

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.368 OF 2021**

**DISTRICT : THANE**

Shri Jayant Ramesh Chavan. )  
Age : 38 Yrs., Promoted and posted as )  
Deputy Regional Transport Officer, Beed )  
from the post of Assistant Regional )  
Transport Officer, having office at )  
Transport Commissioner, Kherwadi, )  
Bandra (E), Mumbai – 51 and residing at )  
301, Ardia, Samta Nagar, Thane – 6. ) **...Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Additional Chief Secretary )  
[Transport], Home Department, )  
Mantralaya, Mumbai – 400 032. )
2. Shri Subodh Medsikar. )  
Aged : Adult, Working as Deputy )  
Regional Transport Officer in the )  
Office of Dy. Regional Officer, )  
Ratnagiri. ) **...Respondents**

**Mr. Arvind V. Bandiwadekar, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 01.12.2021**

**JUDGMENT**

1. The Applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 08.01.2021 to the extent of posting/promotion as Deputy Regional Transport Officer, Beed instead of Ratnagiri, Konkan-1.

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

While Applicant was serving as Assistant Regional Transport Officer, he was due for promotion to the post of Deputy Regional Transport Officer. In Departmental Promotion Committee (DPC) of 2020-2021 held on 20.11.2020, the Applicant was promoted. In terms of Revenue Division Allotment for Appointment by nomination and promotion to the post of Group 'A' and Group 'B' (Gazetted and Non-gazetted) of the Government of Maharashtra Rules, 2017 (hereinafter referred to as 'Division Allotment Rules of 2017' for brevity), the options were called by Government by letter dated 17.12.2020 and in response to it, the Applicant has given options viz. Pune Division, Konkan-1 Division and Konkan-2 Division. Admittedly, one post at Ratnagiri falling in Konkan-1 Division was vacant that time. It had fallen vacant in view of transfer of the then incumbent Mr. Vinod Chavan by order dated 10.11.2020. However, the Respondents over-looked and ignored the option given by the Applicant and posted him at Beed instead of Ratnagiri, as sought by him in terms of 'Division Allotment Rules of 2017'. Despite the representations made by the Applicant, no remedial measures were taken. On the contrary, later the Government promoted Respondent No.2 – Mr. Subodh Medsikar and posted him at Ratnagiri in Konkan-1 Division by order dated 19.04.2021. Thereafter also, the Applicant made representation claiming Ratnagiri, Konkan-1, but in vain. Ultimately, he filed the present O.A. to the extent of posting at Beed.

3. The Respondent No.2 – Subodh Medsikar is served with the notice, but chose to remain absent.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant has pointed out that in terms of 'Division Allotment Rules of 2017', the posting on promotion was required to be given as per the option and since admittedly, at the time of promotion and posting of the Applicant, Ratnagiri, Konkan-1 Division was vacant, it ought to have been allotted to the Applicant, but it was kept reserved or vacant intentionally and later it was given to Respondent No.2 – Medsikar who was promoted in meeting of DPC held on 22.02.2021. On this line of submission, he urged that there is breach of 'Division Allotment Rules of 2017' and Applicant is deprived of getting his option without any valid reason or ground.

5. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer sought to support the posting of Respondent No.2 – Medsikar at Ratnagiri, Konkan-1 Division contending that admittedly, Mr. Medsikar was senior to the Applicant and secondly, his case was considered by DPC in the meeting dated 22.02.2021 in terms of order passed by this Tribunal in O.A.No.304/2020. According to her, that time views of General Administration Department were called and Applicant was found fit for promotion. She, therefore, sought to justify the posting of Respondent No.2 at Ratnagiri, Konkan-1 Division.

6. Following are the events which are required to be noted being undisputed facts.

(i) In DPC for select list of 2019 which was held on 19.05.2020, the name of Respondent No.2 – Medsikar was considered for promotion but having found that he has already taken the benefit of reservation in terms of G.R. dated 25.05.2004, his name was dropped/deleted from the list of Officers promoted to the post of Deputy Regional Transport Officer.

(ii) In DPC for select list of 2020-2021 held on 20.11.2020 again name of Respondent No.2 – Medsikar was considered but having noticed that he is facing DE, his result was kept in sealed envelope. Here, material to note that there is specific reference in minutes of DPC that the name of Respondent No.2 was considered in terms of direction given by the Tribunal on 13.10.2020 in O.A.No.304/2020, but having noticed that DE is initiated against him and pending, his fate was kept in sealed envelope.

(iii) In DPC of 2021 itself held on 20.11.2020, the name of Applicant was considered for promotion and was found eligible for the same.

(iv) In terms of 'Division Allotment Rules of 2017', options were called from the concerned Officers and admittedly, that time one post of Ratnagiri from Konkan-1 Division was vacant, as seen from letter of Government dated 17.01.2020 (Page No.18 of Paper Book).

(v) The Applicant gave three options by his letter dated 21.12.2020 viz. Pune Division, Konkan-1 Division and Konkan-2 Division (Page No.19 of P.B.)

(vi) The post of Ratnagiri was vacant, but it was not given to the Applicant.

(vii) In DPC held on 28.02.2021, DPC again considered the name of Respondent No.2 – Mr. Medsikar after obtaining views of GAD and found him fit for promotion. That time interestingly, Mr. Medsikar was found fit for promotion in select list of 2019 on the ground that when select list of 2019 was prepared, that time there was no DE initiated against him.

(viii) The Respondent No.2 – Medsikar by his letter dated 24.03.2021 requested the Government to give posting in Konkan-1 (Ratnagiri) since only 11 months remained for his retirement.

7. Now turning to the 'Division Allotment Rules of 2017' which was amended in 2017 in terms of Rule 6(v), the Officers shall be allotted the revenue division as per their choice subject to the availability of post in the revenue division as per their serial number in the waiting list by excluding the case which is exempted under Rule 7. Whereas, as per Rule 7, Officer who is handicapped, Officer whose spouse or child is mentally retarded or an officer who has taken guardianship of his own mentally retarded brother or sister, a woman officer who is widow or abandoned and an Officer who is due for retirement in less than three years from the date on which he is found fit for promotion as per the recommendation of the Departmental Promotion Committee are exempted from the provisions of Rules 4 and 6 of 'Division Allotment Rules of 2017'. It is thus explicit that Officer shall be allotted to revenue division as per choice subject to seniority in the select list and exemption granted under Rule 7.

8. True, Respondent No.2 – Medsikar was senior to the Applicant, but fact remains that he was not promoted in DPC of 2019 as well as in DPC of 2020. He was promoted in 3<sup>rd</sup> DPC dated 22.02.2021. Thus, there is no denying that when Applicant was promoted, the post at Konkan-1, Ratnagiri was vacant which was sought by the Applicant. However, that time, the Applicant was not given Konkan-1 though he was entitled to the same in terms of 'Division Allotment Rules of 2017'. It is only in DPC meeting dated 22.02.2021, the name of Respondent No.2 was again considered and he was promoted in select list of 2019 on the specious ground that at the time of select list of 2019, there was no initiation of DE against him. The DE was initiated on 11.11.2020. However, the fact remains that the Respondent No.2 was not promoted in first two DPC minutes held on 19.05.2020 and 20.11.2020. The Applicant's name was considered in the meeting dated 20.11.2020 and promoted. Admittedly, that time, the post at Ratnagiri, Konkan-1 was vacant.

9. Undoubtedly, the posting was required to be given as per the options vis-à-vis seniority. However, pertinent to note that in DPC meeting dated 19.05.2020 as well as 20.11.2020, the Respondent No.2 was not found fit and suitable for promotion and his name was deleted from the recommendation. This being the position, the postings to the Officers who were promoted were ought to have been given in terms of choice as well as seniority and in terms of 'Division Allotment Rules of 2017'. Only because DPC held on 22.02.2021 selected Medsikar in selected list of 2019, it will not retrospectively made applicable, so as to deprive of the Applicant from his choice to which he was entitled in terms of 'Division Allotment Rules of 2017'.

10. Indeed, while giving posting to the Applicant, that time itself, the Government was under obligation to consider his option and to give him posting in Konkan-1 Division, which was admittedly vacant and it should not have been kept vacant, as if it was reserved for Mr. Medsikar, so as to give him posting in Konkan-1 Division in future. The posts were required to be filled in as per the then existing number of persons promoted and the vacancies as well as options given by the Officers in terms of 'Division Allotment Rules of 2017' in fair and transparent manner.

11. I have, therefore, no hesitation to sum-up that the act of Government in giving posting to the Applicant at Beed instead of Ratnagiri, Konkan-1 and later to give the said posting to Respondent No.2 – Medsikar is arbitrary and in contravention of 'Division Allotment Rules of 2017'. It caused serious prejudice to the right of the Applicant. O.A. is, therefore, deserved to be allowed. Hence, the following order.

### **ORDER**

(A) The Original Application is allowed.

- (B) The order dated 08.01.2021 to the extent of giving the posting to the Applicant at Beed as well as order of Respondent No.2 to the extent of giving him posting at Ratnagiri, Konkan-1 are quashed and set aside.
- (C) The Respondent No.1 is directed to post the Applicant at Ratnagiri, Konkan-1 Division as per his option and issue necessary order of his posting within a month from today.
- (D) No order as to costs.

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

Mumbai

Date : .12.2021

Dictation taken by :

S.K. Wamanse.

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