

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.792 OF 2023

**DISTRICT : MUMBAI
SUBJECT : TRANSFER**

Smt. Asmita Haribhau Sarode)
Age: 37 yrs,)
Occ. Superintendent (Non Gazette Group B))
In Charity Commissioner (Head Office),)
Mumbai,)
Permanent Resident Add : House No.137,)
B.No.20 Labour Colony, Municipal Corporation,)
Nanded Waghala Nanded 431 602.)... **Applicant**

Versus

1) The State of Maharashtra,)
Through the Principal Secretary,)
Law and Judicial Department,)
Mantralaya, Mumbai 400 032)
2) The Charity Commissioner,)
Maharashtra State, Mumbai)
Second floor, South Wing, Sasmira)
Building, Sasmira Marg, Worli,)
Mumbai 400 030)... **Respondents**

Shri Mukund R. Kulkarni, learned Advocate for the Applicant.

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : DEBASHISH CHAKRABARTY, MEMBER (A)

DATE : 02.04.2024.

JUDGMENT

1. The Applicant who is working as 'Superintendent (Non Gazetted Group B)' in 'Head Office' of 'Charity Commissioner Maharashtra State Mumbai' has invoked provisions of 'Section 19' of the 'Administrative Tribunal Act, 1985' to seek cancellation of 'Transfer Order' dated

19.05.2023 of 'Charity Commissioner, Maharashtra State, Mumbai' by which she has been posted to 'Head Office' in Mumbai and seeks consideration of her request to be transferred to any 'Vacant Post' of 'Superintendent (Non Gazetted Group B)' in Nanded or Jalna or Parbhani Districts.

2. The learned Advocate for Applicant stated that upon promotion to cadre of 'Superintendent (Non Gazetted Group B)'; she was posted to 'Public Trust Regulation Office, Latur' by 'Transfer Order' dated 12.05.2017 of 'Charity Commissioner, Maharashtra State, Mumbai'. Thereafter; Applicant came to be posted to 'Public Trust Regulation Office, Parbhani' by 'Transfer Order' dated 10.08.2018 of 'Charity Commissioner, Maharashtra State, Mumbai'.

3. The learned Advocate of Applicant then stated that 'Charity Commissioner, Maharashtra State, Mumbai' who is 'Competent Transferring Authority' has not observed 'Administrative Guidelines' in G.A.D. G.R. of 09.04.2018 by not considering request of Applicant to be posted to Nanded or Jalna or Parbhani Districts as per 3 Options submitted by her on 06.04.2023.

4. The learned Advocate for Applicant further stated that request of Applicant to be posted to any 'Vacant Post' of 'Superintendent (Non Gazetted Group B)' in Nanded or Jalna or Parbhani Districts was made on grounds that both 'Husband and Wife' being 'Government Servants' should have been posted together. The 'Husband' of Applicant is serving on post of 'Talathi' in Parbhani District.

5. The learned Advocate for Applicant thereupon stated that request of Applicant should have been considered by 'Charity Commissioner, Maharashtra State, Mumbai' and instead of 'Head Office' in Mumbai she should have been transferred within same region of 'Chhatrapati

Sambhaji Nagar Division' when there were 'Vacant Posts' as on 31.03.2023 in 'Nanded, Jalna and Parbhani Districts'.

6. The learned Advocate for Applicant cited several instances of other employees in cadre of 'Superintendent (Non Gazetted Group B)' who were all transferred again within same regions of 'Nagpur/ Amaravti/ Pune/ Konkan/ Chhatrapati Sambhaji Nagar Divisions' on similar requests to 'Vacant Posts' or to those which became available during 'General Transfer 2023'.

7. The learned PO relied on 'Affidavit-in-Reply' dated 13.10.2023 filed on behalf of 'Charity Commissioner, Maharashtra State, Mumbai' which affirms that due procedure in G.A.D. G.R. of 09.04.2018 had been observed and 'Seniority List' of eligible 'Superintendents (Non-Gazetted Group-B)' for 'General Transfer: 2023' had been published on 31.03.2023. The proposals for transfers of such 'Superintendent (Non Gazetted Group B)' were placed for due consideration of 'CSB'. The Applicant was recommended by 'CSB' to be transferred to 'Head Office' in Mumbai primarily upon consideration of the fact that she had worked for substantial period of time in 'Parbhani District' in two stints from 2012 to 2017 and 2018 to 2023.

8. The learned PO on the basis of 'Affidavit-in-Reply' dated 13.10.2023 of 'Charity Commissioner, Maharashtra State, Mumbai' further stated that there are several 'Subordinate Offices' and therefore 'Seniority List' of 'Superintendent (Non Gazetted Group B)' was required to be maintained at 'State Level' and not at 'Regional Levels'. She contended relying on 'Affidavit-in-Reply' dated 13.10.2023 of 'Charity Commissioner, Maharashtra State, Mumbai' that Applicant was not discriminated against on grounds of being 'Woman Employee' as few other 'Woman Employees' were required to be given higher precedence over Applicant under 'Annexure-1' of 'Statement - 2' of G.A.D. G.R. dated 09.04.2018. She also mentioned that posts of 'Superintendent (Non

Gazetted Group B)' at Nanded, Jalna & Parbhani Districts were not vacant when 'Seniority List' was published by 'Charity Commissioner Maharashtra State, Mumbai' on 31.03.2023. Further the case of Applicant cannot be considered at par with those employees under 'Charity Commissioner Maharashtra State, Mumbai' who are serving in cadres of 'Stenographer' and 'Senior Clerk'; while Applicant belongs to cadre of 'Superintendent (Non Gazetted Group B)'.

9. The grievance of Applicant primarily is that there has been discrimination against her vis-à-vis other employees in cadre of 'Superintendent (Non Gazetted Group B)'. However, nothing has been averred in 'Affidavit-in-Reply' dated 13.10.2023 filed on behalf of 'Charity Commissioner Maharashtra State Mumbai' about the specific instances cited by Applicant especially about those 'Superintendents (Non Gazetted Group B)' who have been transferred again within same regions of 'Nagpur/ Amaravti/ Pune/ Konkan/ Chhatrapati Sambhaji Nagar Divisions'.

10. The recommendations of 'CSB' in respect of Applicant and thereupon its approval by 'Charity Commissioner, Maharashtra State, Mumbai' as 'Competent Transferring Authority' to transfer Applicant to 'Head Office' in Mumbai does appear to have been granted only by taking into account the fact that Applicant had done proximate tenures of about 10 years in 'Parbhani District' and thus her request was not even to be considered for posting to 'Nanded District' or Jalna District' which are adjacent to Parbhani District.

11. The 'Charity Commissioner, Maharashtra State, Mumbai' in 'Affidavit-in-Reply' dated 13.10.2023 however has not disclosed justiciable grounds on which requests of several other 'Superintendent (Non Gazetted Group B)' came to be considered and they were posted again within same regions of 'Nagpur/ Amaravti/ Pune/ Konkan/ Chhatrapati Sambhaji Nagar Divisions'. Thus, the 'Transfer Order' dated

19.05.2023 of 'Charity Commissioner Maharashtra State Mumbai' by which Applicant was transferred to 'Head Office' in Mumbai becomes vulnerable on account of 'Arbitrary Exercise' of 'Statutory Powers' under the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'. Further, contention of 'Invidious Discrimination' made by Applicant by citing specific instances of transfers of several other 'Superintendents (Non Gazetted Group B)' who were not only transferred again within same regions of 'Nagpur/ Amaravti/ Pune/ Konkan/ Chhatrapati Sambhaji Nagar Divisions' gets compounded by the fact that similar requests came to be considered by 'Charity Commissioner, Maharashtra State, Mumbai' on identical grounds as that of Applicant; which was regarding 'Husband and Wife' to be posted together as per policy guidelines in G.A.D. G.R. Of 09.04.2018.

12. The requests from 'Husband & Wife' to be posted together as per policy guidelines in G.A.D. G.R. Of 09.04.2018 may not always be considered due to certain 'Administrative Reasons' especially at 'Tahsil Level' or even at 'District Level', but as is evident from several approvals granted for such transfers of 'Superintendents (Non Gazetted Group B)' by 'Charity Commissioner, Maharashtra State, Mumbai' such request can certainly be implemented at 'Regional Levels', as it provides larger canvas for judicious exercise of 'Statutory Powers' by 'Competent Transferring Authority' and next 'Superior Transferring Authority'. The request of Applicant thus needs to be reconsidered by 'Charity Commissioner, Maharashtra State, Mumbai' to obliterate 'Invidious Discrimination' which is apparent against Applicant on grounds of 'Husband & Wife' not being posted together even at 'Regional Level' which is 'Chhatrapati Sambhaji Nagar Division'. However, it must also be observed that there was no evidence of any prejudice against Applicant only on 'Gender Scale'; since only in few cases of 'Superintendent (Non Gazetted Group B)' who are 'Women Employees'; the 'Charity Commissioner, Maharashtra State, Mumbai' has transferred

them again within same regions of 'Nagpur/ Amaravti/ Pune/ Konkan/ Chhatrapati Sambhaji Nagar Division'.

13. The **Hon'ble Supreme Court of India in B Varadha Rao v State of Karnataka, 1986 (3) SLR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287** has observed that transfer is an ordinary incident of service and therefore does not result in any alteration of any condition of service to disadvantage of Government Servants. The **Hon'ble Supreme Court of India** has in **K. Sivankutty Nair v. Managing Director, Syndicate Bank, 1984 (2) SLR 13 (Kant); Chief General Manager (Telecom) v. Rajendra Ch. Bhattacharjee, (1995) 2 SCC 532 : SC 813 : (1995) 2 SLR 1** also observed that an employee cannot, as a matter of right, seek transfer to a place of his choice.

14. The **Hon'ble Supreme Court of India in B Varadha Rao v State of Karnataka, 1986 (3) SLR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287** has also observed that continued posting at one station or in one department not conducive to good administration as such continued posting creates vested interest. Further, **Hon'ble Supreme Court of India in UOI v NP Thomas, AIR 1993 SC 1605 : (1993) Supp (1) SCC 704** has further observed that since posts in public employment are generally transferable post, it follows that an employee has no vested right to remain at the post of his posting. Also, **Hon'ble Supreme Court of India in UOI v S.L. Abbas, AIR 1993 SC 2444 : (1993) 4 SCC 357** has observed that who is to be transferred where, is a matter for the appropriate authority to decide.

15. **The Hon'ble Supreme Court of India in Shilpi Bose vs. State of Bihar, AIR 1991 SC 532 : 1991 Supp (2) SCC 659 : 1991 Lab IC 360** nonetheless has been considerate about the cause of 'Husband & Wife' to be posted together and has not stood in the way of the spouses being brought together by orders of transfer to accommodate them so as to avoid undue 'Personal Hardships'. **The Hon'ble Supreme Court of**

India in Shilpi Bose vs. State of Bihar, AIR 1991 SC 532 : 1991 Supp (2) SCC 659 : 1991 Lab IC 360 dealt with the issue of transfer of 'Women Teachers' in Primary Schools of Bihar to places where their 'Husbands' were serving and had displaced several other teachers who had subsequently challenged such Transfer Orders. However it declined to interfere based on findings that such considerations as 'Husband & Wife' to be posted together were reasonable and upheld those Transfer Orders.

16. **The Hon'ble High Court of Judicature Allahabad in Deepa Vishishtha v State of U.P., 1996 (1) ESC 148 (All - DB)** has made pertinent observations regarding transfers of 'Husband and Wife' together with nuanced differentiation between 'Personal Hardships' caused to Government Servants and often cited grounds for transfer such as 'Administrative Exigencies' or 'Public Interest'. These observations are reproduced below:-

"In other words, in the garb of public interest or administrative exigencies, it is not at the whims of the authority to disturb the family by transferring one of the husband and wife to a different place since the guidelines are not in imperative form or they have no force of law. If the administrative exigencies or public interest so requires, certainly husband and wife may be transferred to different places but only in exceptional cases i.e. respect of rare cases, for which no illustration can be given."

17. **The Hon'ble Supreme Court of India in Bank of India Vs. Jagjit Singh Mehta; 1992 AIR 519 SC** has observed about the desirability of 'Husband & Wife' being posted together as well as about carrier choices required to be made by such Government Servants. These observations are as follows:-

"There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the

decision in accordance with the administrative needs. In the case of All-India Services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life."

18. The Transfer Order dated 19.05.2023 of 'Charity Commissioner Maharashtra State, Mumbai' by which Applicant was posted as 'Superintendent (Non Gazetted Group B) to 'Head Office' in Mumbai for reasons stated above does exhibit shades of 'Arbitrary Exercise' of 'Statutory Powers' by 'Charity Commissioner Maharashtra State, Mumbai' while acting as 'Competent Transferring Authority' under the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. Be that as it may; considering the contextual background to the case of Applicant it would suffice to direct Applicant to submit 'Fresh Representation' within 'Two Weeks' to 'Charity Commissioner, Maharashtra State, Mumbai'. The 'Charity Commissioner Maharashtra State, Mumbai' thereupon in all fairness will be expected to consider the judicial observations referred to above; which lean towards amelioration of 'Personal Hardships' caused to 'Government Servants' if as 'Husband and Wife' they were not to be posted together especially when such 'Personal Hardships' get overlooked as the reasons often quoted for justifying transfers of such 'Government Servants' are 'Administrative Exigency' and 'Public Interest'.

19. The 'Charity Commissioner Maharashtra State, Mumbai' to take appropriate decision within 'Two Weeks' after receipt of 'Fresh Representation' from Applicant regarding transferring her to any

available post of 'Superintendent (Non Gazetted Group B)' in 'Chhatrapati Sambhaji Nagar Division'. However, if any posts of 'Superintendent (Non Gazetted Group B)' are likely to be available in 'Nanded District' or 'Jalna District'; then request of Applicant may be considered at the time of 'General Transfers: 2024'.

ORDER

- A) The Original Application is Partly Allowed.
- B) No Order as to Costs.

**Sd/-
(Debashish Chakrabarty)
Member (A)**

Place: Mumbai
Date: 02.04.2024.
Dictation taken by: N.M. Naik.

Uploaded on: _____