

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 1106 OF 2015

DISTRICT : PALGHAR

Smt Sayali Santosh Ghadshi,)
Senior Clerk, R/o: Ambewadi Babu)
Gadiwali Chawl No. 2, Highway Cross,)
Sahar, Vile Parle [E], Mumbai 400 009.)...**Applicant**

Versus

1. The Director,)
Technical Education, M.S.,)
3, Mahapalika Marg, Post Box. 1967))
Mumbai 400 001.)
2. Joint Director,)
Technical Education Regional Office))
World Bank Project Building,)
Government Polytechnic Campus,)
49, Kherwadi, Aliyaware Jung Marg,)
Bandra [E], Mumbai 400 051.)

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3. Government Ploytechnic,)
Vikramgad, Zadpoli Shil Road,)
Post Onde, Tal-Vikramgad,)
Dist-Palghar 401 605.)...**Respondents**

Shri A.S Gadre, learned advocate for the Applicant.

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

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 18.08.2016

ORDER

1. Heard Shri A.S Gadre, learned advocate for the Applicant and Smt Kranti S. Gaikwad learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking transfer to Mumbai Region.

3. Learned Counsel for the Applicant argued that the Applicant was appointed by order dated 20.12.2008 as Junior Clerk by the Respondent no. 2. Subsequently, she was selected as Senior Clerk on 1.3.2012. The Applicant has made several representations to the Respondents to transfer her to Mumbai, due to family

reasons. However, no positive response is forthcoming from the Respondents. She was informed on 20.11.2014 that for Clerical posts in Mumbai Region, there are separate cadres for Mumbai & Mumbai Suburban District and Rural cadre comprising Thane, Raigad, Ratnagiri and Sindhudurg Districts. Learned Counsel for the Applicant stated that the Respondent no. 2 had issued advertisement for filling Clerical posts and it is clearly mentioned therein that selected persons were liable to be posted anywhere in Mumbai or districts of Thane, Raigad, Ratnagiri and Sindhudurg. This clearly shows that all Clerical posts in Mumbai Region are in the same cadre and distinction between Urban and Rural cadres does not exist. Learned Counsel for the Applicant stated that under Section 3(1) of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (the Transfer Act) the Applicant has completed her 3 years tenure at Vikramgad, Dist-Palghar and her request to transfer to Mumbai deserved to be considered sympathetically. Learned Counsel for the Applicant stated that even if rural and urban cadres in Mumbai Region are considered separate and distinct, as per G.R dated 3.6.2011, she could be considered for transfer to Mumbai. However, the Respondents are claiming that there is no vacancy in Mumbai to accommodate her. This is not correct. As per G.R dated 29.3.1997, 100 point roster for recruitment is prescribed. As per this roster,

one post of open and one post of VJ-A category in Senior Clerk cadre are vacant in Mumbai. The Applicant can be accommodated in the vacant post at Mumbai from open category. This vacancy position is as given by the Respondents in their affidavit in reply dated 2.2.2016.

4. Learned Presenting Officer (P.O) argued that the Applicant's contention that there is a common cadre of Clerks and Senior Clerks in Mumbai Region is not correct. As per G.R dated 8.4.1971 (Exhibit R-3, page 171 of the Paper Book), these are the following separate cadres for Clerks/Senior Clerks in Mumbai City, viz.

- (1) For Head Office, Mumbai, i.e. office of the Respondent no. 1.
- (2) For the Board of Technical Education, Mumbai and
- (3) For Regional office, Mumbai, i.e. office of the Respondent no. 2 and institutions in Greater Bombay.

Separate seniority lists of Clerks and Senior Clerks are maintained in these establishment. For the rest of the districts in Mumbai region, viz. Thane, (Palghar), Raigad, Ratnagiri & Sindhudurg, a separate cadre is maintained. Transfer from one cadre to other can be made on request as per G.R dated 3.6.2011 (page 80 of the Paper Book). However, as per para 3(6), of this G.R, posts from promotion or nomination cadre should be available for

accommodating employees on transfer. Also, a candidate belonging to a particular category, e.g. open, S.T, O.B.C etc can be accommodate in the vacancy from the category which he/she belongs. The Applicant is from O.B.C and nomination quota and she can be accommodated in a vacancy from O.B.C from nomination quota only. Learned Presenting Officer argued that the Applicant in her affidavit dated 7.7.2016 has annexed the posts vacant as per 100 point roster in the cadre of Senior Clerk in Exhibit AR-J-5 (page 215 of the Paper Book). It is shown that for 2015, 1 post each from O.B.C and open category are vacant in the office of the Respondent no. 1 and 1 post from open category is vacant in the office of the Respondent no. 2. The Applicant claims that these vacant posts are from nomination quota, and the Applicant is also from nomination quota. Learned Presenting Officer stated that these calculations of vacancy position ~~are~~ not correct. The correct position is given in the affidavit in sur-rejoinder dated 25.7.2016.

5. It is seen that the Applicant is seeking transfer in the post of Senior Clerk to Mumbai. She has claimed that there is a single cadre of Senior Clerks in Mumbai Region, comprising rural and urban posts and there are many vacancies in Mumbai City, where she can be accommodated. In support of her contention that there is a single cadre for Senior Clerks in Mumbai Region, she has relied on the advertisements issued by the

Respondent no. 2 from time to time to fill vacancies of Senior Clerks by nomination. It is mentioned in these advertisements that a selected candidate is liable to be posted in Mumbai or any other district in Konkan. This is nodoubt true. But this does not prove that there is a common cadre for Senior Clerks in Mumbai Region. Often-times, one authority selects candidates but selected candidates are allotted to different cadres. One example is that of Naib Tahsildar, who are selected by the Maharashtra Public Service Commission in a single State wise examination, but are allotted to revenue divisional cadres. Similarly, the contention of the Applicant that she has completed her tenure of 3 years at Vikramgad as per Section 3(1) of the Transfer Act, does not appear to be relevant. First, for Group 'C' post, tenure is six years (two tenures of three years each) and second, she can be transferred within her cadre, that is districts in Mumbai Region except Greater Mumbai itself. This is clear from G.R dated 8.4.1971, which provides for three separate cadres in Greater Mumbai, where separate seniority lists are maintained for Clerks & Senior Clerks. The fact that this G.R does not mention so called 'rural' cadre comprising rest of the district in Mumbai Region does in no way prove that there is a single cadre for Senior Clerks in Mumbai Region. Once it is established that there are three cadres in Greater Mumbai and one for rest of the districts in Mumbai region, and transfer from one cadre to another will be governed by G.R dated



3.6.2011. Para 3(6) of the aforesaid G.R reads as follows:-

“ ६) ज्या पदावर बदलीबाबत विनंती केली आहे ते पद निर्बाध रिक्त असणे आवश्यक राहिल. तसेच संबंधित कर्मचा-याने समान पदावर बदलीबाबत विनंती केली असल्यास त्याची ज्या मार्गाने (उदा:- पदोन्नती, नामनिर्देशन) नियुक्ती झाली आहे त्या कोट्यातील पद उपलब्ध असणे आवश्यक राहिल. मात्र कर्मचा-याने अन्य समकक्ष अथवा निम्न पदावर बदलीबाबत विनंती केली असल्यास सरळसेवा कोट्यातील पद उपलब्ध असणे आवश्यक राहिल. तसेच संबंधित कर्मचारी ज्या प्रवर्गातील आहे (उदा:- खुला प्रवर्ग, अ. जा., इ.) त्या प्रवर्गाचे पद उपलब्ध असणे आवश्यक राहिल.

The Applicant admittedly was appointed as Senior Clerk on nomination basis. She belongs to OBC category. She can be transferred in a vacancy in nomination quota (there are separate quotas for nomination and promotion for the post of Senior Clerk) from O.B.C category. The Applicant worked out the vacancy position at Exhibit ARJ-5. However, there is no way to determine whether these calculations are correct or not. The Respondents have stated that correct position is that there are a total of six vacancies of Senior Clerk comprising SC-1, ST-2, VJA-1, NTC-1 and open-1 all from promotion quota. There is no vacancy in nomination category. All the aforesaid vacancies are from promotion quota. The details are given in annexure to sur-rejoinder of the Respondents dated 25.7.2016. The Respondents have stated that the Applicant's case for transfer to Mumbai will be considered as and when any vacancy from OBC

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cadre from nomination quota is available in Greater Mumbai. From these facts, it is quite clear that the request of the Applicant for transfer to Greater Mumbai has been rejected by the Respondents on justifiable grounds.

6. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 18.08.2016
Dictation taken by : A.K. Nair.