

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

ORIGINAL APPLICATION NO. 501 OF 2023

WITH

M.A. NOS. 330 & 385 BOTH OF 2023

(Subject – Transfer)

DISTRICT : OSMANABAD

Nagnath S/o Raghunath Kamble,)
Age : 32 years, Occu. : Service (Surveyor),)
Forest Department Division, Osmanabad.)
R/o : Chincholi Jogan, Tahsil-Ausa,)
Dist. Latur, Serving at Osmanabad.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Forest Department, Having office at)
Mantralaya, Mumbai-32.)
2. **The Chief Conservator of Forest,**)
(Territorial) Aurangabad. Vanbhavan)
Osmanpura, Station Road, Aurangabad.)
3. **The Divisional Forest Officer,**)
Office Osmanabad, Dist. Osmanabad.)
4. **D.S. Chame,**)
Age : Major, Occu. : Surveyor,)
R/o Office of Divisional Forest Officer)
Office, Latur.)
5. **Mr. S.S. Jadhav,**)
Age : Major, Occu. : Service,)
R/o Office Address Social Forest Department,)
Osmanabad, Tq. and Dist. Osmanabad.) ... **RESPONDENTS**

APPEARANCE : Shri Amol Patale, Counsel for the Applicant.

: Shri V.R. Bhumkar, Presenting Officer for
respondent authorities.

: None present on behalf of respondent Nos. 4
and 5.

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

DATE : 08.09.2023.

ORAL - ORDER

1. Heard Shri Amol Patale, learned counsel appearing for the applicant and Shri V.R. Bhumkar, learned Presenting Officer appearing for respondent authorities. None present on behalf of respondent Nos. 4 & 5.

2. The applicant has preferred the present Original Application seeking quashment of the order dated 25.05.2023 issued by the respondent No. 2, whereby the applicant has been transferred from Osmanabad to Beed.

3. The applicant is working as Surveyor in the Forest Department. It is the case of the applicant that by making a representation dated 08.05.2023 with respondent No. 2, he has requested for his retention on the existing place i.e. at Osmanabad on the ground that his parents are old aged and further that his father is suffering from Paralysis. In the said representation it was further stated by the applicant that treatment of his father is being done at Kasbe Multispecialty Hospital at Ausa Tq. Ausa Dist. Latur and in the circumstances

the applicant had prayed for his retention for next one year. It is the further contention of the applicant that on 16.6.2023 also he reiterated his request for his retention at Osmanabad.

4. It is the grievance of the applicant that in spite of the request made by him as aforesaid respondents have transferred him at Beed. According to the applicant, the transfer so effected is contrary to the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "the Transfer Act 2005"), as well as, G.R. dated 09.04.2018.

5. It is the further contention of the applicant that the applicant has given his options for his next transfer and the first preference was for Social Forestry Division, Latur, second was for Divisional Forest Officer Regional Office, Beed and third for the Divisional Forest Office, Parbhani. The applicant has alleged that while issuing the order of transfer, without considering the genuine need of the applicant and the representations made by him he has been transferred at the Divisional Forest Office at Beed.

6. It is the further contention of the applicant that why he has not been given posting at Social Forestry Division, Latur,

for which he had given first preference is not disclosed by the respondents. It is the further contention of the applicant that the respondent No. 5 has been unduly favoured by the respondent authorities by giving him posting at Latur. It is further contended by the applicant that in the past also the respondent No. 5 had worked at Latur for about 7 years and again he has been given posting at Latur, though there is specific provision in the G.R. dated 9.4.2018 that while making transfers on administrative grounds or on request, ordinarily the employee shall not be given posting on the place where he has already worked in past.

7. Shri Amol Patale, learned counsel appearing for the applicant vehemently argued that when in the Transfer Act, 2005 and the GRs and Circulars issued thereunder there is a specific provision for inviting options from employees who are due for transfer, the respondents shall give the posting in order of preferences given by the concerned employees. Learned counsel submitted that when the applicant had given first preference for Latur and though the post for which the applicant had given his preference was vacant, the applicant has not been given posting on the said post and instead of him respondent No. 5 has been given posting at the said place. Learned counsel submitted that

transfer of the applicant being made contrary to the provisions of law and deserves to be set aside. Learned counsel in the circumstances prayed for quashment of the order dated 25.5.2023. Learned counsel further submitted that though the applicant had exercised the option by giving preferences for his transfer in the Annual General Transfers, 2023, subsequently he has preferred the representation requesting for his retention at the existing place on the ground of illness of his father. Learned counsel submitted that representation so made has not at all been considered by the respondents.

8. Respondent Nos. 1 to 3 have filed affidavit in reply and have resisted the contentions raised in the Original Application and prayers made therein. Respondents have contended in their affidavit in reply that the representation of the applicant dated 16.6.2023 was received to the office on 19.6.2023 and was rejected by recording reasons therefor. The respondents have further contended that respondent No. 5 had requested for his transfer in the Social Forestry Division at Latur prior to the request of the applicant and, as such, the request made by respondent No. 5 was forwarded for consideration of Additional Chief Conservator of Forest (Conservation), Nagpur and in the circumstances, request of the applicant could not be

considered. It is further contended that the transfer of the applicant, as well as, respondent Nos. 4 and 5 have been made on the recommendation of the Civil Services Board (for short CSB). The respondents have further submitted that when it was not possible for giving posting to the applicant on the place of his first preference i.e. at Latur, the respondents have given the posting to the applicant at Beed for which second preference was given by the applicant. The respondents have further contended that transfer order of the applicant dated 25.5.2023 is made by scrupulously following the directions given by the Additional Chief Conservator of Forest (Conservation), Nagpur. It is further contended that the transfer of the applicant has been effected by following the due process of law and on recommendations of the CSB and as such no interference is warranted in the impugned order.

9. Learned Presenting Officer reiterated the contentions raised in the affidavit in reply filed on behalf of the respondent nos. 1 to 3 and submitted that the applicant has been transferred according to the preferences recorded by him and as such the applicant does not have any right to dispute the said order. Learned P.O. submitted that the CSB, which is the competent body, has recommended the transfer of the applicant

at Beed and the said proposal has been approved by the competent authority. Learned PO submitted that the respondent no. 4, who has been posted in place of the applicant, has resumed the charge of the post on which the applicant was working, whereas the respondent no. 5 has also joined at Latur. Learned PO submitted that in the circumstances it would be unjust and improper to cause interference in the impugned order. He therefore, requested for rejecting the present OA.

10. I have duly considered the submissions advanced on behalf of the applicant, as well as, respondent authorities. It is not in dispute that the applicant was due for transfer. He has completed the tenure of 05 years on the existing post at Osmanabad. It is, however, his case that he has made an application/representation praying for his retention at Osmanabad for next 01 year on the ground of ill-health of his parents and more particularly of his father. Representations dated 8.5.2023, as well as, 16.6.2023 both are filed on record by the applicant. Representations reveal that the retention was sought by the applicant on the ground that his father, who is suffering from paralysis, was being treated at Kasbe Multispecialty Hospital at Ausa, Dist. Latur. It is the grievance of the applicant that, instead of considering the genuine difficulties

of the applicant, the respondent authorities considered the respondent no. 5 for his appointment at Latur. As noted hereinabove, it is alleged by the applicant that the respondent no. 5 has been unduly favoured by again giving him posting at Latur, when in the past he had already worked at Latur for about 07 years. It has also been argued by the learned counsel for the applicant that when the applicant filed the present OA by that time no one was given posting at Latur and subsequently by making haste the respondent no. 5 came to be posted at the said place. The applicant has referred to the provisions under the Transfer Act, 2005, as well as, to the guidelines laid down in the GR dated 9.4.2018.

11. As against the contentions raised by the applicant the respondents have come out with the case that the posting has been given to the applicant by considering the preferences recorded by him. The respondents have specifically contended that 03 preferences were given by the applicant for his transfer, first was at Latur, second was at Beed and third was at Parbhani. According to the respondents, the applicant does not have any reason to make any grudge when he has been appointed on the post for which he has recorded his option/preference. It has also been contended that since the

request made by the respondent no. 5 was already under consideration, the request of the applicant for the same post could not be considered.

12. In the above facts and circumstances, the question, which fall for my consideration is whether any case is made out by the applicant for quashment of the order of his transfer dated 25.5.2023.

13. It cannot be disputed that for a Government servant the transfer is an incidence of service and when his services are transferable and he can be transferred at any place all over the State, ordinarily the Government servant shall not raise any grievance against the order of transfer. No doubt, the transfers are also effected on request of the employees and the GR dated 9.4.2018 provides under which circumstances the request transfers can be done. Sickness of the parents or any of the family members or of the government servant himself are certainly the grounds for considering the request of Government employee for directing his transfer on his request on the place requested by him. However, it cannot be said that once the request is made, the respondents in all circumstances shall transfer the concerned employee at the place asked for by the

employee. All these guidelines are advisory. While considering the request of the government servant for his posting at a particular place, need of the Government administration cannot be lost sight of.

14. In the present matter as is revealing from the record, the respondent no. 5 had also made a request for his posting at Latur on the ground of illness of his parents. The applicant also had given first preference for his posting at Latur on the ground of illness of his parents. As has come on record the request of respondent no. 5 was under consideration when request made by the applicant was received to the authorities. In the circumstances the request of respondent no. 5 came to be accepted for his posting at Latur and in the circumstances the applicant could not be given posting at Latur for which he has given first preference. Applicant has been given posting on the place for which he has recorded his second choice/preference.

15. Considering the aforesaid facts, it does not appear that anything was done by the State authorities intentionally to cause prejudice to the applicant or for extending undue favour to respondent no. 5. It is true that AUSA where the treatment of the father of the applicant is being done was near from Latur.

However, it is not that AUSA is at far away distance from Beed to allege that grave prejudice is caused to the applicant. It is not in dispute that the applicant was due for transfer since he has completed his ordinary tenure on the post at Osmanabad. The applicant has not denied the fact which is revealed through the affidavit in reply filed on behalf of respondent Nos. 1 to 3 that he had given his options / preferences for the Annual General Transfers for the year 2023. As has come on record, the applicant had given 03 preferences. No doubt the first preference was given for Latur, but the fact remains that the second preference was given for Beed and he has been transferred at Beed.

16. As per the provisions under the Transfer Act, 2005, the options are invited from the employees due for transfer, ordinarily in the month of March or April. It is thus evident that in the month of March or April of 2023 the applicant has given options/ preferences for his transfer at the aforesaid 03 places. It is not the case of the applicant that his father suffered from paralysis thereafter i.e. after the preferences / options were recorded by the applicant. The certificate, which is placed on record by the applicant, reveals that the father of the applicant is suffering from the said disease from October 2022. The certificate

placed on record issued by Dr. R.B. Kasbe is dated 07.02.2023. It is thus discernible that at the time when the applicant submitted options / preferences to be considered in Annual General Transfers, the father of the applicant was suffering from paralysis. In spite of that, applicant gave second option for Beed. A reasonable inference can be drawn that at the relevant time the applicant was having no objection for his transfer to Beed.

17. I reiterate that the first preference given by the applicant was of course for Latur. However, it has to be kept in mind that for the administration, it may not be possible at every time to give posting to every government servant on the place for which he has given first preference. The very reason for seeking more than one options is that if it does not become possible to give posting to the employee at the place of his first preference, he can be conveniently transferred at other place in order of the preferences given by him. The applicant has not provided any explanation as to what happened in the period of two or three months after submitting the options that he was required to make a request for his retention at Osmanabad.

18. The respondents have provided the reason for giving posting to respondent No. 5 at Latur. As has come on record the

respondent No. 5 also had sought the transfer at Latur on the ground of illness of his parents. As has been submitted by the respondents, the request from respondent No. 5 was prior in time and hence, that was considered first and respondent No. 5 was given posting at Latur.

19. After having considered the facts as aforesaid, I see no reason for causing interference in the impugned order. The Hon'ble Apex Court, as well as, the Hon'ble Bombay High Court have time and again ruled that the transfer orders issued should not be interfered lightly and unless they suffer from any breach of setout guidelines or rules or reducing the minimum assured tenure or on the ground of malice. None of the aforesaid grounds is made out by the applicant. I therefore, see no reason for causing interference in the impugned order. In the result, the following order is passed :-

ORDER

- (i) The Original Application is dismissed.
- (ii) In view of dismissal of O.A., M.A. Nos. 330 and 385 both of 2023 stand disposed of.
- (iii) There shall be no order as to costs.

PLACE : Aurangabad.

DATE : 08.09.2023

KPB S.B. O.A. No. 501 of 2023 PRB Compassionate Appointment

(Justice P.R. Bora)

Vice Chairman