

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 132 OF 2017

DIST. : JALGAON

Dattu s/o Rama Sonawane,
Age. 50 years, Occu. : Service as
Craft Instructor (Turner),
Industrial Training Institute,
Bodwad, Tq. Bodwad, Dist. Jalgaon.

-- APPLICANT

V E R S U S

1. The State of Maharashtra,
Through the Secretary,
Skill Development &
Entrepreneurship Department,
Mantralaya, Mumbai – 400 032.
(Copy to be served on the
Chief Presenting Officer, M.A.T.
Mumbai, Bench at Aurangabad).
2. The Director of Vocational Education &
Training, Maharashtra State,
Mumbai.
3. The Joint Director of Vocational
Education & Training,
Regional Office, Nasik.
4. The Principal,
Government Industrial Training Institute,
Bodwad, Tq. Bodwad, Dist. Jalgaon.
5. Shri P.B. Gore,
Age. Major, Occ. Service as
Craft Instructor (Mechanic Diesel),
Industrial Training Institute,
Nasik, Dist. Nasik.

-- RESPONDENTS

APPEARANCE :- Shri J.B. Choudhary, learned Advocate for
the applicant.
: Shri D.R. Patil, learned Presenting Officer
for the respondents.

CORAM : **Hon'ble Shri B.P. Patil, Member (J)**
DATE : **16th September, 2017**

ORDER

1. The applicant has challenged the order dtd. 18.2.2017 passed by the res. no. 3 by which he is posted as Mathematics & Drawing Instructor, Mandvi, Dist. Nandurbar by ignoring the option submitted by him for posting at B.T.R.I., Ahmednagar and posting the res. no. 5 at B.T.R.I., Ahmednagar, and also prayed to direct the respondents to post the applicant at B.T.R.I., Ahmednagar on the post of Mathematics & Drawing Instructor as per the option submitted by him, by filing this O.A.

The applicant was initially appointed as a Mathematics and Drawing Instructor on 15.3.1999 and posted at I.T.I., Dharangaon, Tq. Dharangaon, Dist. Jalgaon. On 13.8.2008 the post on which he was working was declared as surplus and the applicant was directed to report the res. no. 2 for absorption on other post. Accordingly, the applicant was relieved from the post of Mathematics & Drawing Instructor. By the order dated 13.5.2009, the applicant along with other employees were absorbed on the post of Craft Instructor (Turner) and the applicant was posted at I.T.I., Jalgaon. Accordingly, the applicant joined on the said post on 13.5.2009. He worked at I.T.I., Jalgaon till June, 2016. Thereafter he was transferred to Bodwad, Dist. Jalgaon and since then he was working as a Craft Instructor at I.T.I. Bodwad, Dist. Jalgaon.

2. The applicant and other employees, who were declared surplus, were representing the res. nos. 2 & 3 for accommodating them on their original post of Mathematics & Drawing Instructor. Thereafter, on 20.1.2017 the res. no. 3 issued a letter to all the Principals of I.T.Is. & directed them to obtain the option from the employees, who were declared surplus and submit the report to the res. no. 3 as they have to be absorbed on their original post of Mathematics and Drawing Instructor as per the seniority as the posts of Instructors in Mathematics & Drawing were being vacant. It was directed in the said letter dtd. 20.1.2017 that those employees to submit an undertaking and option forms on or before 25.1.2017, in the Proforma - I attached with the said letter. A seniority list of the employees was also attached with the letter. Moreover, the details of the vacancies were also mentioned in Annex. II attached with the said letter. In view of the said letter dtd. 20.1.2017, the surplus employees were to be absorbed on the vacant post as per their seniority. Accordingly, the applicant has submitted option form and undertaking on 23.1.2017 and opted for posting at B.T.R.I., Ahmednagar. He has submitted the option form to the res. no. 4.

3. It is the contention of the applicant that as per the condition no. 3 mentioned in the Option Form, if more than one employee

opt for one station, in that case the seniority of the employees may be considered while giving posting. It is his contention that as he is senior most employee in the said seniority list, he ought to have been posted as per his option at B.T.R.I., Ahmednagar. It is his contention that as per Annex. II, there were only 8 vacancies of Mathematics & Drawing Instructors and accordingly 8 persons were to be accommodated on the said vacant posts. The res. no. 5 was at sr. no. 9 in the said seniority list, but the respondent no. 1 had not considered the said aspects and transferred & posted the applicant at I.T.I., Mandvi, Dist. Nandurbar and posted the res. no. 5 at B.T.R.I., Ahmednagar by the impugned order. It is his contention that the impugned order is mala-fide and against the condition no. 3 mentioned in the option form. It is his contention that the respondents have not considered his seniority as per the condition mentioned in the option form and they have posted him at Mandvi, Dist. Nandurbar, which is a tribal area. It is the contention of the applicant that, it is difficult for him to work in Tribal Area as his old parents are residing at Jalgaon and he has to take care of them. It is the contention of the applicant that he has been posted at Mandvi, Dist. Nandurbar with mala-fide intention to accommodate the res. no. 5, who was not eligible for getting posting as he was at sr. no. 9 in the seniority list and only 8 posts were vacant at that time. On these grounds, he

challenged the impugned order and prayed to quash and set aside the same and prayed to direct the respondents to post him as Mathematics & Drawing Instructor at B.T.R.I., Ahmednagar.

4. The respondents have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that by issuing G.R. in the year 2001, the Govt. has decided to take a review of its employees. After taking review by the Department, posts of Mathematics & Drawing Instructors were surrendered to the Government and therefore employees like the applicant became surplus. Therefore, the persons like the applicant were absorbed and accommodated as Craft Instructors having equivalent pay scale. Accordingly, the applicant was posted as a Craft Instructor (Turner) at I.T.I., Jalgaon and accordingly he was relieved from the post of Instructor in Mathematics & Drawing. He was accommodated at Jalgaon as per his option. In the year 2016, again the applicant was transferred to Bodwad, Dist. Jalgaon as per the option given by him. It is his contention that by letter dtd. 23.5.2014, the Director of Vocational Education & Training, M.S., Mumbai has given instructions to re-accommodate the surplus employees on their original post. Considering the said directions, the res. no. 3 has taken the review of the post of Mathematics & Drawing

Instructors and after considering vacant posts, the res. no. 3 issued letter dtd. 20.1.2017 and called options from the employees, whose names were mentioned in the list attached with the said letter. The applicant has submitted his option form and requested to accommodate him at B.T.R.I., Ahmednagar.

5. It is their contention that as per the policy of the Government, the surplus employees have to be accommodated on the original post whenever the posts become vacant. Accordingly, options had been called from the concerned employees. It is their contention that 8 employees were re-accommodated on their original post of Instructor in Mathematics & Drawing by order dtd. 18.2.2017. Most of the employees were posted as per their options. However, it was not possible to re-accommodate all the employees as per their choice. Therefore, they were accommodated on available posts considering the administrative exigencies. It is their contention that the res. no. 3 had given preference to fill up the vacant posts in tribal area and accordingly 6 persons out of 8 persons were re-accommodated in tribal area in view of the policy of the Government. It is their contention that the res. no. 5 was posted at I.T.I., Ahmednagar and he was relieved on 28.2.2017 and he joined on 1.3.2017 at Ahmednagar. It is their contention that the impugned order dtd. 18.2.2017 is implemented except the

applicant. The applicant was accommodated as per his option while giving posting to him earlier. It is their contention that there is no illegality in the impugned order and they have not favoured the res. no. 5. Therefore, they prayed to reject the O.A.

6. The applicant has filed rejoinder and contended that previously he was transferred considering his option and not on his request and his option has been considered as per the routine procedure followed by the respondents. It is his contention that as per the condition no. 3 of the option form, he ought to have been posted at B.T.R.I., Ahmednagar, as he was senior most employee in the seniority list. It is his contention that the res. nos. 3 & 4 are unnecessarily protecting the res. no. 5 and justifying the transfer of the applicant at Mandvi under the garb of posting of senior employee in a tribal area. It is his contention that the res. no. 3 has not followed the G.R. Therefore, he prayed to quash the impugned order.

7. I have heard Shri J.B. Choudhary, learned Advocate for the applicant and Shri D.R. Patil, learned Presenting Officer for the respondents. I have considered the documents placed on record by both the sides.

8. Admittedly the applicant was initially appointed as a Mathematics and Drawing Instructor on 15.3.1999 and posted at I.T.I., Dharangaon, Tq. Dharangaon, Dist. Jalgaon. On 13.8.2008, the posts of Instructor in Mathematics & Drawing were declared as surplus and the applicant was directed to report the res. no. 2 for absorption on other post. Accordingly, the applicant was relieved from the post of Mathematics & Drawing Instructor. By the order dated 13.5.2009, the applicant along with other employees were absorbed on the post of Craft Instructor (Turner) and the applicant was posted at I.T.I., Jalgaon. Accordingly, the applicant joined on the said post on 13.5.2009. He worked there till June, 2016 and thereafter he was transferred to Bodwad, Dist. Jalgaon and since then he was working as a Craft Instructor at I.T.I. Bodwad, Dist. Jalgaon. Thereafter, on 20.1.2017 the res. no. 3 issued a letter to all the Principals of I.T.Is. and directed them to obtain the options from the employees, who were declared surplus and submit the report to the res. no. 3 as they have to be absorbed on their original post of Mathematics and Drawing Instructor as per the seniority as the posts of Instructors in Mathematics & Drawing were vacant. It was directed in the said letter dtd. 20.1.2017 that those employees have to submit an undertaking and option forms attached with the said letter on or before 25.1.2017. A seniority list of the employees was also

attached with the letter. The details of the vacancies were mentioned in Annex. II attached with the said letter. In view of the said letter dtd. 20.1.2017, the surplus employees had to be absorbed on the vacant post as per their seniority. Admittedly, the applicant has submitted option form and undertaking on 23.1.2017 and exercised option for his posting at B.T.R.I., Ahmednagar. The applicant was at sr. no. 1 in the seniority list attached with the letter and the res. no. 5 was at sr. no. 9 in the said seniority list. The applicant was posted at Mandvi, Dist. Nandurbar by the impugned order dtd. 18.2.2017.

9. Learned Advocate for the applicant has submitted that the res. no. 3 has called the option forms and undertaking from the employees, who were declared surplus from the post of Instructor in Mathematics & Drawing and were absorbed on the other posts in the equivalent pay scale by his letter dtd. 20.1.2017 (paper book page 19) for absorbing them on their original post. He has submitted that along with the said letter the list of vacant posts of Instructor in Mathematics & Drawing as on 31.12.2017 in the Nasik Division has been given in the Annex. II of the said letter. In Annex. I attached with the said letter a seniority list of the employees to be absorbed on the original post of Instructor in Mathematics & Drawing is attached. He has submitted that as

per the seniority list, the applicant's name appears at sr. no. 1 while name of res. no. 5 appears at sr. no. 9. He has submitted that option form was attached with the said letter dtd. 20.1.2017. As per the said letter employee has to give 3 options of the station / place, where he has to be posted after absorption on the original post of Instructor in Mathematics & Drawing. He has submitted that as per conditions mentioned in the said letter and as per the condition no. 3, if more than one employee exercise option for one place then the seniority of the employee will be considered while posting him on the said post. He has argued that as per condition no. 3 the respondents ought to have posted the applicant at B.T.R.I., Ahmednagar as per his option as he being senior most amongst the Instructors eligible for absorption on the original post. He has submitted that the res. no. 5 was junior to him and he was at sr. no. 9, but the respondents have not considered the said condition no. 3 incorporated in the option form and posted the res. no. 5 at B.R.T.I., Ahmednagar though he is junior to the applicant. He has submitted that the respondents have not followed the norms fixed by them while giving posting to the incumbents and, therefore, the impugned order posting the applicant at I.T.I., Mandvi, Dist. Nandurbar is illegal. He has also submitted that the posting of res. no. 5 at B.T.R.I., Ahmednagar is also illegal and against the norms fixed by the respondents.

Therefore, he prayed to quash the impugned order so far as transfer and posting of the applicant and res. no. 5 is concerned.

10. The learned P.O. has submitted that the applicant has rendered services in Jalgaon District as per option given him and thereafter he has been transferred to I.T.I., Bodwad, Tq. Bodwad, Dist. Jalgaon as per choices given by him. He has submitted that, as per the Govt. policy all the senior most Instructors have been accommodated on their original post i. e. on the post of Instructor in Mathematics & Drawing. They have been posted in tribal area as per the guidelines of the Government. He has submitted that 6 employees out of 8 were absorbed in tribal area as per the policy of the Government. He has submitted that since the res. no. 5 exercised the option and requested to post him at B.T.R.I., Ahmednagar, he has been posted there. He has submitted that the transfer of the applicant and the res. no. 5 has been made in accordance with the conditions mentioned in the option forms submitted by the employees and there is no violation of any condition. He has submitted that the res. no. 5 has joined his new posting at B.T.R.I., Ahmednagar on 1.3.2017 and at present there is no vacancy at Ahmednagar and therefore, the applicant cannot be accommodated and posted at B.T.R.I., Ahmednagar. He has submitted that, there was no mala-fide intention on the part

of the respondents in giving posting to the applicant at I.T.I., Mandvi, Dist. Nandurbar. He has submitted that the posting to the applicant has been given as per the norms fixed by the respondents and there is no illegality in the impugned order. Therefore, he prayed to reject the O.A.

11. On going through the documents, it reveals that by issuing letter dtd. 20.1.2017, the res. no. 3 has called options from the employees, who were declared surplus and absorbed in other post in the equivalent pay scale, to reabsorb them on the available vacant posts of Instructor in Mathematics & Drawing. The seniority list of the eligible employees, who have to be re-absorbed on their original post of Instructor in Mathematics & Drawing has been attached with the said letter dated 20.1.2017. As well as statement regarding vacant post of the Instructor in Mathematics & Drawing and the places had been attached with the said letter. The option forms had been supplied to the employees with a direction to give their options regarding choices of places of posting along with undertaking. In the said option form, 4 conditions are mentioned, which will have to be taken into consideration while giving posting to the said employees after absorbing in their original post of Instructor in Mathematics &

Drawing. The said conditions are relevant and, therefore, I reproduce the said conditions :-

“अटी :-

१. प्रपत्रात नमूद केलेल्या रिक्त पदापैकी कमीत कमी तीन ठिकाणचे विकल्प देण्यात यावे.
२. प्रपत्रात नमूद केलेल्या रिक्त पदांव्यतिरिक्त विकल्प दिल्यास त्याचा केला जाणार नाही.
३. एकाच ठिकाणी एका पेक्षा अधिक कर्मचा-यांनी विकल्प सादर केल्यास अश्या वेळेस संबंधित कर्मचा-याची सेवाजेष्ठता व दिलेल्या विकल्पानुसार कर्मचा-यांचे समायोजन करण्यात येईल.
४. दिलेल्या विकल्पाप्रमाणे समायोजन करणे शक्य न झाल्यास विभागातील ज्या ठिकाणी पद रिक्त आहे अश्या ठिकाणी संबंधिताचे सेवाज्येष्ठतेनुसार समायोजन करण्यात येईल.”

12. In view of the said conditions, each employee has to give 3 options for posting. As per the condition no. 3, if more than one employee opt for one particular station, in that case the seniority of the employees may be considered and posting will be given accordingly. The condition no. 3 in the option form is material & relevant in this case. The applicant Shri Dattu Rama Sonawane is at sr. no. 1 in the seniority list prepared by the res. no. 3, while the res. no. 5 is at sr. no. 9. As per the letter dtd. 20.1.2017, only 8 posts were available for absorbing the employees on their

original post of Instructor in Mathematics & Drawing. Accordingly the employees at sr. nos. 1 to 8 would be eligible for absorption on their original post, but the respondents have not absorbed the candidate viz. Shri K.S. Wagh, who is at sr. no. 4 in the seniority list while giving posting to those employees for the reasons best known to them. On the contrary, they have considered the case of res. no. 5 Shri P.B. Gore out of them who is at sr. no. 9 though he was not eligible for consideration as per the seniority. The applicant has given option form (page 23) and thereby requested to post him at B.R.T.I., Ahmednagar. The respondents ought to have considered his option and posted him at B.T.R.I., Ahmednagar in view of the condition no. 3 in the option form as the applicant is senior most employee amongst the employees, who were to be absorbed in the original post (page 20). But the respondents have not considered the said aspect and they had not posted the applicant at B.T.R.I., Ahmednagar.

13. There is no evidence on record to show that the res. no. 5 exercised the option for posting him at B.T.R.I., Ahmednagar. No document to that effect has been placed on record by the respondents. Even if it is assumed that the res. no. 5 has also opted for B.T.R.I., Ahmednagar along with the applicant, in that case, the applicant ought to have posted at B.T.R.I., Ahmednagar

as per the condition no. 3 of the option form considering his seniority as he was senior than the res. no. 5. The respondents have fixed the norms for posting surplus employees on their original post to show transparency in the absorption. But the res. no. 3 has not followed the norms fixed by him and made the posting of the applicant and res. no. 5 contrary to the norms and violated the same. The documents on record show that the respondents have favoured the res. no. 5 Shri P.B. Gore by absorbing him, though he was not eligible to absorb on the 8 vacant posts at the time of impugned order as per the seniority list as he was at sr. no. 9 in the list attached with the letter dtd. 20.1.2017. The respondents have not assigned reasons for absorption of res. no. 5 while absorbing the surplus employees on the 8 vacant posts and as to why they considered the case of res. no. 5 for absorption out of turn and as to why he had not considered the case of Shri K.S. Wagh, an employee at sr. no. 5 for reabsorbing him on original post. This shows that the respondents have issued the impugned order giving posting to the applicant at I.T.I., Mandvi, Dist. Nandurbar to favour & accommodate the res. no. 5 at B.T.R.I., Ahmednagar and this show mala-fide intention on the part of the respondents.

14. In view of the above said discussion, in my view, the impugned order dtd. 18.2.2017 giving posting to the applicant at I.T.I., Mandvi, Dist. Nandurbar as a Instructor in Mathematics & Drawing without considering his option for B.T.R.I., Ahmednagar and posting the res. no. 5 at B.T.R.I., Ahmednagar is illegal one and it is against the conditions or norms fixed by the respondents themselves. Therefore, the impugned order dated 18.2.2017 requires to be quashed so far as posting of applicant & res. no. 5 is concerned by allowing the present O.A. Hence, I pass the following order :-

ORDER

- (i) The O.A. is allowed with no order as to costs.
- (ii) The impugned order dated 18.2.2017 so far as posting of the applicant as Instructor in Mathematics & Drawing at I.T.I., Mandvi, Dist. Nandurbar after absorption and posting of res. no. 5 at B.T.R.I., Ahmednagar as Instructor in Mathematics & Drawing after absorption is hereby quashed and set aside.
- (iii) The respondent Nos. 1 to 3 are directed to give posting to the applicant at B.T.R.I., Ahmednagar on the post of Instructor in

Mathematics & Drawing as per his option by taking corrective measures immediately.

MEMBER (J)

ARJ-O.A. NO. 132-2017 BPP (POSTING)