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Exhibit :- O-2
Argued on :- 25.06.2019
Judgment dictated on :- 25.06.2019
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& signed on :- 25.06.2019

**IN THE INDUSTRIAL COURT, MAHARASHTRA, (CHANDRAPUR
BENCH) CHANDRAPUR.**

Complaint (ULP) No.01/2018

(CNR No.MHIC-34-000001/2018)

Manohar Maroti Yewale
Age 52 years, Occ: Service (Conductor)
R/o. At Po. Temurda, Tq. Warora,
Distt. Chandrapur.

.... Complainant.

.....versus.....

Maharashtra State Road Transport
Corporation, Chandrapur Division,
Chandrapur, Through its Divisional

Controller, Office at Durgapur Road,
Tukum, Chandrapur.
Tq. & Dist. Chandrapur

.... Respondent.

CORUM : Pradeep H. Kale, Member.

APPEARANCES : Shri V. M. Shikare Representative for
Complainant.

Shri S. S. Urade Advocate for
Respondent.

JUDGMENT

(Delivered on this 25th Day of June, 2019)

Complainant has filed this complaint to challenge the transfer order dated 22.12.2017 thereby complainant came to be transferred from Warora Depot to Rajura Depot illegally and by disobeying the circular of the respondent.

2] Brief facts of the case are as under :-

Complainant is working with respondent as a conductor. Respondent issued transfer order dated 22.12.2017 by which he was transferred from Warora Depot to Rajura Depot. According to complainant, said transfer order is illegal, unlawful and respondent has not followed circular dated

03.05.2014, therefore, it is made with mala fide intention. According to complainant, there are total 426 conductors working under the respondent at Chandrapur Division. Out of which several conductors are working in the same Depot since more than 10-15 years, but they are not transferred and only complainant came to be transferred by impugned order. Therefore, by filing this complaint, he prayed to set aside the impugned transfer order declaring that, by issuing it respondent has engaged in unfair labour practice.

3] Respondent appeared and by filing W. S. below Exh.C-3 denied the contents of complaint. By special pleadings respondent contended that the circular dated 03.05.2014 is not applicable to the case of complainant. According to respondent, complainant has committed misconduct of misappropriation. Back service record of the complainant is poor and bad. Therefore, as per provision of circular no.2/2017 dated 01.02.2017 he is transferred, therefore, said transfer is on administrative ground and respondent has not acted mala fidely while transferring the complainant.

4] In view of this pleadings, this Court has framed issues below Exh.O-1. Complainant has filed affidavit of evidence below Exh.U-9 and relied on the documents produced on record below Exh.U-11 to Exh.U-15. Respondent filed pursis Exh.C-5 informing that, it does not want to lead any oral evidence.

5] Heard Shri Shikare learned representative for the complainant and Shri Urade learned Advocate for the respondent.

6] Learned Representative for the complainant mainly submitted that, as per circular dated 03.05.2014 class III employee may be transferred after rendering service at one place for about 6 years and that too in the month of March of said year. According to him, impugned transfer order is passed in the month of December. Therefore, respondent has not followed the circular dated 03.05.2014 and impugned transfer order is mala fide on the ground that, other conductors though senior to complainant at Warora Depot are not transferred. Learned Representative further submitted that, though charge-sheet was issued against complainant charges are not still proved therefore, on that ground also impugned transfer order is mala fide.

7] Learned Advocate for respondent mainly submitted that, considering the misconduct committed by the complainant and in view of circular no.2/2017 dated 01.02.2017 impugned transfer of complainant is passed. Therefore, according to learned advocate, respondent has not acted malafidely while transferring the complainant. He further submitted that,

circular dated 03.05.2014 is not applicable to the case of complainant.

8] In view of the submissions of both sides, evidence of complainant and documents produced on record by both the parties I answer the issues for the reasons recorded below :-

ISSUES**FINDINGS**

- 1] Does complainant prove that the impugned transfer order dated 22.12.2017 issued by respondent is illegal? : No.
- 2] Whether he further prove that by issuing said order respondent has engaged in unfair labour practice? : No.
- 3] Whether complainant is entitled for the relief claimed? : No.
- 4] What order? : Complaint is dismissed.

REASONS

9] **As to Issue nos. 1 to 3** :- Learned representative for complainant mainly relied on the circular of respondent dated 03.05.2014 Exh.U-13 which shows that Class III employee i.e. complainant may be posted at one place for six years and thereafter he would be transferred i.e. too in the month of March of said year. According to complainant, this transfer order is dated 22.12.2017, therefore, it is mid term transfer and not according to circular of respondent. As against this, it is the case of respondent that, complainant is facing enquiry for misappropriation of Government amount and in view of circular dated 01.02.2017 there are some provision for transferring the employees who have committed misconduct like misappropriation. Respondent relied on the said circular. Said circular is about provision of transfers of the employees who have misappropriated the amount of respondent Corporation. As per clause (b) of Rule 1 of said circular it is provided that if any employee or conductor is charged for allowing passenger to travel without ticket for third time then he may be transferred in another Depot. In view of this circular respondent relied on the letter of Divisional Traffic Superintendent which shows that complainant has committed third misconduct of allowing passenger to travel without ticket and not taking fare from said passenger, therefore, he is proposed for transfer. Alongwith said letter, respondent produced on record list of misconducts committed by the complainant. It is also produced on record

copy of charge-sheet issued against complainant. Considering all these facts if transfer order of complainant is perused in which it is mentioned that as per circular No.2/2017 dated 01.02.2017 complainant was transferred from Warora to Rajura. Therefore, it appears that there was charges against complainant and as per circular dated 01.02.2017 such employee may be transferred, complainant came to be transferred. Circular relied by the complainant is not applicable to the case of complainant as he is facing charges of misconduct. Apart from this, complainant in his cross-examination admitted that, he is serving at Warora Depot for about 12 years therefore, as per circular dated 03.05.2014 he is due for transfer. So far as mid term transfer is concerned, impugned transfer order is as per circular dated 01.02.2017 and not as per circular dated 03.05.2017. Complainant in his cross-examination admitted that impugned transfer order is as per circular dated 01.02.2017.

10] Learned Advocate for complainant relied on the judgment of Hon'ble High Court Bench Nagpur in W. P. No. 6465 of 2018 and contended that, the circular on the basis of which impugned transfer order is passed is not legal. After perusal of the judgment of Hon'ble Bombay High Court, in that case transfer of petitioner was made as per circular no.3/2018 dated 22.02.2018. His Lord-ship of Hon'ble Bombay High Court observed that,

“this order states two reasons for effecting transfer of petitioner. The first reason is that, as the petitioner has obtained stay from the Labour Court against the respondent no.1, it became necessary for the Divisional Controller, Amravati i.e. respondent no.1 to make use of his transfer power given under circular no.3/2018 dated 22.02.2018. The second reason is of administrative exigency. The second reason appears to be only the camouflage to the first reason. The first reason, on the face of it, is illegal and speaks volumes of the vindictive attitude of the respondent no.1. It indicates that, because the petitioner obtained stay against respondent no.1, from the Court of law the respondent no.1 got annoyed and brazenly only made it a ground and reason for him to make use of his transfer power. Such an order, therefore, is patently illegal. It is full of mala fides on the part of respondent no.1 and so it must go.”

In view of the above observation and the facts of the case before his Lord-ship, in the present case before me the impugned transfer order is not as per circular no.3/2018 dated 22.02.2018, but as per circular no.2/2017 dated 01.02.2017.

Moreover, in the said petition his Lord-ship further observed in para no.5 that,

“having considered the fact that there is also a circular issued by the Vice Chairman from Managing Director of the Corporation for taking effective steps in order to curb the menace of corruption, this time this Court would refrain from imposing any costs upon the respondent.”

Considering above observation, the circular on the basis of which impugned transfer order of complainant is passed is not declared as illegal. Hence, submission of complainant that, the circular dated 01.02.2017 is illegal and transfer under said circular is mala fide is not acceptable. In view of the circular dated 01.02.2017 and considering the misconduct committed by the complainant there is nothing to infer that without any reason complainant came to be transferred. Hence, I hold that, complainant failed to prove that impugned transfer order is mala fide and by issuing it respondent has engaged in unfair labour practice. As such, complainant is not entitled for any relief and by answering issue no.1 to 3 in negative complaint is liable to be dismissed, I pass following order.

ORDER

- i] Complaint is dismissed.
- ii] No order as to costs.

Chandrapur.

Date: 25.06.2019

Sd/-

(Pradeep H. Kale)

Member

Industrial Court, Chandrapur