

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.283 OF 2023**

**DISTRICT : NASHIK**

**Sub.:- Posting**

Smt. Kalpana Vijay Bachchav. )  
Age : 53 Yrs, Working as Revenue )  
Assistant in the office of Tahasildar, )  
Nandgaon, District : Nashik and R/o. )  
Samrat Simphoni, Flat No.103, F-Wing, )  
Behind Karma Building, Nashik. )...**Applicant**

**Versus**

The District Collector, Nashik. )...**Respondent**

**Shri A.V. Bandiwadekar, Advocate for Applicant.**

**Smt. A.B. Kololgi, Presenting Officer for Respondent.**

**CORAM : Debashish Chakrabarty, Member-A**

**DATE : 15.02.2024**

**JUDGMENT**

1. The Applicant who is 'Revenue Assistant' in the establishment of District Collector, Nashik has invoked provisions of 'Section 19' of 'Administrative Tribunals Act 1985' to challenge the Transfer Order dated 18.01.2023 by which she has been posted in office of Tahsildar, Nandgaon, District Nashik following revocation of her 'Suspension Order' dated 12.09.2022.

2. The learned Advocate for Applicant stated that Applicant was appointed on 'Compassionate Grounds' on the post of 'Junior Clerk' and she also belongs to 'SC Category'.

3. The learned Advocate for Applicant further stated that Applicant was served with 'Suspension Order' dated 12.09.2022 in contemplation of 'Departmental Enquiry' and her 'Head Quarter' during 'Suspension Period' was fixed as office of 'Tahsildar Surgana, District Nashik'. Subsequently, the 'Suspension Order' was revoked on 18.01.2023 and Applicant was posted in office of 'Tahsildar Nandgaon, District Nashik' where she joined on 30.01.2023.

4. The learned Advocate for Applicant then stated that 'Departmental Enquiry' was initiated late by District Collector, Nashik as 'Charge-Sheet' was served only on 18.01.2023.

5. The learned Advocate for Applicant emphasized that the 'Departmental Enquiry' against the Applicant should have been completed within 'Six Months' as per GAD Circular dated 07.04.2008.

6. The learned Advocate for Applicant thereupon argued on grounds of discrimination by citing instances of other employees in the establishment of District Collector, Nashik in whose cases after revocation of 'Suspension Orders', they came to be posted at convenient places which were either same as the 'Head Quarter' fixed during 'Suspension Period' or near to where they had been posted before being served with 'Suspension Order'.

7. The learned Advocate for Applicant then cited the 'Personal Reasons' behind the request made by Applicant such as her 'Medical Condition'; besides highlighting the fact that she is 'Widow' with many 'Family Responsibilities'.

8. The learned Advocate for Applicant concluded by stating that the request of Applicant seeking cancellation of 'Transfer Order' dated 18.01.2023 deserves to be considered sympathetically by District Collector, Nashik. She has requested to be posted closer to Nashik preferably in offices of (i) Tahsildar Niphad, District Nashik or (ii) Tahsildar Dindori, District Nashik.

9. The learned PO relied on the Affidavit-in-Reply filed on 12.04.2023 on behalf of District Collector, Nashik to contend that Applicant has justiciably been posted in office of Tahsildar Nandgaon, District Nashik upon revocation of her 'Suspension Order' on 18.01.2023.

10. The learned PO relied on the 'Affidavit-in-Reply' filed on 12.04.2023 to affirm that the 'Departmental Enquiry' against Applicant was ordered by District Collector, Nashik because several 'Oral Complaints' were made by 'Public Visitors' who came to meet District Collector, Nashik and on account of repeated 'Oral Complaints' received from many of her colleagues especially 'Women Employees'.

11. The learned PO relied on the Affidavit-in-Reply filed on 12.04.2023 to argue that several employees who are 'Awal Karkoons' or 'Circle Officers' in establishment of District Collector, Nashik were not brought back to same offices where they had been posted prior to being served with 'Suspension Orders'. Hence, the Transfer Order dated 18.01.2023 was issued without any prejudice or malice against the Applicant. The request made by Applicant has not been considered so as to prevent injustice to these employees who have by now served even more than 6 years in distant places such as (i) Tahsil Office Surgana and (ii) Tahsil Office Baglan which are considered as 'Tribal & Remote Areas'.

12. The Hon'ble Supreme Court of India in its Judgment in ***B Varadha Rao v State of Karnataka, 1986 (3) Serv LR 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 also observed that an employee cannot, as a matter of right, seek transfer to a place of his choice in **K. Sivankutty Nair v. Managing Director, Syndicate Bank, 1984 (2) Serv LR 13 (Kant); Chief General Manager (Telecom) v. Rajendra Ch. Bhattacharjee, (1995) 2 SCC 532 : SC 813 : (1995) 2 Serv LR 1.**

13. The Hon'ble Supreme Court of India in **B Varadha Rao v State of Karnataka, 1986 (3) Serv LR 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 in **UOI v NP Thomas, AIR 1993 SC 1605 : (1993) Supp (1) SCC 704** Hon'ble Supreme Court of India has 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. In **UOI v SL Abbas, AIR 1993 SC 2444 : (1993) 4 SCC 357** it has been observed by Hon'ble Supreme Court of India that who is to be transferred where, is a matter for the appropriate authority to decide.

14. The Hon'ble Supreme Court of India in **(1997) 3 SCC 87 (Laxmi Narain Mehar V/s Union of India)** has upheld the unenforceability of guidelines or instructions in cases relating to Government Servants belonging to Scheduled Caste and Scheduled Tribe and has observed "that even though there were instructions that the SC and ST candidates should be posted nearest to their hometown, yet such instructions would be subject to administrative exigencies e.g. where the officer is an experienced persons and there is a need for such an officer at the place of transfer".

15. The main grievance of Applicant is that her 'Head Quarter' was fixed as office of Tahsildar Surgana, District Nashik after being served

with 'Suspension Order' on 12.09.2022. No compassionate consideration was given to 'Personal Reasons' particularly the fact that she is a 'Widow'. Further that the 'Departmental Enquiry' came to be instituted belatedly on 18.01.2023.

16. The 'Departmental Enquiry' against Applicant should have been instituted immediately after she was served with 'Suspension Order' on 12.09.2022 and should have been completed in time bound manner as per GAD Circular dated 07.04.2008. Be that as it may, the 'Departmental Enquiry' though not challenged but if still pending must be expeditiously completed for which Applicant should be able to remain present regularly before the 'Enquiry Officer'. Further, taking into due consideration the fact that Applicant being 'Widow' was required to be accorded precedence at 'Sr.No.4' in matters of transfer as per 'Annexure-2' of 'Statement-1' of GAD GR dated 09.04.2018, the ends of justice would be served by allowing the Applicant to submit 'Fresh Representation' to District Collector, Nashik. The District Collector, Nashik to sympathetically consider 'Fresh Representation' if submitted by Applicant and take appropriate decision to post Applicant on any vacant post of 'Revenue Assistant' having travel distance which is of more convenience to her by taking into account the cited 'Personal Reasons' and upon consideration being given to the fact that Applicant is not just another 'Woman Employee' but with differentiated categorization as widow for matters of transfer as per 'Annexure-2' of 'Statement-1' of GAD Circular dated 09.04.2018.

### **ORDER**

- (i) The Original Application is partly Allowed.
- (ii) The District Collector, Nashik to consider 'Fresh Application' if submitted by Applicant within One Week and take appropriate decision within Two Weeks thereafter to transfer

Applicant from office of 'Tahsildar Nandgaon, District Nashik' to any vacant post of 'Revenue Assistant' having distance which is of more convenience to her by taking into account the cited 'Personal Reasons' and upon consideration being given to the fact that Applicant is not just another 'Woman Employee' but with differentiated categorization as widow for matters of transfer as per 'Annexure-2' of 'Statement-1' of GAD Circular dated 09.04.2018.

(ii) No Order as to Costs.

Sd/-

**(DEBASHISH CHAKRABARTY)**  
**Member-A**

Mumbai

Date : 15.02.2024

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2024\January, 2024\O.A.283.23.w.1.2024.Posting.doc

Uploaded on 20.02.2024