli alone, and therefore, it was necessary to consider her request for transfer at Aurangabad.

6. The Respondent no.4 also files affidavit in reply and justified her transfer.

7. The applicant has filed rejoinder affidavit and submitted that, the Xerox machine of the office was not functioning due to technical

reasons and therefore, it was not possible for the applicant to take copies. He has denied to have done any overt act of threatening or pressurizing Smt. Kamble. It is stated that, the applicant had no intention to trouble or harass any employee. He has again reiterated his personal problems.

8. Heard Shri Bilolikar learned Advocate holding for Shri S.N. Boiwar, learned Advocate for the Applicant, Shri V.R. Bhumkar, learned Presenting Officer for the Respondents no.1 to 3 and Shri Ashish Rajkar, learned Advocate for the Respondent no.4. I have perused the application, affidavit in replies filed by the Respondents as well as the documents placed on record.

9. The learned Advocate for the applicant submitted that, the applicant is a Class IV employee and as per Section 3 (2) of the Transfer Act, 2005 there is no fix tenure of posting for the Class IV employee, and therefore, the transfer of the applicant is illegal.

10. The only material point is to be considered is “whether the impugned order of transfer in respect of applicant and respondent no.4 is legal and proper?”

11. Perusal of Section 3 (2) of the Transfer Act, 2005 deals with the tenure of posting and the relevant provision 3 (2) of the said Act reads as under :-

“3. Tenure of posting.

(2) Employees in Group D shall normally not be subjected to fixed tenure. They shall not be transferred out from the station, where they are serving except on request when a clear vacancy exists at the station where posting is sought, or on mutual transfer, or when a substantiated complaint of serious nature is received against them.”

12. Aforesaid provision makes it crystal clear that the Group D employee has no fix tenure and they cannot be transferred out of station only in case (i) on request when there is a clear vacancy exists or (ii) on mutual transfer and (iii) when a substantial complaint of serious nature is received against him.

13. The learned Advocate for the applicant submits that, no exigency has happened to transfer the applicant has provided under Section 3 (2) of the said Act. In the present case, admittedly there is no mutual request for transfer. From the reply affidavit it seems

that, the applicant has been transferred because of complaint against him and therefore, it is necessary to see whether the complaint against the applicant is substantiated complaint and whether it is of serious nature.

14. The respondents no.2 & 3 have stated in their reply affidavit that the lady employee files complaint against the applicant on 9.3.2015. The said complaint is regarding incident dt. 7.3.2015. Copy of the said complaint is also placed on record which is at Exh.R-2 at paper book page nos.36 & 37. It seems from the said complaint that the applicant was doing work of Xeroxing as per office order, but he was not willing to work. He used to avoid such work saying that it was not his work. It was hi say that he was only working and that other Peons used to sit idle. He also used to say that the Xeroxing was not the duty of Peon. It is stated that the applicant used to talk loudly and arrogantly. It seems that, on 7.3.2015 the lady employee Mrs. Kamble wants to the applicant for Xeroxing and that time also he refused to take out Xerox copies and told her not to insist him and not only that he ran on her person. It seems that on her report inquiry was initiated and the applicant also gave his explanation. The applicant submitted explanation making grievance of non functioning of Xerox machine, but admitted

his mistake and stated that he will not commit such mistake in future. His explanation is at Exh.R-2.

15. It seems that, in view of such incident the competent authority has considered the pros and cons and decided to transfer the applicant. The minutes of the meeting are also placed on record, which are at Exh.R-5.

16. In my opinion, considering the misbehavior committed by the applicant, the competent authority thought it proper to transfer the applicant on a complaint. The said complaint has been substantiated in view of the fact that applicant has admitted that he will not commit such mistake in future. He has not stated as to why lady clerk was making false complaint against him. Running on the person of a lady clerk while refusing to work is definitely a serious complaint, and the competent authority thought it proper to transfer the applicant on such serious nature of complaint. There is nothing on record to show that, the respondents no.1 to 3 were in any manner prejudiced against the applicant and therefore, the impugned order of transfer can not be said to be illegal.

17. The respondent no.4 has been transferred in place of applicant on the posting which was lying vacant due to transfer of the applicant and there is nothing wrong for considering the request of the respondent no.4 for transfer at Aurangabad in place of applicant.

18. The learned Advocate for the applicant submits that he has filed application for continuation of his post at Aurangabad on 11.2.2016 i.e. prior to issuance of impugned order of transfer. In spite of said application the applicant has been transferred itself shows that the respondents have not thought it proper to accept the request of the applicant. In the reply affidavit some falsities have been brought on record, which were found in the representation of the applicant. There is no need to go into the merits of the claim of the applicant as regards his representation. He will be at liberty to file representation separately once he joins his post at Hingoli and the cognizance of such representation can be taken by the respondent authorities as and when such representation is filed.

19. In view of the discussions in foregoing paragraphs, I do not find any merits in the original application. Hence the order.

ORDER.

The Original application stands dismissed with no order
as to costs.

MEMBER (J)

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