

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

**ORIGINAL APPLICATION NO. 892 OF 2019**

DIST. : BEED

Naganath S/o Malaji Shinde, )  
Age. 46 years, Occ. Service as a )  
Block Education Officer, )  
R/o Beed Road, Shivajinagar, )  
Behind Marathi School, Jamkhed, )  
Tq. Jamkhed, Dist. Ahmednagar. )      --      **APPLICANT**

**V E R S U S**

(1) The State of Maharashtra, )  
Through Secretary, )  
School Education & Sports Deptt.)  
Mantralaya, Mumbai - 32. )

(2) The Chief Executive Officer, )  
Zilla Parishad, Beed. )      --      **RESPONDENTS**

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APPEARANCE :- Shri I.D. Maniyar, learned Advocate for  
the applicant.

: Smt. Deepali S. Deshpande, learned  
Presenting Officer for the respondents.

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**CORAM : Hon'ble Shri V.D. Dongre, Member (J)**

**DATE : 3.8.2021**  
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**O R D E R**

1. This Original Application is filed by the applicant U/s 19 of the Administrative Tribunals Act, 1985 challenging the impugned order of his transfer dated 13.8.2019 (Annex. A-10 collectively) by modifying the earlier transfer order dated 28.5.2019 (Annex. A-4

collectively) and also challenging the order dated 24.6.2019 (Annex. A-6 collectively) passed by the respondent no. 2 thereby illegally relieving the applicant to join the office of the Commissioner of Education, Pune.

2. The applicant was initially appointed as a Block Education Officer by the order dated 9.6.2011 and accordingly he joined on the said post on 26.7.2011 (Annex. A-1 collectively). Thereafter the applicant worked at various places. He worked very-well and to the utmost satisfaction of his superiors. However, in the year 2013, out of quarrel between two teachers, an offence came to be registered against the applicant. Thereafter he was put under suspension by the order dated 28.2.2014. However, during the investigation, it was revealed that the applicant had no nexus with the alleged crime and therefore the Police authority filed a report U/s 169 of the Cr. P. C. discharging the applicant. The concerned Court of learned J.M.F.C., Georai by the order dated 15.1.2015 (Annex. A-2) discharged the applicant by accepting the said report submitted U/s 169 of Cr. P.C. by the Police authority. Thereafter the applicant was reinstated in service by the order dated 17.10.2015. The applicant was posted at Panchayat Samiti, Ambajogai, Dist. Beed. Accordingly the applicant joined at Ambajogai, Dist. Beed on 28.10.2015 (Annex. A-3 collectively).

Upon completion of tenure of 3 years, the respondent no. 1 by order dated 28.5.2019 (Annex. A-4) transferred the applicant from Panchayat Simiti, Ambajogai, Dist. Beed to Panchayat Samiti, Ashti, Dist. Beed. Pursuant to the said transfer order the applicant wrote a letter dated 30.5.2019 (Annex. A-5) to the Education Officer, Beed and requested to relieve him so as to enable him to join at the transferred post at Ashti, Dist. Beed. The applicant did not receive any response from the said authority, however, surprisingly the respondent no. 2 issued the impugned order dated 24.6.2019 (Annex. A-6) illegally, thereby the applicant was relieved and was directed to join before the Commissioner of Education, Pune. According to the applicant, the said impugned order dated 24.6.2019 (Annex. A-6) is illegal and is passed without jurisdiction and behind his back and, therefore, it is liable to be quashed and set aside. In the said impugned order dated 24.6.2019 (Annex. A-6), there is reference to the complaint filed before the Human Rights Commission, Mumbai on 7.2.2013 and by order dated 3.2.2019 learned Commission also imposed costs of Rs. 1,00,000/- upon the applicant. The applicant, however, challenged the said order before the competent Court of Law. According to the applicant, the said incident has no relevance. The applicant is also discharged of the alleged crime by the order dated 15.1.2015 and,

therefore, its mention in the impugned order dated 24.6.2019 (Annex. A-6) is misplaced and misconceived. There is also mention of various complaints filed by one Smt. Mumataz Pathan, Block Education Officer against the applicant about his arrogant behaviour. However, the said complaint is quashed and set aside by the Vishakha Committee by the order dated 4.6.2018 (Annex. A-7). In view of the same, the reasons mentioned in the said impugned order dated 24.6.2019 are totally irrelevant and misconceived and, therefore, the said order is liable to be quashed and set aside.

3. It is further contention of the applicant that the respondent no. 1 is the competent transferring authority of the applicant, whereas the respondent no. 2 is merely controlling authority and it has no power to transfer the applicant. In view of the same, the order of transfer dated 28.5.2019 (Annex. A-4) passed by the respondent no. 1 was binding on the respondent no. 2. However, the respondent no. 2 defied the order of respondent no. 1 illegally and passed the impugned order dated 24.6.2019 (Annex. A-6).

4. It is further contention of the applicant that aforesaid illegal act of the respondent no. 2 in the form of order dated 24.6.2019 (Annex. A-6) was challenged by the applicant before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by

filing writ petition No. 7959/2019. Notices were issued by the Hon'ble High Court to the respondents therein. During the pendency of the said writ petition all of a sudden the respondent no. 1 changed the establishment of the applicant intentionally by passing the impugned order dated 13.8.2019 (Annex. A-10) and thereby he was transferred to Jamkhed, Dist. Ahmednagar. The said impugned order dated 13.8.2019 is passed by the respondent no. 1 only to harass the applicant. The said act of the respondents was pointed out to the Hon'ble High Court in the said writ petition. Hon'ble High Court disposed of the said writ petition by passing order dated 29.8.2019 (Annex. A-11) and also granted liberty to the applicant to file fresh writ petition in view of the subsequent order of the respondents.

5. It is further contention of the applicant that by the order dated 13.8.2019 (Annex. A-10) the applicant is now transferred to Jamkhed, Dist. Ahmednagar within a period of 3 months from the date of his earlier general transfer order dated 28.5.2019 by changing his establishment. The remedy against it lies before this Tribunal and therefore the applicant has filed the present O.A. challenging the impugned order dated 24.6.2019 (Annex. A-6) passed by the respondent no. 2 and the impugned order dated 13.8.2019 (Annex. A-10) passed by the respondent no. 1 with a

prayer to quash and set aside the same and restore the order dated 28.5.2019 passed by the respondent no. 1 and thereby allow the applicant to join at the transferred place at Ashti, Dist. Beed.

6. Affidavit-in-reply is filed on behalf of respondent no. 1 through Shri Madhukar s/o Dharmanath Avhad, Jr. Administrative Officer, Deputy Director of Education, Aurangabad Region, Aurangabad, thereby the respondents have justified the impugned transfer order dated 24.6.2019 (Annex. A-6) passed by the respondent no. 2 and the order dated 13.8.2019 (Annex. A-10) passed by the respondent no. 1. It is admitted by the respondents that by the earlier order dated 28.5.2019 (Annex. A-4 collectively) in general transfers, the applicant was transferred from the post of Block Education Officer, Panchayat Samiti, Ambajogai, Dist. Beed to the post of Block Education Officer, Panchayat Samiti, Ashti, Dist. Beed. Later on the said transfer order dated 28.5.2019 (Annex. A-4) by which the applicant was transferred on the post of Block Education Officer, Panchayat Samiti, Ashti, Dist. Ahmednagar was modified by issuing the order dated 13.8.2019 (Annex. A-10). The applicant immediately joined on the said post on 14.8.2019. This act of the applicant shows that he was eager to join on the choice post and therefore the applicant has no locus

to challenge the said order dated 13.8.2019 (Annex. A-10) as he has already joined on the said transferred post.

7. It is further contended by the respondents that as per the guidelines given by the G.A.D. in its G.R. dated 9.4.2018 the requisite process for the said transfer was carried out by the respondents. In all 10 choice options of the employees due for transfer were called for. The applicant gave 10 places for his choice posting (Exhibit R-1). The first 2 choice places for posting of the applicant were Ashti Dist. Beed and Jamkhed, Dist. Ahmednagar respectively. By the order dated 28.5.2019 (Annex. A-4), the applicant was transferred on the post of Block Education Officer, Panchayat Samiti, Ashti, Dist. Beed. However, thereafter letter dated 24.6.2019 (Annex. A-6) was written by the Chief Executive Officer, Zilla Parishad, Beed to the Commissioner (Education), Pune. The Commissioner (Education), Pune forwarded the copy of the said letter dated 24.6.2019 to the respondent no. 1 (Exhibit R-2) by letter dated 9.7.2019. In the said letter dated 24.6.2019 it was disclosed that previous behavior of the applicant while working in Beed District was controversial and the Office bearers of Zilla Parishad, Beed opposed regarding joining of the applicant at Panchayat Samiti, Ashti, Dist. Beed. It is their contention that in such situation the matter was placed

before the Civil Services Board and the Civil Services Board recommended the second choice of posting of the applicant i.e. Jamkhed, Dist. Ahmednagar and therefore by the impugned order dated 13.8.2019 (Annex. A-10) the applicant was transferred on the post of Block Education Officer, Panchayat Samiti, Jamkhed, Dist. Ahmednagar and immediately the applicant joined on the said post on 14.8.2019. In view of the same, the said modified order dated 13.8.2019 (Annex. A-10) is passed by following the requisite procedure as laid down in the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005) and it is in accordance with law, and therefore, the present O.A. is liable to be dismissed.

8. The applicant filed rejoinder affidavit and denied the adverse contentions of the respondents raised in the affidavit in reply of respondent no. 1. He reiterated the contentions raised in the O.A. He submits that he has joined on the transferred post of Block Education Officer, Panchayat Samiti, Jamkhed, Dist. Ahmednagar as he wanted to follow the orders of the superiors and not with other ulterior motive.

9. I have heard the arguments advanced by Shri I.D. Maniyar, learned Advocate for the applicant and Smt. Deepali S.

Deshpande, learned Presenting Officer for the respondents, at length.

10. During the hearing of the matter, the learned Presenting Officer for the respondents was asked to produce on record the entire record of transfer file of the applicant and to explain who were the Members of the Civil Services Board and as to whether the Members, who attended the meeting have signed the minutes of the meeting. The respondents accordingly produced the copies of relevant documents on record.

11. Leaned Advocate for the applicant strenuously urged before me that the impugned transfer order of the applicant dated 13.8.2019 (Annex. A-10) is necessarily passed midterm and mid tenure as it is passed without allowing the applicant to join at his earlier place of transfer as per the earlier transfer order dated 28.5.2019 (Annex. A-4) i.e. at Panchayat Samiti, Ashti, Dist. Beed. No exceptional circumstances or special reasons are established as contemplated under section 4(4)(ii) and 4(5) of the Transfer Act, 2005. He submits that the said impugned order dated 13.8.2019 (Annex. A-10) is passed in the background of the impugned communication dated 24.6.2019 issued by the respondent no. 2. He submits that the allegations leveled against the applicant in the said communication dated 24.6.2019 are totally misconceived

as there is evidence to show that the applicant has been exonerated from all those complaints and allegations.

12. On the other hand, the learned Presenting Officer for the respondents submitted that the said impugned communication dated 24.6.2019 (Annex. A-6) issued by the respondent no. 2 to the Commissioner of Education, Pune is to the effect that because of controversial tenure of the applicant in Beed District he was not allowed to join at Panchayat Samiti, Ashti, Dist. Beed and necessary disciplinary action was suggested against the applicant. According to her, in this background the modified order i.e. the impugned order dated 13.8.2019 (Annex. A-10) came to be passed and in that regard she submitted that the record of the Civil Services Board would show that the meeting was held in accordance with law and the second choice of posting given by the applicant i.e. Panchayat Samiti, Jamkhed, Dist. Ahmednagar was considered and he was posted there by exercising the powers under section 4(4)(ii) and 4(5) of the Transfer Act, 2005 and no illegality is committed by the respondents.

13. Undisputedly by the general transfer order dated 28.5.2019 (Annex. A-4) the applicant was transferred from Panchayat Samiti, Ambajogai, Dist. Beed to Panchayat Samiti, Ashti, Dist. Beed. According to the applicant, he was not relieved to join at

Panchayat Samiti, Ashti, Dist. Beed. He wrote a letter dated 30.5.2019 (Annex. A-5) to the Education Officer, Zilla Parishad, Beed for relieving him, however, there was no response to this letter from the said authority. Thereafter, by the impugned letter dated 24.6.2019 (Annex. A-6), the respondent no. 2 communicated to the Commissioner of Education, M.S., Pune stating that in view of various complaints against the applicant while working in Beed District there was resistance from the office bearers of Zilla Parishad, Beed regarding allowing the applicant to join at Panchayat Samiti, Ashti, Dist. Beed. By the said letter the respondent no. 2 has stated that appropriate disciplinary action should be taken against the applicant for his alleged controversial conduct while working in Beed District and thereby he relieved the applicant to join in the office of the Education Commissioner, M.S., Pune. This order is assailed by the applicant in the present O.A.

14. It is a fact that the applicant challenged the said order dated 24.6.2019 (Annex. A-6) by filing writ petition No. 7959/2019 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad. However, subsequently modified impugned order dated 13.8.2019 (Annex. A-10) came to be passed by the respondent no. 1 thereby transferring the applicant to Panchayat

Samiti, Jamkhed, Dist. Ahmednagar. The said writ petition was disposed of by the order dated 29.8.2019 (Annex. A-11) granting liberty to the applicant to file fresh writ petition in view of the subsequent order passed by the respondent no. 1. The applicant states that as remedy in respect of impugned order dated 13.8.2019 as well as earlier impugned order dated 24.6.2019 (Annex. A-6) lie before this Tribunal and, therefore, he filed the present O.A.

15. It is the contention of the respondents that the impugned order dated 24.6.2019 (Annex. A-6) is in the form of letter addressed to the Education Commissioner, M.S., Pune and thereby the applicant is relieved to join in the office of the Education Commissioner, M.S., Pune instead of joining on the transferred post at Panchayat Samiti, Ashti, Dist. Beed because of certain allegations against him about his previous behavior while working in the Beed District and, therefore, the request of applicant to relieve him to join at Panchayat Samiti, Ashti, Dist. Beed was not granted. Even from tenor of the entire O.A. it is evident that the applicant is basically challenging his transfer order dated 13.8.2019 (Annex. A-10) to Panchayat Samiti, Jamkhed, Dist. Ahmednagar necessarily cancelling the earlier general transfer order dated 28.5.2019 (Annex. A-10), whereby he

was transferred from Panchayat Samiti, Ambajogai, Dist. Beed to Panchayat Samiti, Ashti, Dist. Beed.

16. As regards the allegations contained in the communication dated 24.6.2019 (Annex. A-6), the applicant has denied and has demonstrated that he has been exonerated from certain allegations made against him after enquiry by the authority of Vishakha Committee and Human Rights Commission, Mumbai, and therefore, there is no substance in the said letter suggesting disciplinary action against the applicant. It is the contention of the applicant that the respondent no. 2 is the controlling authority and not transferring authority and the competent transferring authority admittedly is the respondent no. 1 and the respondent no. 2 has no authority to change the place of transfer of the applicant from Ashti, Dist. Beed to Pune.

17. I have carefully considered the communication dated 24.6.2019 (Annex. A-6), wherein disciplinary action is also suggested against the applicant. In my opinion, it would not fall for consideration in the present O.A. when I am required to deal with the legality of the impugned transfer order dated 13.8.2019 (Annex. A-10). From the said communication it is evident that the applicant was relieved from Panchayat Samiti, Ambajogai, Dist. Beed and instead of allowing him to join at Panchayat Samiti,

Ashti, Dist. Beed, he was asked to report to the Education Commissioner, M.S., Pune. In view of the same, the said communication can be considered to the extent that the applicant was not allowed to join at Panchayat Samiti, Ashti, Dist. Beed as per the general Transfer order dated 28.5.2019 (Annex. A-4).

18. Record shows that by taking into consideration the contents of the said communication dated 24.6.2019 (Annex. A-6) to the extent that the joining of the applicant at Panchayat Samiti, Ashti, Dist. Beed is resisted by the office bearers of Zilla Parishad, Beed, the modified transfer order came to be issued on 13.8.2019 (Annex. A-10).

19. From the contents of the affidavit in reply filed on behalf of respondent no. 1 it is clear that undisputedly before issuance of the general transfer order of the year 2019 the options of places for transfer were called for and the applicant gave first 2 options as Ashti, Dist. Beed and Jamkhed, Dist. Ahmednagar respectively. His first choice for transfer viz. Panchayat Samiti, Ashti, Dist. Beed was considered and accordingly he was transferred there as per the general transfer order dated 28.5.2019 (Annex. A-4) and the applicant has no grievance about it.

20. In respect of modified transfer order the respondents have produced on record the copy of original record in the form of

minutes of meeting of the Civil Services Board. It shows that in the meeting held on 16.7.2019, a proposal of transfer of the applicant out of Beed District as requested by the respondent no. 2 was considered in the background of the fact of previous controversial behavior of the applicant in Beed District. Admittedly as per the said minutes of meeting of the Civil Services Board, the applicant was transferred to Jamkhed, Dist. Ahmednagar. It is a fact that Jamkhed, Dist. Ahmednagar was second choice given by the applicant for his transfer. This will show that the respondents have followed the procedure as laid down in section 4(4)(ii) and 4(5) of the Transfer Act, 2005, though the said provisions are not specifically mentioned in the impugned modified transfer order dated 13.8.2019 (Annex. A-10).

21. I have already observed that part of contents of the communication dated 24.6.2019 (Annex. A-6) regarding taking of disciplinary action against the applicant is a separate issue and does not fall for consideration in the present matter. From the rival pleadings from both the sides, it cannot be said that there is dispute so far as the alleged controversial behavior of the applicant during the previous tenure in Beed District. In view of the same, in my opinion, the contentions raised by the respondents for issuance of the impugned modified transfer order dated 13.8.2019 (Annex. A-10) would fall under the category of

exceptional circumstances and special reasons. The respondents have taken proper care of choice of places given by the applicant and the second choice at Jamkhed, Dist. Ahmednagar is considered and the applicant is transferred at Panchayat Samiti, Jamkhed, Dist. Ahmednagar. This impugned order is hereby modified order in changed circumstances.

22. In view of the discussion in foregoing paragraphs, in my opinion, there is no illegality committed by the respondents while passing the impugned modified transfer order dated 13.8.2019 (Annex. A-10) and in the tenor of the impugned communication dated 24.8.2019, whereby the respondent no. 2 relieved the applicant to join at the office of Education Commissioner, M.S., Pune instead of at his earlier transferred place at Panchayat Samiti, Ashti, Dist. Beed. Hence, the present O.A. deserves to be dismissed being devoid of merits. Hence, I proceed to pass the following order :-

**ORDER**

Original Application No. 892/2019 stands dismissed with no order as to costs.

**(V.D. DONGRE)**  
**MEMBER (J)**

**Place : Aurangabad**  
**Date : 3.8.2021**

ARJ-O.A. NO. 892-2019 VDD (TRANSFER)