

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 163 OF 2023

DISTRICT:- NANDED

Shantaram Murlidhar Shinde,
Age-48 years, Occu. Service as
Head Clerk (Under Suspension),
In the office of Assistant Commissioner,
Social Welfare Office, Nanded,
District Nanded. R/o. 77, Attar Nagar,
Vijapur Road, Solapur,
District Solapur.

.. **APPLICANT**

V E R S U S

1) The State of Maharashtra,
Through its Principal Secretary,
Social Justice & Special Assistance
Department, Madam Cama Road,
Hutatma Rajguru Chowk, Mantralaya,
Mumbai-400032.

02. The Commissioner for Social Welfare,
Social Welfare Commissionerate,
3rd Church Road, Behind G.P.O.
M.S. Pune-1.

.. **RESPONDENTS**

APPEARANCE : Shri V.B. Wagh, learned counsel for
the applicant.

: Shri I.S. Thorat, learned Presenting
Officer for the respondent authorities.

**CORAM : JUSTICE SHRI P.R. BORA, VICE CHAIRMAN
AND
: SHRI VINAY KARGAONKAR, MEMBER (A)**

DATE : 05.02.2024

ORAL ORDER

(Per : Justice Shri P.R. Bora, Vice Chairman)

Heard Shri V.B. Wagh, learned counsel for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondent authorities.

2. The applicant has preferred the present Original Application seeking cancellation of the order dated 15.09.2022, whereby respondent No. 2 has cancelled the promotion of the applicant to the post of Office Superintendent and has reverted him to the post of Head Clerk. Against the said order, the applicant had preferred the departmental appeal which came to be rejected vide order passed on 2/3.3.2023 by respondent No.

1. The order passed in appeal has also been challenged by the applicant.

3. The applicant was working on the post of Head Clerk w.e.f. 05.11.2018 at 1000 Boy's Hostel, Unit-1, Latur. Vide order dated 20.07.2022 the applicant was promoted to the post of Office Superintendent and was given posting at Hingoli as District Welfare Officer, Zilla Parishad. The posting given as aforesaid since was inconvenient for the applicant, immediately on the next day i.e. on 21.07.2022 he preferred representation praying for change in his posting and requested for his posting

at Solapur where promotional post was lying vacant. Change in posting was sought by the applicant on the ground of illness of his parents. The said request, however was not considered and vide order dated 15.09.2022 the order of promotion came to be cancelled. The said order was challenged by the applicant previously by filing O.A. No. 870/2022, however, in the said matter when it was noticed by the Tribunal that the applicant had preferred an appeal against the said order, which was pending for consideration, the said O.A. was disposed of by giving directions to the appellate authority to decide the said appeal as expeditiously as possible and communicate the decision thereof to the applicant. The said appeal came to be rejected vide order passed on 02/03.02.2023. As such, aggrieved by the original order of cancellation dated 15.09.2022 and appellate order dated 02.03.2023 the applicant has approached this Tribunal.

4. Shri V.B. Wagh, learned counsel appearing for the applicant submitted that the order of promotion granted in favour of the applicant has been cancelled by the respondents in utter disregard of the principles of natural justice and without giving any opportunity of hearing to the applicant. Learned counsel pointed out that on the very next day after the

posting order was received to the applicant, he had forwarded the request letter requesting for giving him posting at Solapur instead of at Hingoli. Learned counsel submitted that vide communication dated 02.09.2022 the applicant was communicated that his request for change in posting has been rejected. Learned counsel further submitted that the applicant submitted reply to the said communication on 06.09.2022 and within few days thereafter i.e. on 15.09.2022 the order of promotion came to be cancelled.

5. Learned counsel submitted that the applicant being President of Employees' Union, the respondents have taken such harsh action against the applicant without following the principles of natural justice. Learned counsel submitted that in his communication dated 06.09.2022 the applicant had in many words communicated to the respondents that seeking change in his posting may not be taken to be denial to accept the promotion and further that the applicant was keen to join at the transferred place, but for reasons stated by him in his earlier application his request for posting at Solapur be reconsidered. Learned counsel submitted that without considering the said request the order of promotion has been cancelled.

6. Learned counsel further submitted that even the appellate authority failed in appreciating the submissions made on behalf of the applicant and has wrongly rejected the appeal filed by the applicant vide order passed on 02.03.2023. Learned counsel further submitted that in many cases the favourable orders have been passed and the transfer/posting orders are modified by the respondents. Learned counsel submitted that the respondents have not provided any specific reason for not considering the request of the applicant to give him posting at Solapur though promotional post is available at Solapur. Learned counsel in the circumstances prayed that the orders dated 15.09.2022 and 02.03.2023 be quashed and set aside and the respondents be directed to consider the request of the applicant for change in his posting on the promotional post.

7. Learned Presenting Officer has opposed the submissions made on behalf of the applicant. Respondent No. 2 has filed affidavit in reply on behalf of the respondents and had thereby resisted the contentions raised in the O.A., as well as, the prayers made therein. Referring to the averments in the affidavit in reply filed on behalf of respondent No. 2, learned P.O. submitted that in the order of promotion it has been specifically stated that the applicant is under an obligation to

join the promotional post at the place of his posting within 30 days from the date of such order. Learned P.O. submitted that it has also been observed in the said order that if the applicant fails to join within the given period, it would be presumed that the applicant is not intending to accept the promotion and consequently note will be taken in the service book of the applicant, in that regard.

8. Learned P.O. further invited our attention to the letter dated 02.09.2022 and pointed out that in the said letter the applicant was duly cautioned about the consequences of his not joining at the place where he was posted after the promotion. Learned P.O. pointed out that despite giving caution to the applicant, when he did not join at the place where he was posted on promotion, there was no other alternative except to cancel his order of promotion and the same was cancelled vide order dated 15.09.2022. According to the learned P.O., no error has been committed by the respondents in cancelling the said order of promotion. Learned P.O. submitted that in any case the applicant should have reported to the place where he was posted on promotion, may be, by reserving his right to pursue his application for change in posting and by not doing so the applicant has committed breach of the terms and conditions in

the order of promotion and, as such, according to the learned P.O., no error can be said to have been committed by the respondents. Learned P.O. in the circumstances prayed for rejecting the application.

9. We have duly considered the submissions made on behalf of the applicant, as well as, the State authorities. We have also gone through the documents placed on record by the parties.

10. In the present O.A. initially the prayer was for setting aside and/or revoking the order of suspension and for grant of consequential relief. Subsequently by way of amendment prayer clauses A-1 and A-2 have been added. Learned counsel for the applicant at the commencement of his arguments submitted that since the applicant has been reinstated in service in the meanwhile period, the applicant is not pressing those prayers and is pressing relief as claimed in prayer clauses 'A-1' and 'A-2'.

11. It is not in dispute that the applicant was working in the cadre of Head Clerk and vide order dated 20.07.2022 he was promoted to the post of Office Superintendent and vide the same order he was given posting at Hingoli as District Social

Welfare Officer, Zilla Parishad, Hingoli. There is further no dispute that on 21.07.2022 the applicant made a representation seeking change in his posting on the ground of illness of his parents and their treatment being going on at Solapur. According to the applicant, the promotional post was vacant at Solapur. The said contention of the applicant has not been denied by the respondents. There is further no dispute that vide communication dated 02.09.2022 the request made by the applicant for change in his place of posting was rejected by the respondents. Perusal of the contents of the said letter reveals that in the said letter the applicant was cautioned about the consequences of his not joining on the promotional post even after rejection of his request. It is true that on 06.09.2022 the applicant gave some clarification in respect of the said communication dated 02.09.2022. The order was eventually passed on 15.09.2022 whereby promotion granted to the applicant to the post of Office Superintendent has been cancelled by the respondents. There is further no dispute that the appeal was preferred by the applicant against the said order and the appellate authority rejected the said appeal vide order dated 02.03.2023.

12. The question which falls for our consideration is whether the order passed by the respondents on 15.09.2023, thereby cancelling the promotion granted to the applicant on the post of Office Superintendent can be sustained? Rival contentions are made in this regard. According to the applicant, no such order could have been issued by the respondents without conducting a regular enquiry in that regard and without giving full opportunity of hearing to the applicant. As against it, the respondents have taken a stand that in the order of promotion itself when it was stipulated that the employee concerned, who would not join the post on which he has been promoted within the period prescribed in the said order, the order of promotion shall be deemed to have been refused/denied by the applicant and hence would be cancelled.

13. We have perused the order of promotion dated 20.07.2022. We deem it appropriate to reproduce the relevant clause in the promotion order herein-below:

“२. उपरोक्त कर्मचा-यांनी पदोन्नतीच्या पदावर हे आदेश निर्गमित झाल्यापासून ३० दिवसांचे आत रुजू व्हावे, अन्यथा या कालावधीत रुजू न झाल्यास संबंधीत कर्मचा-यांना पदोन्नतीचा कोणताही हक्क राहणार नाही. तसेच पदोन्नतीच्या पदावर रुजू न झाल्यास/पदोन्नती नाकारल्यास त्यांनी तात्काळ त्यांचे कार्यालयामार्फत आयुक्तालयास कळविण्यात यावे व सदरहू आदेशान्वये पदोन्नती नाकारल्याची नोंद कार्यालय प्रमुख यांनी संबंधित कर्मचा-यांचे मूळ सेवापुस्तकात घ्यावी.”

14. According to the applicant, he did not deny the promotion but had sought the change in his posting i.e. instead

of Hingoli he sought posting at Solapur. The fact, however, remains that he did not join the place where after promotion he was given posting, within the period of 30 days. By the letter dated 02.09.2022, the respondents had duly cautioned the applicant that if he fails to join on the promotional post the consequences would follow. The applicant though again submitted his explanation, the impugned order was passed on 15.09.2022, thereby impliedly rejecting the said explanation.

15. In the present matter, according to us, what is relevant is the 'conduct' of the applicant. We do not dispute his right to make a representation seeking change in his posting. We also do not dispute that he may be having genuine difficulties requiring him to ask for the posting at Solapur. But in all these circumstances also the applicant should not have failed in discharging his obligation to join the promotional post within the stipulated period may be by reserving his right to pursue his request even thereafter. In no case the applicant could have remained away from the duties. Since the applicant did not join on the promotional post within the period as prescribed in the order dated 20.07.2022 and even thereafter as directed in the communication dated 02.09.2022, wherein he was duly cautioned about the consequences of failing to join on

the promotional post, as contended by the respondents, they were constrained to issue the order dated 15.09.2022 and thereby to cancel the promotion granted to the applicant. Having considered the facts as aforesaid, it does not appear to us that the respondents have committed any error in cancelling the promotion awarded to the applicant and to revert him to his erstwhile post vide the impugned order. The appellate authority also therefore cannot be said to have erred in dismissing the appeal preferred by the applicant.

16. The applicant has alleged that the principles of natural justice have not been followed while issuing the impugned order by the respondents. Having regard to the facts on record, it is difficult to agree with the objection as has been raised by the applicant. As we have noted hereinabove, vide letter dated 02.09.2022 the applicant was duly cautioned about the consequences of his failure in joining on the promotional post, the applicant did not join in spite of receipt of the aforesaid letter. The respondents were not expected to do anything more than what they have done.

17. Having considered the facts as aforesaid, it does not appear to us that any case is made out by the applicant for grant of the relief as has been claimed by him in the present

Original Application. In the result, the following order is passed: -

O R D E R

The Original Application is dismissed however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

O.A.NO.22-2021(DB)-2024-HDD-D.E.