

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.180 OF 2020

1. Shri Rajendra B. Dhaktode,)
Age 57 years, Occ. Clerk cum Milk)
Distributor (currently relieved),)
R/at Flat No.04, Vishwakarma Building,)
Ekta Park Society, opp. Government Milk)
Scheme, Old Bombay Pune Road,)
Wakdewadi, Pune 411 003.)
2. Shri Madhukar N. Bhosale, Age 57 years,)
Clerk cum Milk Distributor (currently)
Relieved), R/at Room No.'B1', Govt. Milk)
Scheme Quarters, Mumbai Pune Road,)...**Applicant**

Versus

1. State of Maharashtra, through Secretary,)
Agriculture, Animal Husbandry, Dairy)
Development & Fisheries Department,)
Mantralaya, Mumbai 400 032.)
2. The Commissioner, Dairy Development,)
M.S. Worli, Mumbai 400 018.)
3. The Regional Dairy Development Officer,)
Pune, Commonwealth Building, 3rd floor,)
Laxmi Road, Pune 411 030.)....**Respondents**

Smt. Punam Mahajan, Advocate for the Applicants.

Shri A. J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 15.03.2021

JUDGMENT

1. The Applicant has challenged the order dated 11.02.2020 passed by the Respondent No.3 whereby the Applicant was declared surplus and his services were directed to be diverted on the post of

Peon in Food and Civil Supplies Department, Pune invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985

2. Shortly stated facts giving rise to this application are as under:-

The Applicant joined Government service on the establishment of Respondent No.3 in 1981 as Milk Distributor / Milk Delivery Man and since then he was in continuation of service till passing of the impugned order. By G.R. dated 10.09.2001, the Finance Department, Government of Maharashtra had taken policy decision to take review of staffing pattern and Committee was constituted to find out surplus Government servants so as to absorb them in another department. Accordingly, review was taken and in so far as staffs in Dairy Development department is concerned, the Government by G.R. dated 30.08.2014 gave approval to the staffing pattern suggested by the department. As per Para No.8 of G.R. dated 30.08.2014, directions were given to absorb a Government servant declared surplus on equivalent post in same region, if possible and responsibility was fixed upon the Regional Head of the Department. The Dairy Development department by G.R. dated 10.08.2017 prepared a list of surplus Government servants wherein the name of the Applicant was figured as surplus candidate. However, even thereafter also, the Applicant continued in service as Milk Distributor till passing of the impugned order. The Respondent No.3 abruptly by order dated 11.02.2020 relieved the Applicant directing him to report at Food and Civil Supplies Department, Pune on the post of Peon. Accordingly, the Applicant was relieved on the same day. Applicant has made representation dated 12.02.2020 to absorb him in same department in view of vacancy but in vain. The Applicant has challenged this order dated 11.02.2020 in present Original Application.

3. Smt. Punam Mahajan, learned Counsel for the Applicant made following submissions:-

(I) In terms of G.R. dated 30.08.2014, the Applicant was required to be absorbed in the same department but he was sent to another department which is in contravention of said G.R.

(II) Though the Applicant was declared surplus in 2017, he was continued on the same post for the period of near about three years which invariably shows availability of work and post in the same department.

(III) As per reply filed by the Respondent No.3, the post of Peon, Watchman and Chowkidar carrying the same pay-scale are vacant, and therefore, the Applicant could have been absorbed on any one of these posts.

(IV) The Applicant is retiring at the end of 2022, and therefore, he should have been continued in the same department in view of the availability of post of equivalent cadre in terms of pay-scale since the Applicant is ready to work on any post.

4. Per contra, Shri A. J. Chougule, learned Presenting Officer for the Respondents sought to support the impugned order contending that since the Applicant was declared surplus, he was bound to join Food and Civil Supplies Department. He has further pointed out that the Applicant is absorbed in another department in same city and there is no prejudice of any kind to the Applicant.

5. When this matter is taken up for admission on 10.12.2020, the Tribunal has passed detailed order directing the Respondent No.1 and 3 to consider the representation made by the Applicant for repatriation in Dairy Development Department considering availability of post in Dairy Development Department. However, the Respondent No.2 by letter dated 18.02.2021 rejected the representation on following grounds:-

“ 3 आपल्या कार्यालयाकडील दि.३१.१२.२०२० अन्वये श्री.आर.बी.धाकतोडे यांना पुनश्च: शासकीय दूध योजना, पुणे येथे रिक्त पदावर सेवा प्रत्यावर्तित करून समावेशनाची कार्यवाही केली गेल्यास, दुग्धव्यवसाय विकास विभागातील अधिसंख्य कर्मचा-यांच्या समायोजनाबाबत शासनाकडून वेळोवेळी निर्गमित झालेले निर्णय डावलले जावून शासनाच्या आदेशाचा अवमान होण्याची व शासन आदेशाची अंमलबजावणी करणेस तसेच उर्वरित पुणे विभागातील कार्यरत अधिसंख्य कर्मचा-यांचे अन्य ठिकाणी समावेशन झाल्यास सदर कर्मचारी देखील न्यायालयात जाण्याची शक्यता नाकारता येत नाही, असे अभिप्राय कळविण्यात आले आहेत.”

6. As stated earlier, when the decision of staffing pattern and absorption of surplus candidates were taken, it was precisely informed to the concerned that if possible, the candidates should be absorbed in the same department in region and steps to that effect were to be taken by the Regional Head of the Department within six months from the date of G.R. dated 30.08.2014. ClauseNo.8 of the said G.R. is as under:-

“ 8. प्रादेशिक स्तरावरील अतिरिक्त ठरलेल्या कर्मचा-यांना शक्य असल्यास त्या-त्या प्रादेशिक विभागात समकक्ष पदावर सामावून घेण्याबाबतची कार्यवाही प्रादेशिक प्रमुख यांनी आयुक्त दुग्धव्यवसाय विकास यांच्याशी विचार विनिमय करून, या शासन निर्णयाच्या दिनांकापासून ६ महिन्यांच्या आत तातडीने पूर्ण करावी.”

7. As such, obligation was cast upon the Respondent No.3 – Regional Dairy Development Officer, Pune to ensure the absorption of surplus candidates in the same department in region, if possible. The rationale behind it is to alleviate the difficulties likely to be faced by the surplus candidates from shifting one place to another place. However, there is no such compliance of Para No.8 of G.R. dated 30.08.2014 by the Respondent No.3

8 True, the Applicant was declared surplus in 2017 but he was not relieved immediately but continued on the same post for near about three years and it is only on 11.02.2020, he was relieved for

joining in Food and Civil Supplies Department, Pune which invariably shows availability of work and necessity of service of the Applicant in the same department.

9. Apart, what emerges from the record that at present also two posts of Peon, three posts of Watchman and one post of Chowkidar / Watchman carrying same pay-scale of Rs.4440-7440 + 1600 G.P. are vacant as seen from the Affidavit-in-Reply of Respondent No.3 which is at Page Nos.105 to 113 of PB. The Applicant is ready for absorption on any of these posts. This being the factual position, in terms of Clause 8 of G.R. dated 30.08.2014, the Applicant ought to have been absorbed in the same department.

10. Now, turning to the reasons mentioned in communication dated 18.02.2021 all that Respondent No.2 apprehended that in case the Applicant is absorbed, there will be disobedience of the directions issued by the Government and secondly, there would be same demand from another surplus employee.

11. In so far as apprehension of disobedience of the Government directions is concerned, indeed, rejection of the representation made by the Applicant is in disobedience in view of Clause No.8 of G.R. dated 30.08.2014. Therefore, the ground of rejection is totally unsustainable and defy logic.

12. As stated above, the Applicant is retiring at the end of April, 2022. Thus, hardly 13-14 months are left in service. The Applicant is absorbed in Pune city itself but that itself could not deprive him from getting absorption in the same department in view of availability of the post in the same department as well as mandate of Para No.8 of G.R. dated 30.08.2014.

13. The totality of the aforesaid discussion leads me to conclude that the impugned communication dated 11.02.2020 is unsustainable in law and liable to be quashed qua the Applicant and Original Application deserves to be allowed. Hence the following order.

ORDER

(A) Original Application is allowed.

(B) Impugned communication dated 11.02.2020 qua the Applicant is quashed and set aside.

(C) The Respondents are directed to absorb the Applicant on any of the equivalent post in Dairy Development Department, Pune and shall get him joined within one month from today.

(D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 15.03.2021
Dictation taken by : VSM
Uploaded on :
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