**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.501 OF 2021**

**DISTRICT : Mumbai**

Shri Dattatraya Kachru Gawali )
Age 38 years, Working as Jr. Clerk at )
Chembur, Education Department North )
Zone, R/at C/o Mr. Swapnil R. Pimparkar )
7, Suyash Prakash Soc., DNC Road, opp. )
Levabhavan Hall, Ramnagar, )
Dombivili (E) 201. )…. **Applicant**

**Versus**

1) The State of Maharashtra, )
Through Secretary, Schooling )
Education & Sports Department, )
Mantralaya (Extn), Mumbai 400032. )

2) The Director, Central Building, )
Anned Basant Rd., Pune. )

3) Divisional Education Dy.Director, )
Mumbai Division, Netaji Subhash Rd.)
Jawahar Bal Bhavan, Churni Road, )
Mumbai. )

4) The Dy. Director (Pune Division), )
17, Dr. Babasaheb Ambedkar Rd., )
Camp, Pune – 1. )

5) The Commissioner, Education - )
Balbharti, Senapati Bapat Marg,Pune) **..Respondents**

Shri K. R. Jagdale, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 26.11.2021

**JUDGMENT**

1. The Original Application is filed for directions to Respondents to transfer him inter division i.e. from Mumbai Division to Pune Division invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to the O.A. are as follows:-

The Applicant came to be appointed as Clerk-cum-Typist by appointment order dated 16.06.2014 on compassionate ground and accordingly he was posted at office of Education Department Zone, North Zone, Chembur, Navi Mumbai. Thereafter, he made representations (Page Nos.16, 17 & 21) for inter district transfer citing personal difficulties and requested to post him in Ahmednagar district which comes in Pune division. Thereafter, there were exchanges of correspondence in between departments. However, no decision was taken on his representations. Ultimately, the Applicant has filed present O.A. for direction to transfer him from Mumbai division to Pune division.

3. After filing of O.A., by order dated 24.08.2021 the Tribunal directed the Respondents to take decision on the representations made by the Applicant.

4. Smt. Archana B. K., learned P.O. submits that Respondent No.3 – Divisional Education Deputy Director, Mumbai has taken decision that the Applicant did not fulfill the requisite conditions particularly condition Nos.2 & 3, and therefore, not eligible for inter division transfer. The Communication dated 05.10.2021 is annexed with reply. In reply also it is reiterated that since the Applicant did not comply requisite conditions in terms of G.R. dated 15.05.2019, he is not eligible for inter division transfer.

5. Whereas, Shri K. R. Jagdale, learned Counsel for the Applicant tried to contend that Respondent No.3 – Division Education Dy. Director, Mumbai is not competent to pass any such order and it ought to have been passed by the Respondent No.5- Commissioner. He further raised ground that the Applicant's matter ought to have been considered in terms of old G.R. dated 03.06.2011 and not in terms of subsequent G.R. dated 15.05.2019. In alternative, he submits that liberty be granted to the Applicant to apply afresh after fulfilling necessary conditions.

6. Initially, the policy of inter division transfer was governed by G.R. dated 03.06.2011 which stands repealed by G.R. dated 15.05.2019. There is substantial change in the requisite conditions as well as policy of Government in this behalf as reflected in G.R. dated 03.06.2011 and G.R. dated 15.05.2019. True, the Applicant made first application on 16.03.2018 when G.R. dated 03.06.2011 was in force. However, material to note that new policy was formed by subsequent G.R. dated 15.05.2019 wherein there is specific stipulation that pending applications will be considered in the light of fresh G.R. dated 15.05.2019. Thus, if no decision was taken for inter division transfer, such request ought to have been processed in terms of G.R. dated 15.05.2019. Admittedly, no decision was taken on applications made by the Applicant, and therefore, it was required to be processed in terms of fresh G.R. dated 15.05.2019. Therefore, submission advanced by learned Counsel that his matter ought to have been processed by G.R. dated 03.06.2011 holds no water.

7. By G.R. dated 15.05.2019 following five conditions were made prerequisite for inter division transfer which are as follows:-

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| २ | कायमस्वरूपी समावेशनासाठी सेवा कालावधी व इतर बाबी | |
| | १ | संबंधित कर्मचा-याची संबंधित संवर्गात किमान ५ वर्षे सलग सेवा पूर्ण झाली असणे आवश्यक राहील. |
| | २ | कर्मचारी ज्या संवर्गात कार्यरत आहे त्या संवर्गाच्या सेवा प्रवेश नियमात नमूद केलेल्या सर्व अर्हतांची (उदा.विविध परीक्षा इ.) पूर्तता करणे आवश्यक राहील. |
| | ३ | स्दर कालावधीत कर्मचा-यास स्थायित्व लाभ प्रमाणपत्र मिळालेले असणे आवश्यक राहील. |
| | ४ | मूळ संवर्गात त्यांची कामगिरी किमान ''ब'' दर्जाची असली पाहिजे. म्हणजेच त्याच्या मूळ संवर्गातील सेवाकालावधीत प्रतिवर्षीच्या कार्यमूल्यमापन अहवालातील संख्यात्मक गुणांकन किमान ४ असले पाहिजे. |
| | ५ | संबंधित कर्मचा-याविरूध्द कोणतीही विभागीय चौकशी/न्यायालयीन प्रकरणे चालू/प्रस्तावित नसावे. |

8. Now, turning to the fact of the present case, admittedly the Applicant has not fulfilled the condition Nos.2 and 3 as set out above.

9. Learned Counsel for the Applicant did not dispute this position. However, he emphasized that it was for Respondent No.5 – Commissioner to take decision, and therefore, the decision taken by letter dated 05.10.2021 by Respondent No.3 is bad in law.

10. True, at one point of time, the Government by communication dated 19.04.2019 informed the Commissioner to submit necessary information in respect of request made by the Applicant to the Government. However, that does not mean the Government is the competent authority for the same. Admittedly, powers of inter division transfer vest with Appointing Authority as specifically mentioned in G.R. dated 15.05.2019. As such, it is for the Appointing authority to see the conditions set out in G.R. dated 15.05.2019 are complied with and then only to ask for no objection from his counterpart in whose establishment a Government servant seeks

posting. The proceeding set out in G.R. dated 15.05.2019 is as under:-

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| ९ | कायमस्वरूपी समावेशनाची कार्यपध्दती - | |
| | १ | अर्ज करणे - शासकीय कर्मचा-यास ज्या ठिकाणी समावेशनाने कायमस्वरूपी जाण्याची इच्छा आहे, त्याने त्या ठिकाणी असणा-या शासकीय कार्यालयाकडून सरळसेवा / पदोन्नतीच्या रिक्त पदांची प्रवर्ग निहाय माहिती प्राप्त करून, त्यानंतर त्याच्या नियुक्त प्राधिका-याकडे कोणत्या अपवादात्मक वैयक्तिक कारणास्तव कायमस्वरूपी समावेशन करणे आवश्यक आहे त्याबाबतच्या पुराव्यासह विनंती अर्ज करणे आवश्यक आहे. |
| | २ | विनंती अर्ज प्राप्त झाल्यानंतर खालील बाबींची पडताळणी करावी.<br>अ) या शासन निर्णयात नमूद सर्व अटी व शर्तींची पूर्तता होत आहे का?<br>ब) परिशिष्ट-एक मध्ये नमूद कारणास्तव विनंती केली आहे का?<br>वैयक्तिक कारण खरेच अपवादात्मक आहे का याची शहानिशा करणे<br>क) समावेशनास परवानगी देणे प्रशासकीयदृष्टया हिताचे आहे का?<br>उपरोक्त बाबी तपासून, विनंती अर्ज विचारात घेणे योग्य आहे किंवा कसे याची लेखी कारणे नमूद करून प्रस्तावास नियुक्ती प्राधिका-याची तत्वत: मान्यता घेणे आवश्यक आहे. |
| | ३ | नियुक्ती प्राधिका-याची समावेशनाने जाण्यास तत्वत: मान्यता मिळाली तरच, ज्या नियुक्ती प्राधिका-याकडे समावेशन करण्याची विनंती केली आहे, त्या नियुक्ती प्राधिकारी कार्यालयाकडून पत्राद्वारे संबधित कर्मचा-याच्या समावेशनासाठी त्याची नियुक्ती ज्या सरळसेवा/पदोन्नती कोटयातून व ज्या प्रवर्गातून झाली आहे, त्या सरळसेवा /पदोन्नती कोटयात संबंधित प्रवर्गाचे पद निर्बाध रिक्त आहे का याची माहिती तसेच, समावेशनासाठीची सहमती असल्याचे ना हरकत प्रमाणपत्र मागविण्यात यावे. |
| | ४ | वरील (३) नुसार आवश्यक योग्य माहिती प्राप्त झाली तरच, समावेशनाची कार्यवाही करण्याबाबतचे आदेश निर्गमित करण्यापूर्वी कर्मचा-याकडून या शासन निर्णयात विहित केलेल्या सर्व अटी मान्य असल्याचे बंधपत्र दोन प्रतीत घेण्यात यावे. बंधपत्राचा नमूना सोबतच्या ''परिशिष्ट - दोन'' मध्ये नमूद करण्यात आला आहे. |
| | ५ | बंधपत्र प्राप्त झाल्यानंतर मूळ नियुक्ती प्राधिकारी यांनी या शासन निर्णयातील संबंधित अटी व शर्ती नमूद करून कार्यमुक्तीचे आदेश निर्गमित करावेत. कार्यमुक्तीच्या आदेशाचा नमूना सोबतच्या ''परिशिष्ट-तीन'' मध्ये देण्यात आला आहे. |

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| | ६ | कार्यमुक्तीचे आदेश निर्गमित झाल्यानंतर ज्या कार्यालयात समावेश करावयाचे आहे त्या नियुक्तील प्राधिका-याने संबंधित कर्मचा-यास कायम सवरूपी समावेशनाने नियुक्ती देण्याबाबतचे आदेश नियुक्तीसंदर्भातील अटी व शर्ती नमूद करून निर्गमित करावे. कायम स्वरूपी समावेशनाने नियुक्ती देण्याबाबतच्या आदेशाचा नमूना सोबतच्या ''परिशिष्ट-चार'' मध्ये देण्यात आला आहे. |
| १० | कर्मचा-याची विनंतीवरून कायमस्वरूपी समावेशन संपूर्ण सेवेत फक्त एकदाच मान्य करण्यात यावे. | |
| ११ | या शासन निर्णयातील कोणत्याही अटी शिथील केल्या जाणार नाहीत. | |
| १२. | सदरहू शासन निर्णय प्रसिध्द झाल्याच्या दिनांकास, जी प्रकरणे दि.०३.६.२०११ च्या शासन निर्णयानुसार विनंतीवरून/संवर्ग बाहय बदली देण्यासाठी प्रलंबित असतील, ती प्रकरणे या शासन निर्णयातील तरतूदीनुसार निकाली काढली जातील. | |
| १३ | प्रशासकीय विभाग/विभागप्रमुख /प्रादेशिक विभागप्रमुख/कार्यालय प्रमुख यांनी यापुढे यासंबंधीचे प्रस्ताव सदर शासन निर्णयातील तरतूदीनुसार तपासून उचित कार्यवाही करावी. | |

11. It is thus explicit from record that competent authority of the Applicant is Respondent No.3 – Division Education, Deputy Director, Mumbai as seen from appointment order dated 16.06.2014 (Page 14 of PB). This being the position, the submission advanced by learned Counsel for the Applicant that proposal was required to be sent to the Government is totally misconceived and fallacious.

12. Suffice to say since the Applicant did not fulfill the condition Nos.2 and 3 of G.R. which are condition precedent, he is not at all eligible for consideration of inter division transfer, and therefore, it is rightly rejected by Respondent No.3. Resultantly, the Applicant being not eligible for inter division transfer, the question of directions to the Respondents to transfer him does not survive.

13. The totality of the aforesaid discussion of law and facts leads me to conclude that O.A. is devoid of merit and deserves to be dismissed. Hence the following order:-

**ORDER**

(A) Original Application is dismissed.

(B) The Applicant is at liberty to apply for inter division transfer whenever he becomes eligible for the same.

(C) No order as to costs.

Sd/-

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

Place : Mumbai
Date : 26.11.2021
Dictation taken by : VSM
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