

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 01 of 2022 (SB)

Thanesh Anirudha Gaidhane,
Aged about 43 years,
R/o at post Asoli, Tah & Dist. Gondia, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Water Resources and Department,
Mantralaya, Mumbai-32.
- 2) The Chief Engineer
(Electrical) Hydro Project,
Hongkong Building, 4th floor, Fort, Mumbai-01.
- 3) Shri Ajay Gopichand Gadmal,
Dy. Engineer, Vidarbha Hydro
Electric and Lift Irrigation Sub Division no.3, Gadchiroli
(R/o near Itwari post Office, Itwari Main Road,
Umred, Tq. Umred, Dist. Nagpur-441 203.

Respondents.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.
Shri S.A. Deo, C.P.O. for respondent nos.1&2.
Shri S.S. Ghate, learned counsel for respondent no.3.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 17th February, 2022.

Date of Pronouncement of Judgment : 23rd February, 2022.

JUDGMENT

(Delivered on this 23rd day of February, 2022)

Heard Shri G.K. Bhusari, learned counsel for the applicant,
Shri S.A. Deo, learned C.P.O. for respondent nos.1&2 and Shri S.S.
Ghate, learned counsel for respondent no.3.

2. The applicant has filed the present O.A. for the following reliefs –

(7) (i) Direct the Respondents to modify the Order dated 29.12.2021 (Annexure A-1) and consider the request of the Applicant by giving him posting on the post of Executive Engineer to Bhandara or nearby his native places in view of Government Resolution dated 06/08/2002 & 15.04.2004 and Guidelines stipulated therein.

(ii) Direct the Respondents to keep one post of Executive Engineer vacant at Bhandara during the pendency of this instant Original Application by way of ad interim relief.

(iii) Direct the Respondent to consider the representation of the Applicant sympathetically in view of Government Resolution 06/08/2002 & 15.04.2004 and Guidelines stipulated therein.

(iii-A) Direct the Respondents to quash and set aside the order dated 29.12.2021 to the extent of giving the posting to the Applicant in Mumbai as well as order of Respondent no. 3 to the extent of giving him posting at Bhandara.

(iii-B) Direct the Respondent no. 1 to post the Applicant in Bhandara on the post of Executive Engineer as per his option/representation and issue necessary order of his posting immediately.

(8) Direct the Respondents to keep one post vacant at Bhandara during the pendency of this instant Original Application by way of ad interim relief and Direct the Respondent to consider the representations of the Applicant sympathetically in view of Government Resolution and Guidelines stipulated therein.

3. The case of the applicant in short is as under –

4. The applicant was appointed as Deputy Engineer, Class-I vide appointment order dated 4/2/2014. The applicant joined on the said post on 21/4/2014 at Vidharbha Hydroelectric and Lift Irrigation Department, Bhandara. The applicant is 75% disable person. On 31/05/2017 he was transferred to Gondia on the same post. The applicant is permanent resident of Gondia. The applicant is now promoted as Executive Engineer and posted at Inspection and Monitoring Cell, Mumbai by order dated 29/12/2021.

5. It is submitted that the applicant had made presentation before the impugned promotion / posting order. The applicant has requested the respondent authorities to give him posting at Bhandara, but the respondent authorities have given posting to respondent no.3 to Bhandara. Hence, the applicant approached this Tribunal to cancel / modify the posting order and give him posting at Bhandara.

6. The application is opposed by the respondent nos.1&2. It is submitted that the applicant is posted at Mumbai on promotion, it is not a transfer and therefore the Circulars / Notification relied by the applicant are not applicable. It is submitted that the respondent no.3 is senior to the applicant and therefore he is posted at Bhandara. Hence, the O.A. is liable to be dismissed.

7. The respondent no.3 filed the submission and submitted that he has joined at Bhandara and therefore the O.A. is liable to be dismissed.

8. Heard Shri G.K. Bhusari, learned counsel for the applicant. He has pointed out the Government G.R. dated 6/8/2002, Govt. Notifications dated 16/07/2015 and 14/7/2021. He has submitted that the applicant is having 75% disability. Before the promotion and posting the applicant had requested the respondent authorities to give him posting at Bhandara. The respondent authorities posted the respondent no.3 at Bhandara and the applicant is posted at Mumbai which is 1000 Kms. away from his native place at Gondia. The learned counsel for the applicant has submitted that in view of the G.R. of 2002, the respondent nos.1&2 are required to give the posting to the applicant near to his native place. He has pointed out the guidelines of Govt. GAD Notification dated 16/7/2015, more particularly, the Rule 3 of the said Notification.

9. The learned counsel for the applicant has submitted that as per the Govt. Notification dated 14/7/2021, the applicant is entitled to get the posting in his Revenue Division. The applicant is a handicapped person and therefore as per the said Notification more particularly Clause 7 of the Notification, he is entitled to get posting at Bhandara, but he is wrongly posted at Mumbai. In support of his

submission pointed out the decision of M.A.T., Principal Bench, Mumbai in the case of **Jayant Ramesh Chavan Vs. State of Maharashtra & Ors.**, in O.A.No.368/2021 and submitted that the appointment order of applicant be modified, he shall be posted at Bhandara and the respondent no.3 shall be posted at other place.

10. Heard the learned C.P.O. Shri S.A. Deo. He has submitted that it is not a transfer, it is a promotion / posting. The applicant is required to join at the promotional post. The cited Notification / Rules are not applicable in the present matter. Hence, the application is liable to be dismissed.

11. Heard Shri S.S. Ghate, learned counsel for respondent no.3. He has submitted that the respondent no.3 has already joined at Bhandara. Now there is no post vacant at Bhandara. At the most, the applicant can make representation and direction to that effect may be given.

12. There is no dispute that the applicant is a handicapped person having 75% of disability. As per the Notification dated 14/7/2021, the handicapped person is exempted from Revenue Division Allotment. The Clause 7 of the Notification dated 14/7/2021 reads as under –

“7. Cases for which exemption from Revenue Division Allotment is admissible.- (1) *There shall be exemption to the officer from Revenue Division Allotment in the following circumstances,-*

- (a) the officer who is physically challenged;*
- (b) the officer whose spouse or his child is mentally retarded or the officer who is guardian of his brother or sister, are mentally retarded;*
- (c) the officer who is legally proven as a single parent;*
- (d) the officer having 3 years or less than 3 years period for superannuation from the date of recommendation by the Departmental Promotion Committee, for their promotion.*

(2) Under the circumstances mentioned in sub-rule (1), the concerned Administrative Department shall allot the convenient Revenue Division to the concerned officer by taking into account the aforesaid sequence and availability of vacant posts.”

13. The learned counsel has pointed out Clause no.15 of the Notification dated 14/7/2021 which reads as under –

“15. Strict compliance of provisions of these rules.-

(1) It shall be strictly ensured by the concerned Administrative Department that these rules are scrupulously complied with.

(2) If it is found that the officer to whom the powers under rule 11 has been delegated, submits the proposal of posting to the Competent Authority, in violation of the provisions of these rules, then the responsibility shall be fixed against such officer and strict action shall be taken against such erring officer.”

14. There is no dispute that the applicant is entitled for exemption from Revenue Division Allotment. The applicant is promoted and transferred to Mumbai which is 1000 Kms. away from

Gondia. The learned counsel for the applicant has pointed out the decision of M.A.T., Principal Bench, Mumbai. The cited decision is not applicable in the present matter. In the cited decision, the post in Kokan Division was vacant, but the applicant was not given the posting in Kokan Division. It is observed that the post was kept vacant for one Shri S. Medsikar. After the promotion and posting of applicant, Shri S. Medsikar was posted in Kokan Division, therefore, the posting order was modified by the M.A.T., Principal Bench, Mumbai.

15. In the present case, there is no vacant post at Bhandara. The respondent no.3 already joined at Bhandara. The respondent nos.1&2 ought to have considered the representation of the applicant. In that view of the matter, I pass the following order –

ORDER

- (i) The O.A. is partly allowed.
- (ii) The respondent nos.1&2 are directed to consider the representation of the applicant in view of the guidelines of the Government of Maharashtra issued from time to time.
- (iii) The respondent nos.1&2 shall consider the representation of the applicant within a period of one month.
- (iv) No order as to costs.

Dated :- 23/02/2022

(Justice M.G. Giratkar)
Member (J).

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 23/02/2022

Uploaded on : 23/02/2022*