

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

ORIGINAL APPLICATION NO. 484 OF 2023

(Subject – Transfer)

DISTRICT : JALGAON

Hemant s/o Ramdas Deore,)
Age : 51 years, Occu. : Service as)
Administrative Officer Group-A, Office of Joint)
Director, Higher Education, Jalgaon,)
R/o : 79, Draupadi Nagar, Behind Navjivan)
Super Shop, Opp. Manraj Park, Jalgaon,)
Tq. and Dist. Jalgaon.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Higher and Technical Education Department,)
4th Floor, Extension Building,)
Mantralaya, Mumbai-32.)
2. **The Deputy Secretary,**)
Higher and Technical Education Department,)
4th Floor, Extension Building,)
Mantralaya, Mumbai-32.)
3. **The Director of Education,**)
Directorate of Higher Education,)
Central Building, 3, BJ Medical Road,)
Agarkar Nagar, Pune-400 001.)
4. **Smt. Pramila Marathe,**)
Age : 51 years, Occu. : Service,)
R/o Divisional Joint Director, Higher)
Education, Jalgaon Division, Jalgaon,)
District Jalgaon.)... **RESPONDENTS**

APPEARANCE : Shri Aakash Gade, Counsel for the Applicant.

: Shri S.K. Shirse, Presenting Officer for
respondent authorities.

: Shri Abhishek Deshpande, counsel for
respondent No. 4.

CORAM : Hon'ble Justice Shri P.R. Bora, Vice Chairman

DATE : 25.09.2023.

ORAL - ORDER

1. Heard Shri Aakash D. Gade, learned counsel for the applicant, Shri S.K. Shirse, learned Presenting Officer for respondent authorities and Shri Abhishek C. Deshpande, learned counsel for respondent No. 4.

2. Learned counsel for respondent No. 4 has submitted affidavit in reply. Same is taken on record and copy of the same is given to other side.

3. By filing the present Original Application, the applicant has taken exception to the order dated 31.05.2023, whereby he has been transferred from Jalgaon to Pune. The applicant claims to be a person with disability. He is working on the post of Administrative Officer in the department of Education. The grievance of the applicant is that though there are guidelines issued by the Government itself as about the transfers of the persons with disability and though there is specific provision therein that as far as possible while making

transfer of such persons, a care has to be taken to give posting to such category of persons near to their hometown or at the place convenient to them, the applicant has been transferred from Jalgaon to Pune in contravention of the said provision.

4. Learned counsel for the applicant submitted that the applicant even prior to issuance of impugned order had prayed for his transfer at some nearer place from Jalgaon. Without considering his said request, he has been transferred at Pune. Learned counsel submitted that the impugned order is passed in contravention of the guidelines given in the Circular and, therefore, the same cannot be sustained. Learned counsel therefore has prayed for allowing the present Original Application by setting aside the impugned order and by giving further direction to the respondents to post him at the place for which he has made a request in his representation i.e. either at Aurangabad or at Amravati. Learned counsel submits that at both the places the posts are still available, whereby the applicant can be accommodated. For all the reasons the applicant has prayed for allowing the present Original Application.

5. Shri S.K. Shirse, learned Presenting Officer has opposed the contentions so raised and the prayers made in the

Original Application. The respondents have filed their joint affidavit in reply opposing the prayers made in the Original Application. Learned P.O. pointed out para No. 13 of the said affidavit in reply, which reads thus :-

*“13. I say and submit that at present 25 posts of administrative officers are sanctioned in the Higher Education Department at State level. Out of which 11 Administrative Officers are presently working. There are total 10 Divisional offices of Jont Director Higher Education at State level. It is expected that in each Divisional office one administrative officer is required to be accommodated for smooth functioning of the administration. The applicant has requested 2 places for transfer i.e. at Aurangabad and Amravati. In both offices there are already working administrative officers. The office of Director of Higher Education M.S, Pune is a Head office of the State at Pune. There are 5 posts of Administrative Officers sanctioned. Out of which only 2 Administrative officers are working. Therefore, taking into consideration the huge administrative work in the office of Directorate Higher Education, being a controlling authority of all the Divisional offices the transfer of the applicant was carried out on administrative ground in terms of the statutory provisions i.e. transfer Act. Hereto annexed and marked as **Exh. R-II** is the copy of Administrative officer sanctioned post.”*

6. Learned P.O. further pointed out that at the time of earlier transfer also the grievance had raised by the applicant and he had approached the Maharashtra Administrative Tribunal. Learned P.O. submitted that taking into account

administrative need and vacancy position, the posting has been given to the applicant. Learned P.O. further pointed out that at Aurangabad and Amravati, necessary posts for Administrative Officers are already filled in, that is the reason that the applicant has not been considered for the said posts. Learned P.O. further submitted that the insistence of the applicant for his transfer at a particular place cannot be accepted in view of the settled legal position. Learned P.O. submitted that the convenience is something different and insistence at every time for posting at a particular place cannot be accepted.

7. Learned counsel appearing for respondent No. 4 submitted that respondent No. 4 has been transferred to Jalgaon in place of the applicant and he has made a representation with the authorities to retain him at Pune, meaning thereby that he is willing to shift from Jalgaon, thereby making the post available for the applicant at Jalgaon.

8. I have duly considered the submissions advanced on behalf of learned counsel for the applicant, learned P.O. and learned counsel appearing for respondent No. 4. Admittedly, the applicant has been transferred in the Annual General Transfers. Record shows that at the time of earlier transfer also the

applicant had made a grievance and as is revealing from the record, at that time he was ready and willing to accept the transfer at any place except Mumbai and that was the reason that he was transferred to Jalgaon. Record further shows that the applicant has experience of working at Pune. It is the contention of the applicant that by making representation in advance he had prayed for his transfer at the vacant post either at Aurangabad or at Amravati and when the posts were available at both these places, he must have been given posting at any of the said post.

9. It has to be stated that the law is well settled that an employee cannot seek his transfer and insist for a particular place or a particular post, when the job accepted by him is transferable job. It is true that insofar as persons like the present applicant, who are having physical disability are to be differently considered and there are certain guidelines in this regard. Circular dated 15.12.2004 is filed on record by the applicant. The entire emphasis of learned counsel appearing for the applicant was on the provisions made under the said Circular. It cannot be disputed that the convenience of the disabled person has to be taken into account, but at the same time the administrative need cannot be lost sight of. The

administration is the best judge to decide as to services of which employee are required at a particular place. In such matters, as has been consistently held by the Hon'ble Apex Court, as well as, the Hon'ble Bombay High Court some flexibility needs to be given to the administration so far as these aspects are concerned. The Tribunal cannot give any specific direction as about giving particular posting to a particular person, unless mala-fides are attributed or the transfer guidelines are grossly violated. Ordinarily transfer orders are not to be interfered by the Tribunal.

10. In the present matter, after having gone through the contentions raised by the applicant, as well as, by the respondents, it does not appear to me that any case is made out by the applicant for setting aside the impugned order and to give further direction to the respondents for giving posting to the applicant at the vacant post either at Aurangabad or at Amravati. I therefore, see no reason for causing any interference in the impugned order. The Original Application therefore is liable to be dismissed and is accordingly dismissed.

11. At this juncture, learned counsel appearing for the applicant on instructions submitted that the person, who has

been transferred in place of the applicant, has also unwillingly joined on the said post and intends to go back to Pune from where he has been transferred. Learned counsel submitted that in such circumstances, mutual transfer can be sought by the applicant and the person, who has joined in place at Jalgaon. Learned counsel in the circumstances prayed for giving such direction to the respondents to consider request of mutual transfer. It does not appear to me that any direction is required in this regard by this Tribunal. The mutual transfers can be sought by the Government employees and if such a request is made, the authorities do consider such request. As such, if the application is submitted for mutual transfer, the authorities are bound to consider the said request on merit.

PLACE : Aurangabad.

DATE : 25.09.2023

(Justice P.R. Bora)

Vice Chairman