

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 406 of 2017**

Shri Mahendra S/o Babulal Nagpure,  
Aged about 29 years,  
Occ. Service, R/o Gondia  
Tq. & Dist. Gondia.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary Department of Cooperative  
and Marketing,  
Mantralaya, Mumbai-32.
- 2) The Divisional Joint Registrar,  
Cooperative Societies, Dhanwate Chambers,  
Sitabuldi, Nagpur.
- 3) The District Deputy Registrar,  
Cooperative Societies, Gondia,  
Vasant Nagar, Azad Ward no.5, Gondia.

**Respondents**

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**Shri A.Z. Jibhkate, Advocate for the applicant.**

**Shri M.I. Khan, Id. P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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**JUDGEMENT**

**(Delivered on this 11<sup>th</sup> day of August,2017)**

Heard Shri A.Z. Jibhkate, Id. Counsel for the applicant and

Shri M.I. Khan, Id. P.O. for the respondents.

2. The applicant in this case has been appointed initially on the post of Junior Clerk on 27/3/2012 by respondent no.2. He was appointed from handicapped category and was posted in the office of District Deputy Registrar Cooperative Society, Gondia. According to the applicant his younger brother is also physically handicapped and is fully dependent on him.

3. Vide order dated 30/5/2017 applicant along with various Jr. Clerks were promoted to the post of Assistant Cooperative Officer. The applicant was promoted and transferred from the post of Jr. Clerk in District Deputy Registrar Cooperative Society, Gondia to the post of Assistant Cooperative Officer at Chamorshi, Dist. Gadchiroli on a vacant post.

4. The applicant submits that as per Government Circular dated 15/4/2014, the employees appointed under physically handicapped category should be posted near his residential place and the husband and wife shall be posted near to each other as far as possible. The applicant has worked in the Naxalite affected area for three years.

5. The applicant was expecting his transfer on promotion at places of his preference such as Salekasa, Tiroda, Arjuni Morgaon, Goregaon since he has given option for such post and there was

vacancy at these stations. However, applicant's claim was not considered and he has been transferred on promotion at Chamorshi. The applicant has therefore filed this O.A. and has claimed that the order dated 30/5/2017 regarding his post as Assistant Registrar, Cooperative Societies at Chamorshi (on promotion) be quashed and the applicant be posted as Assistant Registrar, Cooperative Societies either at Goregaon, Arjuni Morgaon, Tiroda or at Salekasa.

6. The respondent no.2, i.e. Divisional Joint Registrar Cooperative Societies, Nagpur has admitted the fact that the applicant has been promoted and was posted at Chamorshi. It is stated that it is not binding on the respondents' authority to accept the request of the applicant. It is further stated that the applicant is habituated to avoid duties and Superior Authorities have made complaint against the applicant regarding his non performance of duties and misbehaviour. The applicant used to ignore the orders of his Superior Officers and was not cooperating with office colleagues and the Superiors. It is further stated that the applicant cannot claim any particular post on promotion. Allegations are made to the effect that the applicant has tried to influence the Competent Authority by bringing political pressure which is misconduct as per Rule 23 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

7. The respondent no.2 also denied that the applicant's brother is dependent on him and on the contrary submitted that the applicant is still having father and therefore the applicant cannot be said to be Guardian of his brother. It is further stated that the applicant cannot take the benefit of Government's scheme particularly in those Tribal / Naxalite affected area since the applicant himself is resident of naxalite affected area. The respondents therefore requested that the stay granted on 27/6/2017 be vacated.

8. The respondent no.3, i.e., the District Deputy Registrar, Cooperative Societies, Gondia also filed affidavit-in-reply and submitted that the applicant has failed to produce any documentary evidence shows that his brother is physically handicapped and is depend on the applicant. It is stated that the applicant has already been relieved on 22/6/2017 and has accepted the relieving letter on 24/6/2017. He was deliberately on medical leave just to avoid joining.

9. The applicant has filed counter- affidavit and submitted that one Gurudas S. Mahabhage was working in Deori office and picked up quarrel with him as applicant was required to talk with his wife who is serving in Cooperative Department in Gondia. He submitted that the candidates at sr.nos. 2,21,22,30 & 38 in the transfer order have been posted in the district of their choice being under handicapped category. It is further stated that even on today vacancy

of Assistant Cooperative Officer at Sakekasa, Morgaon Arjuni & Tiroda are still vacant and various candidates who are not from handicapped category also got posting on promotion in the district itself. He further stated that he has not been paid salary from June,2017. He is on medical leave since he got disturbed on account of posting at a distance of 350 Kms.

10. From the facts on record, as already discussed it will be clear that there is no doubt that the applicant is handicapped person and has been posted at a distance about 350 Kms. from his native place. The applicant however cannot claim as of right that he shall be posted at particular place that too on promotion. Since the applicant himself is native of naxalite affected area, he cannot claim benefit of G.Rs. giving special treatment or claiming choice posting to those serving in naxalite affected area.

11. From perusal of the impugned order of promotion and transfer of the applicant (Anex-A-8), it seem that as many as 41 Junior Clerks were promoted as Assistant Cooperative Officer and were posted at various places. Even for argument sake, it is accepted that most of the candidates who are handicapped have been adjusted as per their choice or nearby their native place that itself will not mean that the applicant has not been adjusted deliberately. While considering the transfer of the applicant it seems that his conduct in

the office has been considered on administrative ground and there is documentary evidence in this regard. However that is not the ground for transfer the applicant. On the contrary the applicant has been promoted and therefore on the basis of promotional order the applicant cannot claim posting at particular post. However, it also cannot be ignored that respondent nos. 2&3 are not disputing the fact that the applicant comes under physically handicapped category. Admittedly he has been transferred at a distance of 350 Kms. from his present posting and considering this fact the possibility that the applicant might have been disturbed mentally cannot be ruled out. However that will not justify the applicant for not joining on his transfer post. It seems that the applicant's own colleagues have filed complaint against the applicant and even he seems to have abused wife of some employees as seems from 'Annex-R-1'. Even though the applicant was relieved, he deliberately did not join his post.

12. The learned counsel for the applicant has placed reliance on the Judgment reported in 2006 LAB IC, 637 in the case of **Paras Ram Vs. State of Himachal Pradesh & Ors.** whereby it has been held that absence of the employee cannot be said to be wilful or intentional and order of transfer passed without giving opportunity of hearing is in violation of fair play and natural justice and punitive in nature. In my opinion the said citation is not applicable to present set

of facts. As, in fact, in this case in spite of alleged misconduct of the applicant he has been promoted to the post of Assistant Registrar, Cooperative Societies. In such circumstances, it cannot be said that the order of promotion is punitive. Giving particular posting is a thing to be considered as per administrative convenience of the department. I therefore do not find any merits in the O.A. However, it is necessary to consider the fact that the applicant is physically handicapped person and has been transferred on promotion from at a distance 350 Kms. from his place of service. This aspect is to be required by the competent authority.

13. The applicant in the counter affidavit has stated that the posts are available even today at Salekasa, Morgaon Arjuni, Tiroda. If so is the fact that the respondent authority ought to have considered his request. In view thereof, I pass the following order :-

### **ORDER**

The application is partly allowed. The respondent nos. 2&3 are directed to re-consider various representations filed by the applicant such as on 1/6/2017, 7/6/2017 & 12/6/2017 and to take decision thereon as per the merits of the case without being influenced by any of the orders passed / observations by this Tribunal. The respondents are directed to take decision on the representation

as stated above within one month from the date of this order and same shall be communicated to the applicant in writing. The respondent authority will be at liberty to take decision as regards non joining of the applicant at Charmoshi and also to decide his absence period. No order as to costs.

**(J.D. Kulkarni)**  
**Vice-Chairman (J).**

dnk.