

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 739 OF 2023**

**DISTRICT:- JALGAON**

Prashant Narayan Kedar,  
Age 43 years, Occu. Service,  
Bhandarpal,  
R/o. 31, Shreekrishna Colony,  
Jalgaon, Tq. & Dist. Jalgaon.

.. **APPLICANT.**

**V E R S U S**

1. The State of Maharashtra  
Through its Principal Secretary,  
Soil and Water Conservation  
Department, Mantralaya,  
Mumbai-32.
2. The Soil and Water Conservation  
Department, The Commissioner,  
Soil and Water Conservation  
(Maharashtra State), Walmi Parisar,  
Kanchanwadi, Aurangabad-431002.
3. The District Water Conservation Officer,  
Soil and Water Conservation Department,  
Jalgaon.

.. **RESPONDENTS.**

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APPEARANCE : Shri Vinod P. Patil, learned counsel for  
the applicant.

: Shri M.S. Mahajan, learned Chief Presenting  
Officer for the respondent authorities.

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**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN**

**DATE : 13.10.2023**  
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**ORAL-ORDER**

Heard Shri Vinod P. Patil, learned counsel for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent authorities.

2. Aggrieved by the order dated 6.6.2023, whereby the applicant has been transferred from Jalgaon to Ahmednagar, the applicant has preferred the present Original Application. In the O.A. though several grounds are raised in exception to the impugned order, the prominent ground appears to be that the impugned order came to be served on the applicant on 3.8.2023 by which time the applicant had secured admission for his daughter and has also deposited the tuition fees to the tune of Rs. 45,000/-.

3. Learned counsel submitted that the transfer order, which has been served upon the applicant on 3.8.2023, must be held to be an order of midterm transfer. Learned counsel submits that in the office at Jalgaon there is shortage of the staff and as such the applicant was not expecting his transfer. It is further contended that since the transfer order was not served upon the applicant and the applicant was not made known about his transfer, he was bona fide believing that now he may not be transferred in the said academic year.

4. It is the further contention of the applicant that he has not been transferred at any of the places for which he has recorded his choices/options. Learned counsel submitted that the applicant had given choices for his next posting in the Districts of Dhule, Buldhana and Aurangabad and in all these Districts the posts of Storekeeper were vacant, where the applicant could have been accommodated. Learned counsel submitted that instead of giving posting to the applicant at any of the said places, he has been transferred in Ahmednagar District.

5. Learned counsel submitted that as per the guidelines, laid down in the Government Resolution dated 9.4.2018, the counseling is mandatory and as far as possible the choices of the employees are to be considered if the vacancies are available. Learned counsel submitted that there is no explanation from the side of the respondents as to why the applicant was not considered for any of the places of his choice. However, as I have earlier noted, at this juncture the entire thrust of the applicant is on the ground that it would be very inconvenient for the applicant to shift at transferred place, in view of the fact that his daughter has been admitted in the school at Jalgaon and the huge tuition fees has already been paid for the said admission. Learned counsel in the circumstances, has prayed for setting aside the impugned order.

6. Respondents have filed their affidavit in reply resisting the contentions raised and the prayers made in the O.A. It is contended that since the applicant has been serving in Jalgaon District from year 2009 he was overdue for transfer. It is further contended that the transfer order was issued in the month of June and the Government has made known to all that period for making annual general transfers was extended up to 30<sup>th</sup> June, 2023. It is further contended that the proposal for transfer of the applicant was placed before the Civil Services Board and on recommendation of the Civil Services Board the applicant has been transferred at Ahmednagar and the recommendation of the Civil Services Board has been accepted by the competent authority. It is further contended that before making transfer of the applicant the required procedure has been duly followed. It is also contended that the transfers are made considering the administrative need and few other factors like seniority of the employees etc.

7. Learned C.P.O. reiterated the contentions raised in the affidavit in reply filed on behalf of respondent nos. 1 & 2. Learned C.P.O. also tendered the document evidencing that the order of transfer was forwarded to the office at Jalgaon with a direction to serve the said order on the applicant. Learned C.P.O. submitted that the applicant was fully aware of the fact that he is due for

transfer and would be transferred in the annual general transfers. Learned C.P.O. further submitted that the choices are taken for the sake of convenience and as far as possible they are considered having regard to the vacancy position, administrative need of the services of the applicant and number of employees, who have opted for the respective post, so that in order of their seniority the preferences can be considered. Learned CPO further submitted that it is well settled that the employees cannot insist for their posting at a particular place or at a particular post, in view of the fact that their posts are transferrable. Learned CPO submitted that in the present matter the entire procedure has been scrupulously followed by the respondents. Learned CPO submitted that the problems like education of the children or the admission taken by them, ill-health of the parents or the family members etc. are the difficulties which are faced by every Government employee and merely on the aforesaid ground the order of transfer cannot be held vitiated or held to be invalid. Learned CPO submitted that in the present matter the applicant has not made out any case for quashment of the order of the transfer. He has, therefore, prayed for dismissal of the O.A.

8. I have duly considered the submissions made on behalf of the applicant, as well as, the respondents. I have also gone

through the documents placed on record. Though it is true that the order of transfer is issued on 6.6.2023, the same has been served upon the applicant on 3.8.2023. The applicant has taken a specific plea in his O.A. in that regard. The service of the transfer order is crucial aspect in the present O.A. Since it was the contention of the respondents in their affidavit in reply that the order of transfer was served within time on the applicant, the directions were given to the respondents to produce on record the relevant documents evidencing the service of the impugned order on the applicant. Today, learned C.P.O. has placed on record some documents, however, he could not satisfy the Tribunal that the order of transfer was served upon the applicant on 6.6.2023 or immediately thereafter. On the contrary, from the documents it is apparently revealed that the order of transfer was served upon the applicant on 3.8.2023 and on the same day the applicant was relieved from his existing post.

9. As I noted hereinabove the order of transfer is challenged by the applicant on the following grounds: -

- (i) that it is against the guidelines issued in the Government Resolution dated 9.4.2018;
- (ii) that the applicant was not due for transfer;

- (iii) that the choice places given by the applicant are not considered despite having vacancy at the said place; and
- (iv) that he has been transferred midterm.

Though the applicant has taken a plea that he was not due for transfer stating that the post on which he was presently working was occupied by him in the year 2017, there appears no much substance in the grounds so raised. The applicant has not denied or disputed that in the District of Jalgaon he has been serving from the year 2009. It is thus evident that for long 14 years the applicant is in one district. It has come on record that the choices were called from all the employees, who were due for transfer. Submission of the choices by the present applicant leads to an inference that he was due for transfer. In the circumstances, it is now not open for the applicant to take any such plea that he was not due for transfer.

10. Another objection is that posting has been given to the applicant at the place for which no option was given by the applicant. It is true that the applicant has recorded choices for Dhule, Buldhana and Aurangabad and he has not been transferred in any of the said district, but has been transferred at Ahmednagar, for which the applicant admittedly has not given any

choice. However, it is well settled and even in the guidelines which are incorporated in G.R. dated 09.04.2018, it has been clarified that while giving posting the efforts will be made to give posting to the employee as far as possible in the district of his choice but the administrative need and related other aspects would also be considered. The recommendation of the Civil Services Board is a weighty circumstance in the matters of transfer. The Civil Services Board is a competent independent body, which has recommended transfer of the applicant at Ahmednagar and the said recommendation has been accepted by the competent authority. Meeting of the Civil Services Board was held on 29.5.2023 and accordingly the transfer order has been issued on 6.6.2023. In sum and substance posting given to the applicant at Ahmednagar for which he had not given option cannot be held to be very weighty ground so as to call interference in the order of transfer.

11. The ground now requires to be considered pertains to service of the transfer order belatedly. As noted hereinabove the respondents have admitted that the transfer order dated 6.6.2023 was served upon the applicant on 3.8.2023 and till the said date applicant was discharging duties on the existing post. It is the contention of the applicant that since in the month of June the order of transfer was not served upon him, he was reasonably



believing that he is not likely to be transferred and suddenly on 3.8.2023 the order came to be served upon him and he was relieved from the charge of his existing post. According to the applicant the impugned order, therefore, is midterm transfer and the same has been made contrary to the provisions of law.

12. The provisions under the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short 'Transfer Act, 2005') provides that the transfer of the Government servant shall ordinarily be made only once in a year in the month of April or May. In the present matter as I have earlier noted the period for making transfers was extended up to 30<sup>th</sup> June, 2023 and in that view the order passed on 6.6.2023 cannot be said to be in contravention of the provisions as are made in the Transfer Act, 2005. However, mere issuance of order was not enough when the applicant has come out with a specific case that the order was not made known and was not served upon him till 3<sup>rd</sup> of August, 2023 which reasonably make to applicant to believe that he was not likely to be transferred. The applicant has placed on record the document evidencing that his daughter has taken admission at one Orion English Medium State Board School, Jalgaon in 4<sup>th</sup> standard

and he has deposited the admission fees, as well as, tuition fees totaling to Rs. 45,000/-.

13. As I have noted earlier the entire thrust of the applicant is on the issue that his daughter has now started taking education in the aforesaid school and it would be unjust and unfair to now ask the applicant to join at the transferred place, where it would be difficult for him to take admission for his daughter and also may be suffering financial loss. I have gone through the receipt, which is placed on record by the applicant. The aforesaid receipt shows that the applicant deposited the fees and took the admission in the aforesaid school on 31.5.2023. Considering the date as aforesaid it is difficult to accept the contention of the applicant that he was under an impression that he is not likely to be transferred and hence, he admitted his daughter in the aforesaid school.

14. Secondly when the applicant had recorded his choices, the applicant was certainly knowing that he is likely to be transferred. Even otherwise it was within the knowledge of the applicant that he has completed his ordinary tenure on the existing post and hence, he may be transferred. In the circumstances, ground which has raised by the applicant that he took admission of his daughter believing that he is not likely to be transferred also cannot be accepted. The fact, however remains that the order of

transfer came to be served upon the applicant on 3.8.2023. It is thus evident that the daughter of the applicant, who got admission in the Orion English Medium State Board School, Jalgaon must have started attending the school and attended it in the month of June and July also. The respondents have not given any explanation as to why the order of transfer was not served upon the applicant and why the applicant was not relieved from his existing post within the period stipulated in the order of transfer. It is further informed at the bar that in place of the present applicant no one has yet been posted as Storekeeper. It is further informed that there is only one post of Storekeeper at the establishment where the applicant is working.

15. In premise of the facts as aforesaid, though I have held that other grounds, which are raised by the applicant, are unsustainable and the applicant has failed in substantiating his case on the basis of the said grounds, considering the peculiar facts and circumstances, first that the order of transfer came to be served upon the applicant on 3.8.2023 by which time the daughter of the applicant had completed two months' of her academic career in the school at Jalgaon and further that no one has yet been posted in place of the applicant and also that there is only one post of Store Keeper at Jalgaon, it would be in the fitness of things that

the transfer of the applicant is kept in abeyance for the present academic year. If it is so done there would be no scope for the applicant to seek retention at the existing place thereafter.

16. It is informed that the applicant has been relieved from the existing post w.e.f. 3.8.2023, but has not resumed the charge at the transferred place. If this be so, the applicant has taken a risk and will have to face its consequences.

17. For the reasons stated above, the following order is passed: -

### **ORDER**

(i) The order of transfer dated 6.6.2023 impugned in the present O.A. be kept in abeyance for the present academic year.

(ii) The respondents shall allow the applicant to resume his duties at the existing post and permit the applicant to discharge his duties of the said post for the current academic year.

(iii) The Original Application stands disposed of in the aforesaid terms.

(iv) There shall be no order as to costs.

**VICE CHAIRMAN**