

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.1009 OF 2019
(Subject : Posting)**

- 1) Shri Jakiuddin Pashamiya Biradar,)
Regional Transport Office,)
Mumbai, Permanent R/o. Pune.)
- 2) Shri Ravindra Dnyandeo Solanki,)
Deputy Regional Transport Office,)
Ratnagiri, Permanent R/o. Kolhapur.)
- 3) Shri Sunil Dnyandeo Rajmane,)
Deputy Regional Transport office,)
Vasai, Permanent R/o. Kolhapur.)
- 4) Shri Sambhajirao Pandurang Holmukhe,)
Regional Transport Office, Nashik,)
Permanent R/o. Pune.)
- 5) Shri Vijay Shamrao Sawant,)
Deputy Regional Transport office,)
Shrirampur, Ahmednagar,)
Permanent R/o. Pune.)
- 6) Shri Rahul Pandit Nalawade,)
Deputy Regional Transport office,)
Jalgaon, Permanent R/o. Kolhapur.)
- 7) Shri Arvind Kisan Phulari,)
Deputy Regional Transport Office,)
Ahmednagar, Permanent R/o. Latur.)
- 8) Shri Mayur Shrikrishna Bhosekar,)
Deputy Regional Transport Office,)
Pen, Permanent R/o. Pune.)

- 9) Shri Sunil Ambrushi Kshirsagar,)
 Regional Transport Office,)
 Thane, Permanent R/o. Pune.)
- 10) Shri Anis Ahmad Sardar Bagwan,)
 Regional Transport Office,)
 Nashik, Permanent R/o. New Panvel,)
 Dist. Raigad.)

All are Aged Adult, working as Inspector of)
 Motor Vehicles in the aforesaid offices.)
 Address for service of Notice :)
 Shri Arvind V. Bandiwadekar,)
 Shri Bhushan Arvind Bandiwadekar,)
 Shri Gaurav Arvind Bandiwadekar,)
 Sou. Gayatri Gaurav Bandiwadekar,)
 Advocates, having office at 9, "Ram-Kripa",)
 Lt. Dilip Gupte Marg, Mahim, Mumbai 400 016.)

.....**APPLICANTS.**

VERSUS

The State of Maharashtra,)
 Through Principal Secretary,)
 Home Department (Transport,))
 Having office at Mantralaya,)
 Mumbai 400 032.)

....**RESPONDENT**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicants.

Shri A.J. Chougule, learned Presenting Officer for the Respondent.

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 28.01.2020.

J U D G M E N T

1. The small issue posed for consideration in the Original Application is whether the Applicants are entitled to posting at the same place where they were working at the time of suspension.

2. In pursuance of the directions by Hon'ble High Court in Public Interest Litigation (P.L.I.) No.28 of 2013 decided on 04.05.2017 (page 94 of P.B.), Respondents suspended 37 Motor Vehicle Inspectors by suspension order dated 21.09.2018 (page 42 of P.B.). That time the present applicants were serving at Pune, Kolhapur and Panvel.

3. Indeed alleged incident had taken place at the place of their earlier posting which was at different place. However, they having completed normal tenure in general transfer they were transferred at different places. Thus, at the time of suspension they were already working at different place other than the place where the alleged mis-conduct had taken place. Later, the applicants amongst other were reinstated in services by order dated 08.04.2019. However, at the time of reinstatement they were again shifted to other place and posted at different place.

4. Following chart would make position clear to see the place where alleged misconduct is committed, the place where they were already transferred and working at the time of issuance of suspension order and place where they were posted on reinstatement :-

अ.क्र	अधिका-याचे नाव	घटनेवेळी कार्यरत असलेल्या कार्यालयाचे नांव (२०.०३.२०१७)	निलंबनावेळी कार्यरत असलेल्या कार्यालयाचे नांव (२०.०९.२०१८)	पुनर्स्थापित झाल्यानंतर कार्यालयाचे नांव (०७.०२.२०१९)
१	श्री जकीउद्दीन बिरादार	प्रा.प.का. पुणे	उप.प्रा.प.का. सातारा	प्रा.प.का. मुंबई(मध्य)
२	श्री रविंद्र सोळंके	प्रा.प.का. कोल्हापुर	उप.प्रा.प.का. सांगली	उप.प्रा.प.का. रत्नागिरी
३	श्री सुनिल राजमाने	प्रा.प.का. कोल्हापुर	उप.प्रा.प.का. कराड	उप.प्रा.प.का. वसई
४	श्री संभाजीराव होलमुखे	प्रा.प.का. पनवेल	प्रा.प.का. पुणे	प्रा.प.का. नाशिक
५	श्री विजय सावंत	प्रा.प.का. पनवेल	प्रा.प.का. पुणे	उप.प्रा.प.का. श्रीरामपुर

६	श्री राहूल नलावडे	प्रा.प.का. पनवेल	प्रा.प.का. कोल्हापुर	उप.प्रा.प.का. जळगाव
७	श्री अरविंद फुलारी	प्रा.प.का. पुणे	उप.प्रा.प.का. रत्नागिरी	उप.प्रा.प.का. अहमदनगर
८	श्री मयुर भोसेकर	प्रा.प.का. पुणे	उप.प्रा.प.का. पिंपरी-चिंचवड	उप.प्रा.प.का. पेण
९	श्री सुनिल क्षिरसागर	प्रा.प.का. पुणे	उप.प्रा.प.का. पिंपरी-चिंचवड	प्रा.प.का. ठाणे
१०	श्री अनिस बागवान	प्रा.प.का. पनवेल	उप.प्रा.प.का. पुणे	प्रा.प.का. नाशिक

5. Learned Advocate for the Applicants submits that as the applicants were already transferred from the place where the alleged mis-conduct took place, there was no need to shift the applicants at some other place at the time of reinstatement in service. For example - in case of the Applicant no.1, Shri Jakiuddin Pashamiya Biradar, alleged misconduct took place at Pune. He was then transferred to Satara and when he was working at Satara, suspension order was issued, whereas at the time of revocation of suspension and reinstatement in service he was posted at Mumbai. This happened in respect of all the applicants.

6 Learned Advocate for the Applicant, therefore, submits that there was no necessity, much less any justification, to shift the applicants at third place when they were already transferred from the place where alleged mis-conduct had taken place. He has further pointed out that in case of some of the co-delinquents, Respondents have not changed their postings which they had occupied at the time of issuance of suspension order. He has further pointed out that in **O.A.No.130/2019 filed by (D.J. Thakur & Ors. Versus The State of Maharashtra & Ors.) decided on 28.03.2019** (page 58 of P.B.) in pursuance of directions given by this Tribunal, the Applicants therein were posted at the same place where they were working at the time of suspension order. However, in so far as applicants are concerned they were subjected to discrimination. They made representation to give similar treatment but it was not responded, therefore, the present applicants raised the ground of discrimination.

7. Learned P.O. for the Respondents sought to justify the impugned orders of giving posting to the Applicants at different places in terms of circular dated 20.04.2013 issued by General Administration Department (G.A.D.), which *inter alia* provides in case of suspension and reinstatement of the Government servants he should not be posted in same District.

8. The object of giving the posting to the Government servants at different places is to ensure fair and unobstructive Departmental Enquiry or criminal prosecution. In present case admittedly the Applicants were already transferred from the place where they allegedly committed mis-conduct. They were transferred in due course and while serving at another place they were kept under suspension. Later, at the time of reinstatement in service they were again shifted to different place. As such when the Applicants were already transferred from place where alleged incident took place there was no need to again shift them at different place at the time of reinstatement in service. There is no justification for giving posting to them at different place instead of continuing them at the same place. No useful purpose is served by shifting them again.

9. Admittedly, the co-delinquents who are facing same joint enquiry namely Shri Deepak Thakur, Shri Dheeraj Pawar, Shri Kalbersingh Kalsi, Shri Pralhad Chigale, Shri Ganesh Vighne, Smt. Kalyani Mandlik, Shri Santosh Patil and Shri Vijay Kamble, they were not shifted but were reinstated on the same place where they were working at the time of reinstatement in service. However, the Applicants were given different treatment and they were posted at different place instead of continuing them at same place where they were working at the time of reinstatement in service.

10. Learned Advocate for the Applicant has rightly pointed out the circular issued by Principal Secretary, dated 28.02.2017 to give equal treatment to similarly situated persons. This circular has been issued on the basis of decision rendered by this Tribunal in O.A.Nos.59, 61 and 90 of 2016, decided on 14.12.2016, wherein, paragraph 8, of the aforesaid judgment has been observed as under :-

“If a principle of general applicability is capable of being culled out from a particular pronouncement of this Tribunal, then similarly placed employees, though not before the Tribunal should be given the benefit thereof without actually moving this Tribunal for relief. If on the other hand, the relief is person specific, then of course, this direction will not apply.”

11. Pertinent to note that same circular reference is also made by the Government about decision of Hon’ble Supreme Court in case of **State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava reported in 2015(1) SCC 347** and circular emphasis that similar treatment needs to be given to the Government servants who are similar situated. In paragraph No.3 and 4 of the circular the decision of Hon’ble Supreme Court is quoted as under :

*“3. The Hon’ble Supreme Court in the case of **State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava reported in 2015(1) SCC 347** has laid down similar principle, thus :*

“Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

4. In view of the above, all the departments are hereby directed to take action according to the above directions given by the Hon’ble Maharashtra Administrative Tribunal, reiterating the legal position expounded by the Hon’ble Supreme Court.”

12. Thus it transpires that co-delinquent namely, Shri Deepak Thakur, Shri Dheeraj Pawar, Shri Kalbersingh Kalsi, Shri Pralhad Chigale, Shri Ganesh Vighne, Smt. Kalyani Mandlik, Shri Santosh Patil and Shri Vijay Kamble_were retained at same place in pursuance to the observations made by this Tribunal in O.A.No.130 of 2019 by order dated 28.03.2019.

13. Apart the Government at its own retained another set of employees namely, Shri Pralhad Chigale, Shri Bhushan Ahire, Shri Ganesh Vighne and Smt. Kalyani Mandlik, however, similar treatment is not given to the Applicants despite their representations.

14. For the aforesaid reasons, I have no hesitation to sum up that there was no necessity most less justification to change the posting of the Applicants at the time of reinstatement of services as they were already transferred from the place where the alleged incident had taken place. Respondent have discriminated the Applicants without showing any material to justify or any reasonable basis for doing so.

15. It needs to be noted that at the time of disposal of O.A.No.130/2019 directions issued by this Tribunal on 03.05.2019 to complete the Departmental Enquiry within six months from the date of order. Admittedly till date, though the period of six months is already over, the Departmental Enquiry is not completed. As such, in view of delay in completion of Departmental Enquiry as well as discrimination meted out to the Applicants, I see no justification for posting the Applicants at different place at the time of their reinstatement in service. They should have been continued at the same place on their reinstatement.

16. In view of the above, Original Application deserves to be allowed in terms of paragraph No.9(a) of the O.A. which reads as under :-

“a] By a suitable order/ direction, this Hon’ble Tribunal may be pleased to set aside the order dated 07.02.2019 passed by the Respondent to the extent to which the said order has failed to restore the earlier place of posting of the Petitioners on transfer prior to suspension and as mentioned in column No.4 of the order of suspension dated 21.9.2018 passed by the Respondent and accordingly the Petitioners be granted all the consequential service benefits, as if the impugned order had not been passed.”

17. Applicants shall be reposted in terms of above within two weeks from date of this order. No order as to costs.

Sd/-

(A.P. Kurhekar)
Member(J)

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