

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.449 OF 2020**

Shri Nikhil Bahusao Gaikwad )  
Working as Police Constable (Rural) Motor Transport )  
Currently working as Driver, )  
Officer address : Police Headquarter )  
Pashan Road, Pune. )...**Applicant**

**Versus**

- 1) The State of Maharashtra, )  
Through Principal Secretary, )  
Home Department, Mantralaya, )  
Mumbai 400 032 )
- 2) Director General of Police, )  
Police Headquarters, )  
Old Council Hall, Shahid Bhagat Singh Marg, )  
Mumbai 400 001 )
- 3) Special Transport General of Police, )  
Motor Training Division, M.S. Pune. )
- 4) Superintendent of Police, )  
Pune Rural, Pune. )...**Respondents**

Ms. Asawari Ghate, the learned Advocate holding for Smt. Punam Mahajan, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer holding for Smt. K.S. Gaikwad, Presenting Officer for Respondents.

**CORAM** : **JUSTICE MRS. MRIDULA BHATKAR, CHAIRPERSON**

**DATE** : **25.01.2021**

**J U D G M E N T**

1. The applicant, a Police Constable has entered the service on 21.12.2012 and was posted at Police head Quarters, Pune Rural. On 04.03.2014 he was sent for the training of a driver to Police Driving Training Centre, Pune. Next day, on 05.03.2014 he was posted in Motor Transport Division, Pune Rural. On 25.01.2020, the applicant submitted the representation requesting for posting outside Motor Transport Division, Pune Rural as the applicant has already worked in Motor Transport Division, Pune Rural for the period approximately of 6 years, however it was rejected. The Applicant, therefore, has filed the present O.A. on 23.08.2020 praying that he is to be given posting at any police station with all consequential service benefits.

2. The learned Counsel for the Applicant points out that the applicant has relied on the orders passed by this Tribunal in O.A.No.715 & 716/2010 dated 06.05.2011, in O.A.No.692/2011 dated 10.07.2014 and so also in O.A.No.550 to 560/2017 with O.A.No.578/2017 decided on 28.06.2018. The learned Counsel further points out the representation dated 25.01.2020 made by the applicant to Superintendent of Police, Pune Rural.

3. The learned P.O. files affidavit-in-reply on behalf of the Respondent No.4, Dr. Abhinav Deshmukh, Superintendent of Police (Rural) dated 01.12.2020. The same is taken on record and copy is served on the learned Counsel for the Applicant.

4. Admit.

5. The learned P.O. points out that Superintendent of Police, Pune (Rural) by order dated 07.09.2020 has rejected the representation made by the Applicant. The learned P.O. submits that 102 posts of the driver are vacant in the Police Department so the request of the applicant cannot be accepted, and as and when these posts are filled in the applicant will be relieved.

6. Perused the affidavit-in-reply and considered the submissions made by both, the learned Counsel for the Applicant and the learned P.O. for the Respondents. The applicant initially joined as the Police Constable on 21.12.2012. After serving as Constable of the Police Station for 1 year and 3 months he was given the posting of driver in Motor Transport Division, Pune Rural. At the time of his representation he had completed 5 years and 10 months. In the Affidavit-in-reply the Superintendent of Police while refusing his request for other posting, has stated that as on today 102 posts of the driver in Police Department are vacant. The applicant has not taken his job for the post of driver in the Police Department. However, till today, has put in more than 6 years as the driver in Motor Transport Department. Not filling the 102 vacant

posts of the drivers cannot be a justifiable ground on the part of the Government because it is the basic responsibility of the Government to fill up the posts, if such services are required to run the administration. There is no information since when these 102 posts of driver are vacant in the Police Department.

7. I have perused the orders in earlier Original Applications passed by my Predecessors since 2011 till 2019. The said Original Applications disclose that the problem of vacancy of the posts of driver in the Police Department exists since 2011. In general it is normal to have few vacancies of a particular post due to retirement, death, removal etc., but keeping substantial number of posts vacant for a long period undoubtedly, affects the good governance. Thus Police Department needs to fill up the said posts of the driver when there is a dearth of the Police Constables for bandobast, investigation, maintaining law and order. It is also to be noted that if the Police Constables are made to work as driver, for more than three years, then there is every possibility of losing their ability of investigation, fitness and other skills required for the Police Department.

8. In affidavit-in-reply the officer while justifying the inaction and refusal has quoted the observation made by this Tribunal in O.A.No.715/2010 which reads as under,

*“While driving a vehicle may not be his normal duty but if in the public interest it is necessary to post him as a Driver*

*because of shortage, that action cannot ipso facto become illegal.”*

This observation of the Tribunal is either misunderstood or far stretched beyond the limit by the respondents. The reason of the public interest remains forever and therefore the filling of the 102 posts of the driver in the Police Department is itself protecting the public interest. Similarly, shuffling of the staff by giving different posting is also in the interest of the administration.

9. I have considered the circular dated July 2018 of Mr. Sandeep Bishnoi, Additional Director General of Police, wherein it is specifically mentioned that the Police Personnel who is not in the category of Driver, if transferred temporarily in the Motor Transport Department, then that period should be the maximum period of five years and thereafter he is to be again migrated to his earlier posting subject to his own request to continue as a driver.

10. While filing the affidavit-in-reply the Respondents have not taken into account their own circular but have conveniently turned Nelson's eye towards the order dated 06.05.2011 in O.A.No.715/2010, wherein it is stated that the tenure of such posting of driver, should be for the period of 3 years and after completion of 3 years such driver should be transferred back to regular Police force. Thus the issue of public interest is also taken care of in the earlier judgments where the period of 3 years was specified. Thus present case invites indulgence of the Tribunal.

**ORDER**

- (a) Original Application is allowed.
- (b) Applicant should be transferred on or before 01.02.2021 to regular police force at some police station.
- (c) No order as to costs.

Sd/-

**(Mridula Bhatkar J,  
Chairperson**

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