

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

**ORIGINAL APPLICATION NO. 536 OF 2021
(Subject – Transfer)**

DISTRICT : AHMEDNAGAR

Dnyaneshwar S/o Shivnath Andhale,)

Age : 43 years, Occu. : Inspector at a)

Public Trust Registration Office, Ahmednagar,))

Taluka; Ahmednagar, District : Ahmednagar.))

.... **APPLICANT**

V E R S U S

1. **The Secretary,)**
Law & Judiciary Department,)
State of Maharashtra,)
Mantralaya, Madam Cama Road,)
Mumbai-32.)
2. **The Charity Commissioner,)**
Maharashtra State, Mumbai,)
3rd Floor, Dharmaday Ayukta Building,))
Dr. Annie Besant Road, Opposite)
Garment House, Worli,)
Mumbai-400018.)
3. **Joint Charity Commissioner,)**
Pune Region, 1, Dhole Patil Road,))
Sangamwadi, Pune, Maharashtra-411001.))
4. **The Deputy Charity Commissioner,))**
Public Trust Registration Office,)
2nd Floor, Central Administrative)
Building, In front of Akashwani,)
Savadi, Ahmdnagar-414003.)

...RESPONDENTS

APPEARANCE : Shri R.A. Joshi, Advocate for the Applicant.

: Smt. M.S. Patni, Presenting Officer for
Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**
DATE : **21.09.2022.**

O R D E R

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed seeking appropriate order / direction to the respondent No. 2 i.e. the learned Charity Commissioner, Maharashtra State, Mumbai to consider the applicant for transfer on the post of Inspector at Sangali in the light of the policy decision viz. 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 in respect of couple convenience.

2. The facts in brief giving rise to this Original Application can be stated as follows :-

(a) The applicant is working on the post of Inspector on the establishment of respondent No. 4 i.e. the Deputy Charity Commissioner, Public Trust Registration Office, Ahmednagar. Wife of the applicant by the G.R. dated 20.07.2019 came to be absorbed as a Medical Officer,

Group-B and was given posting at Budhgaon, Tq. and Dist. Sangali. She is working and discharging her duties as Medical Officer on the said post since 22.07.2019. Before being posted at Budhgaon, wife of the applicant was working at Primary Health Care Centre, Talegaon, Tq. Sangamner as Medical Officer. It is contended that there is old aged mother of the applicant and two daughters, who are residing at Sangali. The daughters of the applicant are studying at Sangali. His mother requires medical care frequently. The wife of the applicant, who is working as Medical Officer, finds it difficult to take care of applicant's mother and daughters especially, when there was prevailing situation of COVID-19 decease. The applicant is residing at 400 kms away from Sangali working with the respondent No. 4.

(b) In view of above, the applicant made application / representation dated 20.01.2021 (Annexure A-1) to the respondent No. 1 through proper channel seeking his transfer at Sangali on the ground of couple convenience, as the applicant and his wife, both are working in the State Government Service.

(c) Para No. 10 of the Government Circular dated 27.11.1997 (Annexure A-2) is as under :-

“१०. पती-पत्नी यांची बदली -

जेव्हा पती व पत्नी या दोघांची बदली करावयाची असेल, तेव्हा ती एकाच ठिकाणी करण्यात यावी. मात्र खालील प्रकरणी सहानुभूती व गुणात्मक विचार करून वरिष्ठ अधिका-यांच्या सहमतीने विचार करण्यात यावा.

(अ) पती व पत्नी यांना पदाअभावी एकाच ठिकाणी ठेवता येणे शक्य नसेल,

(ब) जेव्हा दोघापैकी एक कर्मचारी बदलीपात्र नसेल,

(क) अन्य काही कारणामुळे पती अथवा पत्नी यांची बदली सर्वथा टाळता येणे शक्य नसेल.”

(d) Subsequently the G.R. dated 09.04.2018 (Annexure A-4) issued by the G.A.D. Maharashtra State seeking guidelines are laid down for effecting transfer include with transfer on couple convenience.

(e) The respondent No. 4 vide covering letter dated 04.02.2021 (Annexure A-3) communicated to the respondent No. 2 i.e. the Charity Commissioner, Mumbai through the respondent No. 3 giving requisite information of request transfers in the year 2021 in pro-forma B.

(f) Thereafter, the applicant made another application / representation dated 22.03.2021 (Annexure A-5) to the respondent No. 2 through the respondent No. 4 on the ground of couple convenience and difficulties faced by his

old aged mother and schooling daughters and thereby seeking his transfer at Sangali on the post of Inspector. The applicant was under impression that the respondent Nos. 2 and 4 would take appropriate decision on his transfer in accordance with law and more particularly keeping in view the vacancy of the post of Inspector at Sangli. However, contrary to the expectation, the name of the applicant did not find place in the General Transfers of the year 2021. Therefore, the applicant again made application / representation dated 05.08.2021 (Annexure A-6) pointing out that there were three vacancies of Inspector at Sangali, as one Inspector in the General Transfers is transferred from Sangali to Kolhapur and hence, he again prayed for consideration of his transfer at Sangali.

(g) It is further stated that latter on the applicant came across letter dated 12.08.2021 (Annexure A-7) addressed by the office of respondent No. 2 to the various offices of Joint Charity Commissioners at Mumbai, Nashik, Pune, Kolhapur, Latur, Aurangabad, Amravati and Nagpur. As per the said communication, all the applications made seeking request transfer were filed. In view of the same, the request

application of the applicant seeking transfer at Sangali stood rejected.

(h) It is further submitted that there is no vacant post of Medical Officer, Group-B in Ahmednagar District, whereby the applicant's wife can be accommodated. In view of the same, the applicant was constrained to make an application for transfer at Sangali under the policy of couple convenience. The respondents, however, failed to consider the request transfer of the applicant on the ground of couple convenience in accordance with law. Hence, the present Original Application.

3. The affidavit in reply is filed on behalf of respondent Nos. 1 to 4 by one Shri Surendra S/o Jagannath Biyani, working as the Joint Charity Commissioner, Public Trust Registration Office, Aurangabad Region, Aurangabad, thereby he denied all the adverse contentions raised in the present Original Application. It is specifically stated that as per the G.R. dated 29.07.2021 issued by the General Administration Department, State Government, the general transfers were to be made with the approval of the competent authority mentioned in Section 6 of the Transfer Act, 2005 to the extent of 25%. The applicant was

not falling in the said eligible list of the 25% as per G.R. dated 29.07.2021. The request transfers, cancellation of transfers and seeking change in posting are disposed of on administrative grounds as per the said G.R. dated 29.07.2021. It is specifically denied that the applicant could have been accommodated at Sangali on two vacancies of Inspector. The present Original Application is devoid of merit and is liable to be dismissed.

4. During pendency of the present Original Application, the respondents have placed on record status of vacancies of various posts at Sangali, which are at page No. 66A & 66B of the paper book.

5. The applicant filed his rejoinder affidavit denying the adverse contentions raised in the affidavit in reply and reiterating the contentions raised in the present Original Application. It is further specifically submitted that Clause (4) read with Clause (7) of the G.R. dated 29.07.2021 (Annexure A-8) would show that the transfers for special reasons / request transfers were permissible up to the limit of 10% of total existing posting in the given cadre. The respondents have failed to give thought to the said clauses while dealing with the request transfer of the applicant on the ground of couple convenience. The respondents in their affidavit

in reply have suppressed the office orders Nos.420 & 423 dated 05.08.2021 (Annexure A-9) both issued as general transfer orders, where the 22 employees from all cadres including 6 from the cadre of Inspector were transferred on their requests. The number of request transfers was exceeding the limit as provided in Clause 4 read with Clause 7 of the G.R. dated 29.07.2021. Further by office order No. 603 dated 22.10.2021 (Annexure A-11) 13 request transfers were approved by the respondent No. 2 including that of 5 Inspectors. Those request transfers after 30.08.2021 are contrary to the G.R. dated 29.07.2021. In view of the same, the applicant has discriminated and the applicant, therefore, is entitled for transfer and posting at Sangali, when there are vacancies of the post of Inspector.

6. I have heard the arguments at length advanced by Shri R.A. Joshi, learned Advocate for the applicant on one hand and Smt. M.S. Patni, learned Presenting Officer for the respondents on the other hand.

7. After having considered the rival pleadings and submissions of both the sides and documents on record, it is seen that the applicant is seeking mandatory order or direction against the respondent No. 2 to consider the applicant's 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 saying down the policy of couple convenience.

8. Undisputedly, the applicant is working on his present post of Inspector in the office of the Deputy Charity Commissioner, Public Trust Registration Office, Ahmednagar since 01.06.2016; whereas his wife viz. Mandakini Vinayak Nagargoje is working as Medical Officer in Government Allopathic Hospital, Budhgaon, Dist. Sangali since 22.07.2019. The old aged ailing mother of the applicant and two daughters are residing at Sangali along with his wife. The applicant is working faraway at the distance of about 400 kms from Sangali and he is unable to take care of his family. He therefore, made application / representation dated 20.01.2021 (Annexure A-1) to the respondent No. 2 i.e. the Charity Commissioner, Mumbai seeking transfer at Sangali on the post of Inspector on the ground of couple convenience. His representation however, was not considered.

9. It is a matter of record that by the letter dated 12.08.2021 (Annexure A-7), the respondent No. 2 communicated to all the

offices working under him that request applications made seeking transfer in the General Transfers of the year 2021 were filed, meaning thereby none of the applications were considered in the General Transfers of the year 2021.

10. It is however, pertinent to note here that in the affidavit in rejoinder, the applicant has placed on record copies of the office orders Nos.420 & 423 dated 05.08.2021 (Annexure A-9), which would show that undisputedly in all 22 transfers were made on the ground of request made by the concerned employees and five of the said request of the transfer of the employees from the cadre of the applicant i.e. Inspector.

11. From the record, it appears that during pendency of the present O.A., the respondent No. 2 has further effected the request transfers by office order No. 603 dated 22.10.2021 (Annexure A-10). In view of this posting, it is surprising to note here that the respondents have not disclosed the above-said office orders Nos. 420 & 423 dated 05.08.2021 (Annexure A-9) while filing the affidavit in reply, nor placed on record the subsequent order No. 603 dated 22.10.2021 (Annexure A-10) on their own, when this Tribunal was dealing with the claim of the applicant for request transfer on the ground of couple

convenience as envisaged in the Government Circular dated 27.11.1997 (Annexure A-2) and subsequent G.R. dated 09.04.2018 (Annexure A-4).

12. It is an admitted position that the applicant and his wife both are the Government servants respectively working in Ahmednagar and Sangali district. The distance between Ahmednagar and Sangali is about 400 kms. Family of the applicant viz. his wife, old aged mother and two daughters are residing at Sangali. The applicant is working at Ahmednagar since 01.06.2016. His representation / application for request transfer is dated 20.01.2021 (Annexure A-1) i.e. after about completion of tenure of 4 years and 6 months. It is pertinent to note here that by the G.R. dated 29.07.2021 (Annexure A-8), the general transfers of the year 2021 were to be effected by 09.08.2021, whereas the transfers for exceptional reasons were to be effected during the period of 10.08.2021 to 30.08.2021. The applicant in his request application dated 20.01.2021 (Annexure A-1) has specifically stated that there were two vacancies of the post of Inspector at Sangali and some Inspectors from Sangali were also due for transfer in the General Transfers of the year 2021.

13. Perusal of the office orders Nos.420 & 423 both dated 05.08.2021 (Annexure A-9) issued by the respondent No. 2 would show that those are general transfer orders, but 22 transfers were request transfers and amongst them, 6 transfers were of the post of Inspector. It was for the respondents to explain as to in what manner the request transfers of those employees working under the office of respondent No. 2 were on better footing and in accordance with law than the request transfer application made by the applicant. In fact, the applicant has placed on record copy of communication dated 12.08.2021 (Annexure A-7) issued by the respondent No. 2 whereby it is stated that all the request applications of General Transfers of the year 2021 were filed. If that is so in normal course, the request transfers should not have been reflected in the general transfers, as all the request transfer applications were filed, but that is not so. In view of this, it is apparent that it is a clear cut case of discrimination of the applicant. There is no dispute that two posts at Sangali were vacant at the time of General Transfers of the year 2021. Now also the respondents have placed on record copy of communication dated 08.08.2022 (page Nos. 66A and 66B of the paper book), which shows that three posts of Inspectors are vacant in Sangali District. In these circumstances, in my

considered opinion, this is a fit case to give appropriate direction to the respondent No. 2 i.e. the Charity Commissioner, Mumbai to consider the request application of the applicant dated 20.01.2021 (Annexure A-1) seeking transfer at Sangali within specified period. I, therefore, proceed to pass the following order:-

ORDER

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.

PLACE : AURANGABAD.
DATE : 21.09.2022.

(V.D. DONGRE)
MEMBER (J)