

BEFORE SHRI P.W. BHUYAR , MEMBER, INDUSTRIAL COURT,

AT : AHMEDNAGAR.

Complaint (ULP) No. 88 of 2014

Uttam Sopana Ransing,
Bhistbag Chowk, Savedi,
Ahmednagar.

.. Complainant

V/s

Divisional Controller,
Maharashtra State Road Transport
Corporation, Ahmednagar, Sarjepura,
Ahmednagar.

.. Respondent

ORDER BELOW EXH.U-2

(Date : 10-12-2014)

1) Complainant Uttam Sopan Ransing has filed complaint against the Divisional Controller, Maharashtra State Transport Corporation, Ahmednagar u/s- 28(1) items- 4 c,d of Sch-II and Items-3,5,7,9 & 10 of Sch-IV of M.R.T.U.& P.U.L.P. Act,1971 along with application for interim relief.

2) It is the contentions of the complainant that the respondent S.T. Corporation has issued transfer order dated 5-11-2014 transferring the complainant from Divisional Workshop, Ahmednagar to Shrirampur with malafide intention illegally and by misusing the powers and authority and that transfer order was served on the complainant on 9-11-2014.

The act of transferring the complainant by respondent S.T. corporation amounts to unfair labour practices under items 4 c,d of Sch-II and items-3,5,7, 9 & 10 of Sch-IV of M.R.T.U.& P.U.L.P. Act, 1971. There is recognized union functioning in the respondent S.T. Corporation prior to 1995. There are several unions functioning in the S.T. Corporation. There are thousands of workers of the union working in the different places of the corporation. Maharashtra State transport Kamgar Sanghata is recognized union in the S.T. Corporation since 1995. The election of such unions are held in every year and the names of office bearers of such unions are informed to the S.T. Corporation to the management. There are service rules of respondent S.T. Corporation and office bearers of the unions are getting protection under such service rules. The respondent S.T. Corporation is governed under Industrial Dispute Act,1947.

3) There are settlements signed between the union and respondent S.T. Corporation from time to time. The said service conditions and wage rise of the union the service rules are also provided for guidelines regarding transfer of the employees working in respondent S.T. Corporation and as per transfer rules the employees have to be transferred in the month of April every year who are due for transfer and

while making such transfer the period to working of such employees at one place is considered and transfer are made on the basis of seniority. At station for Class-III employees period of transfer at one place is 3 years and employees have to give objections at the time of transfer. Maximum period for remaining at one place of Class-III employees of 6 years at one place on the post. There are no rules of the respondent corporation regarding transfer of the employees of promotion. If the employees refused promotion then as per GSO-36 A then the employees goes due in the bottom of seniority in that cadre. There is circular of the S.T. Corporation dated 17-5-2000 which is regarding has to be scrupulously filed by the respondent and these circular has been issued in consultation with the union by S.T. Corporation. There are settlements between the union and S.T. Corporation for a period from 1996 to 2000, 2000 to 2004, 2004 to 2008, 2007 to 2008 to 2009 prior to 31-3-2012 and last settlement was in operation from 1-4-2008. The terms and conditions of the said settlements are remain in operation till new settlement is signed, if the respondent corporation was to make a change in the settlement then unless the management consult with the union, the change cannot be made in the terms and conditions of the settlement. Last settlement was in force from April, 2012 and as per condition 1991.

The changes made from 1996 are there in the settlement as per the said settlement the office bearers of the union are protected employees and that facility is still continued as per Clause-110 B of the settlement dated 1-4-1996 and prior to as per conditions prior to transfer the management has the concerned with the union and transfer has to be issued 7 days prior to transfer order. The said circular dated 17-5-2000 is still in existence and it is obligatory on the respondent to follow that circular.

4) The complainant has joined the respondent S.T. Corporation at Jalana Division on 4-5-1991. He has worked in Jalana Division till 31-12-1995. The complainant has resumed work in the Divisional Workshop office Shrirampur from 1-1-1996 and worked there till 31-12-2009. The complainant from 1-1-2010 being allotted work in Divisional Workshop at Ahmednagar as Artisan-C. There are 2 posts of said Artisan-C vacancies in Division level. The respondent is conducting test for promotional post of said Artisan and after declaring the result of said test. Artisan vacancies and back log as per requirement after consultation of the employees and on the basis of seniority from employees orders are issued. If the promotion is refused then that employees has to be placed at bottom in that cadre. The employee can refuse promotion twice and if the promotion is refused thereafter when

he has held and then he disqualified from promotion. While being post from promotion the person who refused promotion as per the said has been given promotion on the basis of seniority in the list. There were test examination conducting by S.T. Corporation during the period of 27-9-2012 to 4-10-2012 for for post of Head Artisan thereafter the order was issued on 22-10-2012 for the post of fitter from the candidates who succeed in test exam and the complainant was place at Sr. No. 30. The candidates are placed at Sr. No. 1,10,11,15,17,18,21 and 28 have given promotion in the said list the candidates as Sr. No. 2 Shinde, Sr. No. 5 from Sabale and Sr.No.. 12 Sayyad, Sr. No. 16 Sarje and Sr.. No. 22 Pathak have refused the promotion and therefore they are placed at bottom. The complainant has refused his promotion order dated 29-1-2013 and therefore he has been retained at Division Workshop at Ahmednagar. The complainant has refused the promotion as his son is taking education in Government Polytechnic in Diploma in Civil Engineer and his daughter is taking education in Renavikar High School Ahmednagar. Complainant is elected as Secretary of recognized union Maharashtra State Transport Kamgar Union, Divisional Workshop and he is working as Secretary as on today. The post of Head Artisan (fitter) is sanctioned since 1995 to divisional Workshop Shrirampur and said post is

vacant since 1995 till today. Mr. A.Y. Kukkadwal is working as Head Artisan in Divisional Workshop Ahmednagar since 2008 and he has worked more than 6 year on the said post. It was necessary to appoint Mr. A.Y. Kukkadwal in place of complainant but, the transfer of complainant is made due to union rivalry the rule of seniority is not followed while transferring the complainant and thereby violated the settlement. By this application the complainant has prayed for prima facie declaring the transfer order dated 5-11-2014 as illegal, improper and this Hon'ble Court made please to stay the effect and operation of the said order.

5) The respondent filed the say and written statement vide Exh. C-2. It is the contentions of the respondent S.T. Corporation that the contentions in the complaint as well as application for interim relief are not true and correct and they are denied. The complainant has been given promotion by the respondent S.T. Corporation by order dt. 5-11-2014 on vacant post. Considering this position the allegations made by the complainant regarding transfer, breach of service rules and regulations, circulars and settlement being regarding transfer would not be applicable as complainant has been transferred on promotion, therefore prayer made by the complainant in the application for interim

relief is wrong and illegal and should not be considered. In these facts and circumstances complaint also is not tenable in law.

6) The contentions in para No.2 that the complainant has been transferred by order to 5-11-2014 from Divisional Workshop, Ahmednagar to Regional Workshop at Shrirampur is made illegally and with malafide intention against the service rules and in violation of the settlement and therefore it amounts to an unfair labour practices under Items-4 (C)(D) of Sch-II and Items-3,5,7,9 & 10 of Sch-IV of the Act, 1971 is not correct and respondent should be restrained from transferring the complainant is not correct.

7) The contentions in para No.3-c that the complainant is a protected employee as per Industrial Disputes Act and Service Regulations being office bearer of the union is not correct and is not agreeable. The contentions that as per rules of respondent S.T. Corporation those employees who are due for transfer, list of employees is prepared by the corporation in the month of April and before commencement of the academic year (education) the transfers are made. The transfers are made on the basis of seniority of the employees at one station and this contention is not correct and these rules are not applicable to the promotion order dt. 5-11-2014. Contentions in para No.3b that the

period of Class-III employees at one station is of three years. The Class-III employee is asked three options for transfer and after considering option those transfer is made. The maximum period of Class-III at one station is six years. All these contentions are not applicable for promotion.

8) The contentions in para 3b that there are no rules and regulations of the respondent S.T. Corporation regarding transfer of employees on promotion. There is circular of respondent S.T. Corporation dt. 17th May, 2000 regarding transfer of office bearers has to be followed scrupulously and these rules are still in existence is not correct. The another contentions that the last settlement has come in operation from April, 2012 and as per the terms and conditions Clause-91 the changes made in the settlement from 1996 are incorporated in the said settlement and those conditions which are not amended are also not stated in this settlement is not correct and therefore denied.

9) The contentions that the union office bearers are the protected employees and prior to transfer the office bearers of such union then it is necessary to consult with the union is necessary as per the Clause-110(B) as per settlement dt. 1-4-1996. The office bearer i.e. Depot Secretary, Divisional Secretary, President prior to transfer of Dy. Secretary

consultation with union is necessary is not correct.

10) The contentions that the transfer order has to be issued 7 days prior to its effective date and such provision is made in the settlement and the circular of the respondent S.T. Corporation dt. 17-5-2000 has been issued to be followed by the officer scrupulously is not correct and they are denied.

11) Contentions in para 3-c that the complainant joined with the respondent S.T. Corporation from 4-5-1991 at Jalana Division of the respondent. He was at Jalana Depot till 31-12-1995 and thereafter from 1-1-1996 resumed the work at Shrirampur Workshop of Divisional Office, Ahmednagar. The complainant has worked at Divisional Workshop till 31-12-2009 and thereafter he has been working with the Divisional Workshop at Ahmednagar from 1-1-2010 as Artisan-C are not correct. The contentions that there is provision for refusing promotion twice and if promotion is refused, thereafter that employee is disqualified for getting promotion. The complainant is at Sr. No. 30 of the promotion list. The employees at Sr. No. 1,10,11,15,17,18,21 & 28 have been promoted. In the said list Sr. No.2 Shinde, Sr. No. 5 Sabale, Sr. No.7 Patole, Sr. No. 12 Sayyad, Sr. No. 16 Sarje, Sr. No. 22 Pathak have refused promotions in their first chance and second time they are

numbered in the waiting list are above the complainant. The complainant has wrongly and incorrectly stated that names of above employees passing test for promotion the said employees who have passed test for promotion and the post for which the complainant has passed test for promotion are independent and not applicable in case of the complainant.

12) The contentions in para 3-C that the complainant is not a protected employee in such circumstances the complainant is not protected. The name of the complainant in promotion list is at the bottom and from 1995 till this date the post is vacant. Mr. Kukkadwal is working at Ahmednagar Divisional Workshop as Head Artisan since last six years. The contentions of the complainant that prior to issuing the order dt. 29-1-2013 and 5-11-2014 the respondent should have issued the transfer order of Mr. Kukkadwal and the complainant shall have posted at Division Office Workshop at Shrirampur and not correct and not applicable and therefore denied. The contentions that the union had made a complaint on 7-8-2014 for transferring the complainant from Ahmednagar to Shrirampur due to union rivalry and on the part of the complaint issued the transfer order dt.5-11-2014 for transferring him from Ahmednagar to Shrirampur which has been served on the

complainant on 9-11-2014. The said order is not transfer order but promotional order and contentions made in this regard are not true and correct but false and are denied.

13) The respondent S. T. Corporation had not issued the transfer orders to the other employees in waiting list of promotion as to seniority. The complainant being the Secretary of the recognized union at Divisional Workshop and in consultation with the union the transfer order has been issued and therefore there is violation of the settlement. The respondent had not transferred the complainant on the basis of complaint of the union and there is no complaint of any union. The contentions in this regard are false and denied. The contentions that there are three sanctioned posts of Artisan-A Mechanic at Jamkhed Depot. Mr. Virkar has been posted on the post of Head Artisan at Jamkhed Depot. The contentions in para No. 3d of the complaint that complainant being Head Artisan Fitter only selected candidate and therefore being only one sanctioned post at Shrirampur Workshop and that post being since 1994, if complainant is not transferred there, then the respondent corporation would suffer irreparable loss. Mr. Kukkadwdal even though due for transfer has not been transferred only because there is complaint of unrecognized union and to help the union the transfer of the complainant

is made with hastily and with malafide intention. The children of the complainant are taking education in this academic year and for their interest with consultation with the union the promotion order of the complainant has been issued by transferring him from Ahmednagar to Shrirampur, the said contentions are not correct and therefore denied. The contentions in para 3d that there is no consultation with the recognized union prior to issuing of promotion order as the complainant is a protected employee. In the transfer order period of resuming is not stated. It appears that the complainant is working in Divisional office at Ahmednagar and the promotion order of the complainant is issued by using employers right, mis- using the powers to promote or to transfer of protected employee as per the settlement 1996 has been cancelled.

14) The contentions in para 3-D that transfer by respondent S. T. Corporation is done in the month of April and no transfer order can be issued to the promotion and even the post of Head Artisan at Shrirampur Division office is vacant since 1995 and Mr. Kukkadwal being due for transfer and complainant being protected employee and children being taking education at Ahmednagar, with consultation with the union without specifying period for joining only to ignore the importance of the recognized union and to please the unrecognized union, the complainant

has been transferred to Workshop at Shrirampur vide order dt. 5-11-2014, this contention is wrong and not applicable. It is false that there was no consultation with the union regarding transfer and therefore the transfer order dt. 5-11-2014 is illegal and against the circular, rules and regulations and settlement amounts to unfair labour practice under Items-4c, 4d of Sch-II and Items-3,5,7,9 & 10 of Sch-IV of the Act. Complainant has been promoted on vacant post and complainant is not a protected employee and all the contentions in para 3d are not correct and therefore denied the prayer clause.

15) The respondent has not committed any illegality in transferring the complainant at Shrirampur Workshop. There is no illegal intention of the respondent in transferring the complainant on promotion to Shrirampur from Divisional Workshop. The complainant has raised false contentions in this regard. The complainant has not made prima facie case. The balance of convenience does not lie in favour of the complainant. Therefore, application for interim relief should be rejected. The complainant is not only candidate who passed the test for promotion of Head Artisan Fitter and the posts in Ahmednagar Division being only one post, the complainant was given promotion by order dt. 5-11-2014 on the post of Head Artisan (Fitter) and that promotion was refused by

the complainant due to educational problems of his children. Thereafter, as per service rules, due to administrative reasons, thereafter after two years when the complainant was given promotion by order dt. 5-11-2014 on vacant post, the complainant has refused the promotion. The complainant has made false allegations regarding his transfer dt. 5-11-2014. The complainant is office bearer of recognized union and he can read and write properly, therefore he is aware about the order issued by the respondent whether it is promotional order or it is transfer order. In fact, those facilities available to the protected employees regarding transfer has been cancelled by settlement of 2012 and therefore the complainant cannot claim any protection as a protected employee in transfer. As the complainant had refused promotion, therefore the order dt. 5-11-2014 cannot be implemented. There was no reason to file the present complaint. The reason given by the complainant for filing complaint is not true and correct. The respondent has not transferred the complainant, but the complainant has been promoted on higher post of Artisan A (Fitter). The complaint is not maintainable in law. The complainant cannot claim any relief as claimed in this complaint. As the complainant has refused the promotion, then he has to be placed at the bottom in the seniority. The post of Head Artisan (Fitter) at Ahmednagar

would become vacant in future and thereafter pressurizing the management through union, then complainant would be in a position to get promotion at Division office Workshop, Ahmednagar with this ulterior motive the present complaint has been filed. Therefore, considering these all aspects the Hon'ble Court should reject the application for interim relief. If the Hon'ble Court stays the transfer order of the complainant, then the respondent S. T. Corporation would suffer irreparable loss and administration of the respondent S. T. Corporation would be definitely affected.

16) In this background following points arise for my determination to which I have recorded my findings as under-

Sr.No.	Points	Finding
1	Whether the application for interim relief is maintainable in law ?	In affirmative.
2	Whether the complainant has made out prima facie case for interim relief as claimed ?	In negative.
3	Whether the complainant is entitled for relief as claimed ?	In negative.
4	What order ?	As per final order.

REASONS

17) I have gone through the entire record. Perused application for

interim relief, say and documents and heard learned counsel Shri. K.Y. Modgekar for the complainant and learned counsel Shri. B.R. Wagh for the respondent.

18) The learned counsel Shri Modgekar submitted that respondent S.T. Corporation prima facie has indulged in unfair labour practice under items 3,5,7, 9 & 10 of Sch-IV of M.R.T.U. & P.U.L.P. Act ,1971 by transferring the complainant from Divisional Workshop,Ahmednagar to Workshop at Shrirampur on the post of Head Artisan and therefore, complainant should be granted interim relief. In support of his contentions he placed reliance of the following judgments-

- a) **M.S.R.T.C. Kamgar Sanghatana Vs. M.S.r.T.C. (W.P. No.6108 of 1999)**
- b) **S. M. Waghmare Vs. State of Maharashtra (2010-(125)-FLR,p.502)**
- c) **Colour-chem Ltd. Vs. A.L. Alaspurkar (1998-(I)-CLR, p.838)**
- d) **Mazdoor Congress Vs. S.R. Shinde (1982-(54)-FLR, p.243)**
- e) **Akhil Maharashtra Kamgar Union Vs. Warden & Co. Ltd. (1996-(I)-CLR, p.212)**
- f) **Suptd. Engineer, P.W.D. Vs. Kokan Sarvajanik Bandhakar Va Patbahndhare Kamgar Sangh (2003-(I)-Bom. LC.,p,428)**
- g) **Koshi Project Workers Association Vs. State of Bihar (2007-(113)-FLR, p.549).**

19) The said contentions are disputed by the learned counsel Shri B.R. Wagh appearing for the respondent S.T. Corporation. He submitted that S.T. Corporation had not committed any prima facie unfair labour practices under Items-3,5,7,9 & 10 of Sch-IV of the Act by transferring the complainant from Ahmednagar Workshop to Shrirampur as transfer of the complainant was made on promotion ground and due to administrative exigencies and therefore, the application for interim relief should be rejected.

20) From record it appears that respondent S.T. Corporation had transferred the complainant from the post of Head Artisan from Workshop, Ahmednagar to Workshop, Shrirampur by order dated 5-11-2014 on promotion. It has come on record that complainant was only candidate passed in the test conducted by the respondent S.T. Corporation of the of Artisan-A and the complainant in order to avoid the transfer order on the ground of personal reason wants to stay at Ahmednagar and he is trying for the same and therefore approached this Court for seeking interim relief. If complainant is not posted at Shrirampur, then as nobody is there to send at Shrirampur and the post is vacant since a long time, the complainant cannot avoid the transfer order. The rules and regulations of respondent S.T. Corporation

regarding transfer does not speak anything regarding the guidelines of transfer of employee on promotion. When the employee has been transferred on promotion, he cannot avoid the transfer. He must have to report for work as per transfer order. The learned counsel Mr. Modgekar appearing for the complainant submitted that the post of Artisan-A at Shrirampur is vacant since last several years and the persons sent there on the post of Artisan- A had worked only for one month and the transfer of the complainant is made by the respondent respondent S.T. Corporation with malafide intention as the complainant being office bearer of the Maharashtra State Transport Kamgar Sanghatana and working in the capacity of Secretary. There is complaint made by the Maharashtra Nav Nirman Sena union therefore respondent S.T. Corporation has immediately issued transfer order.

21) The contentions does not appear to be correct as the respondent S.T. Corporation has produced the note sheet regarding the transfer of the complainant on promotion. The note sheet produced at Exh. C-4 does not show that only because complaint was lodged by Maharashtra Nav Nirman Sena on 7-8-2014, the respondent S.T. Corporation has immediately posted the complainant on the post of Head Artisan at Shrirampur. It is also not correct that there is requirement of prior

discussion with the union before issuing transfer of employee or office bearer of the union as per the settlement of 1996 as these terms have been deleted after discussion of the union from the settlement of 2012. The learned counsel Mr. Modgekar also contended that transfer of the complainant is not made on the basis of seniority and the senior person Mr. Kukkadwal in the category of the complainant is interested at Ahmednagar Workshop and to please him and at the behest of the complaint by Maharashtra Nav Nirman Sena, complainant has been transferred to Shrirampur by respondent S.T. Corporation hurriedly and hastily and with malafide intention. The said contention does not appear to be correct at this juncture unless this court goes into the oral and documentary evidence on merit. At this juncture I find that, complainant has already refused the promotion earlier and he being the only one person selected by the selection committee for the post of Artisan- A, therefore the respondent cannot postpone transfer of the complainant on promotion to Workshop Shrirampur. It has also come on record that some person Mr. Berad incharge as reflected in the complaint of Maharashtra Nav Nirman Sena is sent on deputation to work at Shrirampur Workshop for time being. The complainant has put forth the personal difficulty of not transferring him immediately on the ground

that his son is studying in Government Polytechnic, Ahmednagar for 3rd Year Diploma in Civil Engineering and daughter is studying in 9th Std. in Renavikar High School, A.nagar and therefore for time being the transfer order should not be given immediate effect and such application had been filed by him to the S. T. Corporation. Considering this difficulty of complainant, if the transfer of the complainant is not given immediate effect till end of April, 2015, no harm and prejudice would cause to the respondent S. T. Corporation. Therefore, in the facts and circumstances following order is passed-

ORDER

- 1) The application for interim relief stands rejected.
- 2) Ad-interim stay granted by this court on 14-11-2014 shall continue till end of April, 2015. Respondent S. T. Corporation is at liberty to give effect to the transfer order of the complainant after end of April, 2015.
- 3) No order as to costs.

Ahmednagar.
Date:-10-12-2014.

(P. W. Bhuyar)
Member,
Industrial Court, Ahmednagar.