

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 618 OF 2018**

**(Subject :- Appointment)**

**DISTRICT: - AURANGABAD**

Sharad s/o Dinkarrao Raut, )  
Age : 41 years, Occu.: Service )  
(as Clerk in O/o Dy. Suptdt. )  
of Land Records, Badnapur, )  
Dist. Jalna), R/o: K-11/5, )  
N-9, Cidco, Pawan Nagar, Aurangabad.) **...APPLICANT**

**V E R S U S**

**1. The State of Maharashtra** )  
Through its Principal Secretary, )  
(Accounts & Treasuries), )  
Finance Department, )  
M.S., Mantralaya, )  
Mumbai – 32. )

**2. The Director,** )  
Accounts & Treasuries, )  
Mumbai Port Trust, )  
Thackracy House, 3<sup>rd</sup> Floor, )  
Shurji Vallabhdas Road, )  
Ballard Estate, Fort, )  
Mumbai -01. ) **..RESPONDENTS**

**APPEARANCE** : Shri Avinash S. Deshmukh, learned  
Advocate for the applicant.

: Shri V.R. Bhumkar, learned Presenting  
Officer for the respondent.

**CORAM** : **Shri V.D. Dongre, Member (J)**  
**And**  
**Shri Bijay Kumar, Member (A)**

**Reserved on** : **20.12.2022**

**Pronounced on** : **17.01.2023**

**ORDER****(Per: Shri V.D. Dongre, Member (J))**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed challenging the impugned order of cancellation of applicant's appointment to the post of Assistant Accounts Officers, Group-B (Gazetted) vide order dated 30.05.2018 (Annex. A-7) issued by the respondent No.2 i.e. the Director, Accounts & Treasuries, Mumbai and seeking direction to the respondents to permit the applicant to join on the said post in pursuance to and on the basis of the said appointment order dated 10.08.2017 (Annex. A-1) issued in his favour by the respondent No.2 and further directing the respondents to extend to the applicant all the consequential service benefits to which he would become entitled in view of grant of above said two prayers.

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

(i) The applicant entered service of the Government of Maharashtra in its Department of Land Records as a Clerk on 02.02.2009. He worked at various places. In

June 2017, he was transferred to Badnapur in Jalna District, where he is presently posted and working as a Clerk in the office of Deputy Superintendent of Land Records, Badnapur.

(ii) In November 2016, the applicant passed the Maharashtra Finance & Accounts Services, Class -III Examination. Thereupon, he became eligible to be appointed as an Assistant Accounts Officer, Group -B (Gazetted) under the respondents. The applicant accordingly, along with other 206 candidates was appointed to the post of Assistant Accounts Officer, Group -B (Gazetted) vide order dated 10.08.2017 (Annex. A-1) issued by the respondent No.2. The applicant's name appeared at Sr. No. 88 in the said order and he was given posting in the office of Superintendent of Police, Beed.

(iii) The applicant's wife named Smt. Maya Manohar Buzade/Mrs. Maya Sharad Raut was in the service of Zilla Parishad, Jalna as an Assistant Teacher. The applicant has old aged parents, who are to be taken care of by him. In this background and by seeking

benefit of the Government policy of couple convenience/benefit, the applicant submitted representation dated 28.08.2017 (Annex. A-2) to the respondent No.2 urging for posting in Jalna District. The respondent No.2 however, did not consider the request of the applicant though said authority was very much pleased to accept similar requests for change in posting given to them made by four other persons named in the appointment order dated 10.08.2017 at Sr. Nos. 81, 87, 147 and 159 by issuing an order on 11.09.2017 (Annex. A-3). The said modified order was issued for domestic reasons such as illness etc.

(iv) Unfortunately, wife of the applicant suddenly died on 05.11.2017 leaving behind their two minor daughters. In the circumstances, the applicant made another representation dated 02.12.2017 annexed with death certificate of his wife and documents regarding his father's treatment (Annex. A-4 collectively) to the respondent No.2 reiterating his request for change in posting either in Aurangabad or Jalna District.

(v) It is submitted that the respondent No.2 did not take any action on his repeated requests. Thereafter, the applicant made application dated 14.05.2018 (Annex. 'A-6) to the respondent No.1 pointing out his compelling domestic difficulties and earnestly requesting for change in posting by order dated 10.08.2017. The applicant sent copy of the said application to the respondent No.2 also. To the misfortune of the applicant, the respondent No.1 neither accepted his request nor did inform him that the same is rejected. Had the respondent No.1 conveyed the applicant that his request could not be accepted, then the applicant would have had no alternative but to join at Beed as was already committed by him in his application dated 14.05.2018. The applicant was under impression that his application was under active consideration and therefore, he did not join at Beed. Thereafter, quite shockingly, the applicant received impugned order dated 30.05.2018 (Annex. A-7) issued by the respondent No.2, thereby cancelling the appointment given to him as Assistant Accounts Officer, Group -B (Gazetted) vide order dated 10.08.2017. As

seen from the said impugned order, the only reason given by the respondent No.2 for cancellation was that the applicant and others had failed to join on their respective postings upto 09.09.2017. So, only for failure to join at the place of posting, the impugned order was issued, which is not in accordance with law. In fact the record would show that the respondent No.2 as a matter of fact had permitted number of candidates to join at the place of their respective postings even after 09.09.2017, which is reflected from the provisional seniority list as of 01.01.2008 of the Accounts Officer, Group -B (Gazetted). Those candidates are at Sr. Nos. 248, 250 and 254 who are from the batch of as that of the applicant and joined the posting after 09.09.2017.

(vi) In view of above, it is submitted that different yardstick has been applied by the respondent No.2 to persons like applicant and others named in the order of cancellation dated 30.05.2018 as compared to those persons, who also joined after 09.09.2017. The respondent No.2 has wrongly quoted the G.R. dated 12.09.2016 (Annex. A-9) issued by the General

Administration Department, State of Maharashtra in the impugned order dated 30.05.2018 cancelling his appointment. Bare reading of the said G.R. dated 12.09.2016 (Annex A-9) would show that it is not applicable which deals with the posting on promotion, which is not in the case here. Hence, this application.

3. Affidavit in reply is filed on behalf of the respondent Nos. 1 & 2 (page Nos. 103 to 114) by one Dasharath Vitthalrao Jagtap working as the joint Director Account and Treasuries, Aurangabad. Thereby he denied adverse contentions raised by the applicant in the Original Application.

(i) It is specifically contended that the post of Assistant Accounts Officer was awarded status of Gazetted officer vide G.R. dated 06.01.2017. Hence, Regional Allotment Rules were applied to this cadre as per provisions of Rule 6 (a) (7) of Notification dated 15.06.2017 issued by the General Administration Department and accordingly, the applicant was considered for Aurangabad Division (Beed District) and

was given appointment on the post of Assistant Accounts Officer in Beed District.

(ii) It is further contended that in the said order, it was clearly mentioned that the candidates should resume on the said post within 30 days failure of which the appointment shall be cancelled. The applicant did not join on the said post within stipulated time but requested for change in posting by making representations. There is no such provision to change the place of posting unless the candidate joins on the post of appointment. As per provisions of the Notification dated 28.04.2015, 16.07.2015 and 15.06.2017 (not being produced on record) change in place of posting or request transfer is admissible only after completion of one year's service at the present place of posting. The applicant sought change in posting in contravention of the said provisions and hence, his request is not considered. The change in the posting of the candidates at Sr. Nos. 81, 87, 147 and 159 (wrongly stated as 149) was allowed by order dated 10.08.2017 only after approval of Finance Department.

(iii) The respondents waited for nine months after issuance of order dated 10.08.2017, but the applicant and others did not join and therefore, the respondent No.2 was constrained to issue impugned order of cancellation of posting. In order to avoid the administrative imbalance, impugned order of cancellation of posting is issued in view of ensuing general transfer. If the applicant had wished to join at Beed, he would have been permitted but the applicant did not join the posting at Beed up to 31.05.2018 and hence his appointment was rightly cancelled. There is no illegality or contravention of any provisions or in issuing impugned order of cancellation of posting. The application is devoid of merit and it is liable to be dismissed.

4. The applicant has filed affidavit in rejoinder (Page Nos. 115 to 194) denying the adverse contentions raised in the affidavit in reply and reiterating the contentions raised in the Original Application.

(i) It is contended that the respondent Nos. 1 & 2 have falsely stated that the copy of the representation

dated 14.05.2018 was not received by the respondent No.2 i.e. the Director, Accounts and Treasuries, Mumbai. To substantiate that, the applicant has placed on record at new Annexure 'A-1' the copy of the said representation having acknowledgement from the office of respondent No.2 in respect of receipt of the said representation dated 14.05.2018. The respondent No. 2 did not include the name of the applicant in the proposal dated 07.09.2017 sent to the Finance Department /Respondent No.1. In view of that, the applicant could not get change in posting like the candidates at Sr. Nos. 81, 87, 147 and 159.

(ii) It is further submitted that after issuance of impugned order of cancellation of posting dated 30.05.2018 (Annex. A-7), the respondent No. 2 issued transfer order dated 31.05.2018 transferring as many as 308 Assistant Accounts Officers, but thereby the post of Assistant Accounts Officer in the office of Superintendent of Police, Beed where the applicant was posted was not filled in, which can be seen from transfer order dated 31.05.2018 (Annex. A-2).

6. We have heard at length the arguments advanced by Shri Avinash S. Deshmukh, learned Advocate for the applicant on one hand and Shri V.R. Bhumkar, learned Presenting Officer representing the respondents on other hand.

7. Upon perusal of the facts and documents on record, it is evident that the applicant has basically pleaded the ground of discrimination not being considered on the footing of candidates at Sr. Nos. 81, 87, 147 and 159 in appointment order dated 10.08.2017 (Annex. A-7) by issuing an order dated 11.09.2017 (Annex. A-3). Perusal of the said order dated 11.09.2017 (Annex. A-3) would show that change in posting was given to them for domestic reasons such as illness etc. Perusal of the said order would also show that proposal dated 07.09.2017 was submitted by the respondent No. 2 to respondent No. 1 for change in posting more particularly, with recommendation of Hon'ble Finance Minister. Posting orders of 206 Assistant Accounts Officer was issued on 10.08.2017 (Annex. A-7) in which the name of the applicant appears at Sr. No. 88. Thereafter, the applicant made representation dated 28.08.2017 (Annex. A-2) to the

respondent No.2 for change in posting on the ground of couple convenience and responsibility of old aged parents and thereby sought posting in Jalna District.

8. The respondents in their affidavit in reply have not explained/dealt with the alleged discrimination aspect of the matter of giving different treatment to the applicant than the candidates at Sr. Nos. 81, 87, 147 and 159, who were given change in posting vide order dated 11.09.2017 (Annex. A-3). It is also stated on behalf of the respondents that by seeking the approval of the Finance Department, the said change in postings was effected in respect of those candidates. This explanation is not satisfactory and plausible and is not acceptable. Discrimination is loud and clear.

9. That apart, the applicant subsequently made representation dated 02.12.2017 together with documents (Annex. A-4 collectively), dated 06.04.2018 (Annex. A-5) and dated 14.05.2018 (Annex. A-6) seeking change in posting either in Aurangabad or Jalna District in view of death of his wife on 05.11.2017. In the representation dated 14.05.2018 (Annex. A-6) addressed to the respondent No.1 the copy of which was also marked to the respondent No.2, the applicant

sought liberty alternatively to join his posting at the office of Superintendent of Police, Beed as per posting order dated 10.08.2017 (Annex. A-1). However, the respondent No.2 issued impugned order dated 30.05.2018 (Annex. A-7) giving reason that the applicant and others mentioned therein were required to join by 09.09.2017 but they failed to join and thereby refused posting and hence their postings were cancelled. There is reference to G.R. dated 12.09.2016 (Annex. A-9) issued by the General Administration Department in the said impugned order. Perusal of the said G.R. dated 12.09.2016 would show that the same is applicable to the promotional post and not the posting made as per order dated 10.08.2017 (Annex. A-1), which is by way of selection. The respondents have also pleaded that the applicant was not governed by relevant G.R. in respect of allotment of division but the respondents have failed to demonstrate as to how the provision in that regard would be applicable.

10. In this regard, the learned Advocate for the applicant placed reliance on the judgment dated 02.11.2018 delivered by Bombay High court in Writ Petition No. 2942/2018. The

Hon'ble High Court was pleased to set aside an order dated 14.09.2017 passed by Principal Bench of this Tribunal in O.A. No. 764/2015 making following observations :-

*“We also accept the statement made by the learned Advocate General as recorded in paragraph no.52 of this judgment and other and directed the petitioners-State to issue necessary orders concerning the appointment and postings of the respondent Nos.3,4,5,6,10,12,17 and 18 within four weeks from today. If these respondents join the appointed post at the places of their respective posting within the stipulated period, then, all consequential benefits with effect from 10<sup>th</sup> August 2017 are directed to be extended to them.”*

11. For clarity, the statement made by the learned Advocate General, which has been mentioned in para 52 of the judgment of Hon'ble High Court of Judicature as mentioned in preceding para is being quoted as below:-

*“52] The learned Advocate General has, very graciously made a statement that the order dated 30<sup>th</sup> May 2018 would be withdrawn and the appointments of such respondents in terms of the order dated 10<sup>th</sup> August 2017 would be revived. He also stated that fresh posting orders would be issued to these respondents to join at such places as exigencies of service would require, within stipulated period. If the respondents join within the stipulated period, then,*

*consequential benefits with effect from 10th August 2017 will be extended to them. We accept this statement and direct the petitioners- State to act accordingly within a period of four weeks from today.”*

12. From the above discussed facts, it is obvious that the ratio in the judgment delivered by Hon'ble High Court of Judicature at Bombay in W.P. No. 2942/2018 cited by the respondent is not applicable in the present recruitment process related to the O.A. No. 618/2018.

13. It has been observed in preceding para 9 of this order that the Government Order issued by the Finance Department vide order No. सेवाप्र-२०१७/प्र.क.७६/कोषा.प्रशा.३, मंत्रालय, मुंबई, dated 11.09.2017 changed the posting order of four similarly situated candidates considering their family / personal difficulties. The reason of doing so appears from reference No. 2 mentioned in text of the said order (Annexure A-3, page No. 43 of the paper book) वित्त मंत्री शिफारस/६७३, दि.०७.०९.२०१७. Learned C.P.O. / P.O. have not contested their inference drawn in that respect.

14. The learned Advocate for the applicant pointed out from the provisional seniority list of the post of Assistant Accounts Officer as on 01.01.2018 (Annex. A-8) that the

batch mates of the applicant at Sr. Nos. 248, 250, 254 were allowed to join on their postings respectively on 11.09.2017, 12.09.2017 and 29.09.2017. On that point also discrimination meted to the applicant is loud and clear.

15. In the circumstances, in our considered opinion, the applicant has been meted out with discrimination on two occasions. After issuance of posting order dated 10.08.2017, the applicant was seeking change in posting by making representations initially on the ground of couple convenience. However, in between the applicant's wife who was working as Assistant Teacher in Zilla Parishad School in Jalna District died on 05.11.2017. Thereafter, in his last representation dated 14.05.2018 (Annex. A-6), the applicant desired to join his posting at given place in the office of Superintendent of Police, Beed that was overlooked.

16. A question arises whether change in posting orders of a few of the selected candidates, without giving cogent reasons, in violation of right to equality and /or, on political / extraneous reasons, shall have effect of nullifying the policy framed by the government in this regard. In our considered opinion, Principles of Natural Justice forms the backbone of

service jurisprudence and therefore, the natural inference to the question would be in affirmative. In view of the same, in our considered opinion, the impugned order of cancellation of posting bearing No. संलेको ३.२०१८/प्रशा.राज./सलेअ संवर्ग/न.क. १०५(१)/सलेअ संवर्ग/निनि. आदेश रद्द/३७५, dated 30.05.2018 issued by the respondent No.2 is not sustainable in the eyes of law and the same is liable to be quashed and set aside and, the applicant and similarly situated other candidates named in the same order are entitled for consequential service benefits. The respondents may have to accordingly inform the applicant and such similarly situated other candidates, whose appointment orders had been cancelled by impugned order and those willing to join shall have to be given appointment and posting orders.

17. As the candidates who had been selected were in-service candidates and some of them continuing in government services even after cancellation of their candidature in the present selection process, it would be administratively desirable to consider service benefits to all such candidates with prospective effect. Hence, the following order:-

**ORDER**

The Original Application is allowed in following terms :-

- (A) The impugned order of cancellation of appointments, dated 30.05.2018 (Annex. A-7) to the extent of the applicant and similar such candidates issued by the respondent No. 2 is, hereby, quashed and set aside for reason of being *ultra vires* to Article 14 of the Constitution of India.
- (B) The respondents are directed to permit the applicant and similarly situated other candidates, who are interested in joining, to join the post on the Assistant Accounts Officer, Group -B (Gazetted) in pursuance to and on the basis of the appointment order dated 10.08.2017 (Annex. A-1) on their respective posts as mentioned in their initial appointment orders or any other vacant post of choice of the candidates, as far as doing so is administratively feasible.
- (C) The respondents are also required to extend to the applicant and all other similarly situated candidates, all service benefits with prospective effect.
- (D) The respondents to comply this order within a period of two months from the date of this order.
- (E) No order as to costs.

**MEMBER (A)****MEMBER (J)****Place :- Aurangabad****Date :- 17.01.2023**

SAS O.A.701/2019