

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO. 06 OF 2022**

**WITH**

**MISC. APPLICATION NO. 469 OF 2022**

**IN**

**ORIGINAL APPLICATION NO. 536 OF 2021**

**DISTRICT : AHMEDNAGAR**

**The Charity Commissioner,** )  
Maharashtra State, Mumbai, )  
Dharmaday Ayukta Bhavan, )  
2<sup>nd</sup> floor, Sasmira Building, )  
Worli, Mumbai-400 030. )

Through

**The Deputy Charity Commissioner,**  
Maharashtra State, Mumbai.

.... **APPLICANT**

**V E R S U S**

1. **Mr. Dnyaneshwar S/o Shivnath Andhale,** )  
Age : 43 years, Occu. : Service, )  
R/o. Public Trust Registration Officer,  
Ahmednagar, Tal. District : Ahmednagar.)
2. **The Secretary,** )  
Law & Judiciary Department, )  
State of Maharashtra, )  
Mantralaya, Madam Cama Road, )  
Mumbai-32. )
3. **Joint Charity Commissioner,** )  
Pune Region, 1, Dhole Patil Road,) )  
Sangamwadi, Pune, Maharashtra-411001.)
4. **The Deputy Charity Commissioner,**)  
Public Trust Registration Office, )  
2<sup>nd</sup> Floor, Central Administrative )  
Building, In front of Akashwani, )  
Savadi, Ahmdnagar-414003. )

**...RESPONDENTS**

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**APPEARANCE** : Shri I.S. Thorat, Presenting Officer for  
Applicant in Review / respondents in O.A.  
: Shri R.A. Joshi, Advocate for respondent No. 1  
in Review / applicant in O.A.  
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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J).**

**DATE** : **15.12.2022.**  
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**ORDER**

1. This Review Application is made on behalf of respondent No. 2 i.e. Charity Commissioner, Maharashtra State, Mumbai in order dated 21.09.2022 disposing of O.A. No. 536/2021 filed by the respondent No. 1 herein i.e. Mr. Dnyaneshwar Shivnath Andhale seeking appropriate order or direction against the applicant / respondent No. 2 to consider the respondent No. 1 / applicant for transfer on the post of Inspector at Sangali in the light of the police decision reflected in Government Circular dated 27.11.1997 (Annexure A-2) and Government Resolution dated 09.04.2018 (Annexure A-4) popularly known as couple convenience and transfer accordingly.

2. After considering the pleadings and hearing both sides, the said O.A. was decided by me the order dated 21.09.2022 by passing the following operative order :-

**“O R D E R**

*The Original Application No. 536/2021 is allowed and stands disposed of with following directions :-*

*(A) The respondent No. 2 i.e. the Charity Commissioner, Maharashtra State, Mumbai is directed to consider the applicant for his transfer on the post of Inspector at Sangali in the light of the Government Circular dated 27.11.1997 (Annexure A-2) and G.R. dated 09.04.2018 (Annexure A-4) both issued by the General Administration Department, State of Maharashtra dealing with couple convenience within a period one month from the date of this order.*

*(B) There shall be no order as to costs.*

3. Review of the said order dated 21.09.2022 passed in O.A. No. 536/2021 is sought on the ground that the respondent No. 1 / applicant said to have suppressed the fact that the Government Circular dated 27.11.1997 (Annexure-D, which is Annexure A-2 in O.A.) referred to in operative part of the order has been superseded by the subsequent Government Circular dated 07.06.2006 (Annexure-E) and that G.R. dated 09.04.2018 (Annexure A-4 in O.A. and Annexure-C in Review) referred to in operative part of the order in O.A. was not applicable to mid-term transfer.

4. I have heard the arguments advanced at length by Shri I.S. Thorat, learned Presenting Officer for the applicant / respondent No. 2 on one hand and Shri R.A. Joshi, learned Advocate for the respondent No. 1 / applicant on the other hand.

5. Admittedly, the respondent No. 1 / applicant is working as Inspector on the establishment of the respondent No. 4 herein and also in O.A. i.e. The Deputy Charity Commissioner, Public Trust Registration Office, Ahmednagar in Review and O.A. He made applications for his transfer at Sangli on the ground of couple convenience and other grounds, which applications are dated 20.01.2021, 22.03.2021 and 05.08.2021 (Annexure A-1, A-5 and A-6 respectively in O.A.).

6. It is also a fact that by communication dated 12.08.2021 (Annexure A-7 in O.A.), the applicant/ respondent No. 2 in Review communicated to all the learned Joint Charity Commissioners in various divisions that all the request applications made to the office of the applicant/respondent No. 2 from all over Maharashtra were filed. The respondent No. 1 /applicant in O.A. pleaded that before issuance of the communication dated 12.08.2021 (Annexure A-7 in O.A.) as

above, various request transfers were allowed as per the transfer order dated 05.08.2021 (Annexure A-9 in O.A.).

7. The respondent No. 1/applicant in O.A. also placed on record the order dated 05.08.2021 issued by the applicant / respondent No. 2. Admittedly, the applicant was seeking mid-term request transfer on the ground of couple convenience and some other grounds of education of her daughters and illness of his old aged mother. In view of the same, considering the scope of Government Circular dated 27.11.1997 and G.R. dated 09.04.2018 in respect of couple convenience, the Original Application was disposed of by issuing the order dated 21.09.2022, operative part of which is already reproduced.

8. As stated earlier, review is sought mainly on the ground that the Government Circular dated 27.11.1997 relied upon by the applicant was superseded by subsequent Government Circular dated 07.06.2006 issuing after enactment of the Transfer Act 2005. Secondly on the ground that the G.R. dated 09.04.2018 relied upon by the applicant was not applicable to the mid-term transfer.

9. As regards suppression of the facts, learned Advocate for the respondent No. 1 / applicant in O.A. strenuously urged

before me that what amounts to suppression of material fact is laid down in the citation of the Hon'ble Apex Court reported in **AIR 2004 Supreme Court 2421** in the matter of **M/s. S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others.**

In para No. 13 thereon it is laid down as follows :-

*“13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken.”*

In view of above-said ratio, I have to consider as to whether the applicant has obtained the order in O.A. No. 536/2021 by suppressing the material fact. It is a fact that the respondent No. 1/applicant in O.A. relied upon the Government Circular dated 27.11.1997, which specifies various criteria for various transfer and policy of the Government for considering the ground of couple convenience and on the ground that the Government servant is guardian of slowwitted child.

10. In Review Application only the applicant / respondent No. 1 has placed on record the Government Circular dated 07.06.2006 (Annexure-E), wherein it is mentioned as follows :-

*“२.....शासकीय कर्मचा-यांच्या बदल्या करण्यासंदर्भात या विभागाने सदर अधिनियम अस्तित्वात येण्यापूर्वी निर्गमित केलेले सर्व आदेश दिनांक १ जुलै, २००६ पासून अधिक्रमित झाले असे समजण्यात यावे.”*

11. It is further a fact that the respondent No. 1 / applicant also relied upon the G.R. dated 09.04.2018 (Annexure A-4 in O.A. and Annexure-C in Review). In specification sheet-2 to Appendix-1 of that G.R. the priorities are mentioned for general transfer on counseling. In the said G.R. dated 09.04.2018 under the caption of kinds for transfers by counseling, it is mentioned that the mid-term transfer cannot be done as per the policy of counseling. It is however, mentioned therein that such mid-term transfer including the request transfers can be done by taking into consideration the administrative exigency, reason for transfer and availability of vacancies. In view of that, it cannot be said that this G.R. dated 09.04.2018 cannot be referred for mid-term transfer, wherein priorities of transfers are reflected. If this G.R. is read in another sense, ground of couple convenience as envisaged in the said specification sheet-2 in Appendix-1 cannot be taken into consideration for request transfer at all.

But that is not so. In view of the same, in my considered opinion, the said G.R. dated 09.04.2018 relied upon by the applicant and considered by this Tribunal was relevant for considering the case of the applicant.

12. So far as the Government Circular dated 27.11.1997 relied upon by the original applicant as Annexure A-2 in O.A. and Annexure-D in Review is concerned, even if the contention of the applicant / respondent No. 2 is taken into consideration that by subsequent Government Circular dated 07.06.2006 (Annexure-E in Review) earlier Government Circular dated 27.11.1997, which was issued in respect of the transfer was superseded after enactment of the Transfer Act, 2005, which came into force on 01.07.2006, it can be said to have been superseded to the extent of the provisions of transfer made in the Transfer Act, 2005.

13. It is pertinent to note here that the ground of couple convenience and guardian of slowwitted children is a policy of the Government for considering the transfer either in general or mid-term transfer. If the said policy was also washed away by Government Circular dated 07.06.2006, then the said policy of the Government would not have been there from 07.06.2006 till issuance of the G.R. dated 09.04.2018. In fact, the list of such



grounds has gone up from 2 grounds to 6 grounds in the specification sheet-2 in Appendix-1, which include two of the grounds which were also there in the Government Circular dated 27.11.1997. While deciding the O.A. No. 536/2021 only policy of couple convenience was taken into consideration. The said ground said to have been merged into G.R. dated 09.04.2018.

14. It was possible for the applicant / respondent No. 2 to bring subsequent Government Circular dated 07.06.2006 to the notice of this Tribunal at the time of hearing of the O.A. No. 536/2021. However, they failed to do that. In the circumstances as above, in my considered opinion, not bringing to the notice of Government Circular dated 27.11.1997 by the respondent No. 1 / applicant during the hearing of the O.A. does not amount to suppression of material fact as per the parameters laid down by the Hon'ble Apex Court in the matter of **M/s. S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others.** (cited supra).

15. Even if in the absence of Government Circular dated 27.11.1997, it was possible for the Tribunal to consider the case of the applicant on the ground of couple convenience, which is envisaged in G.R. dated 09.04.2018. In the said G.R. dated

09.04.2018, what is laid down is mid-term transfers cannot be done as per the procedure laid down for counseling in general transfers. The ground of couple convenience is a policy of the Government and there is no specific provision in the Transfer Act, 2005 regarding that. In view of the same, the said ground can be said to have been available for general, as well as, mid-term transfers. At the most, it can be said that in view of the clear-cut G.R. dated 09.04.2018 now the reference to Government Circular dated 27.11.1997 (Annexure A-2 in O.A.) would be inconsequential and therefore, in the operative part of the order dated 21.09.2022 in O.A. No. 536/2021 reference to the said Government Circular dated 27.11.1997 can be deleted and reference of G.R. dated 09.04.2018 can be made to the extent of ground No. 5 in specification sheet-2 in Appendix-1 of G.R. dated 09.04.2018. Hence, the Review Application can be disposed of by passing the following order :-

**ORDER**

1. The Review Application is partly allowed.
2. The order dated 21.09.2022 passed in O.A. No. 536/2021 is modified as under :-

*“ The Original Application No. 536/2021 is partly allowed and stands disposed of with following directions :-*

(A) *The respondent No. 2 i.e. the Charity Commissioner, Maharashtra State, Mumbai is directed to consider the applicant for his transfer on the post of Inspector at Sangali in the light of the ground No. 5 in specification sheet-2 in Appendix-1 of G.R. dated 09.04.2018 (Annexure A-4) issued by the General Administration Department, State of Maharashtra dealing with couple convenience within a period two months from the date of this order.*

*There shall be no order as to costs.”*

3. In view of the order passed in the Review Application, the M.A. No. 469/2022 taking out for stay stands disposed of.
4. No order as to costs.

**PLACE : AURANGABAD.**

**DATE : 15.12.2022.**

**(V.D. DONGRE)  
MEMBER (J)**