

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.637 OF 2023

DISTRICT: Thane

Subject: Transfer

Shri R. R. Yadav)
Age 46 years, Occ : Inspector, Public)
Trust Registration Office, Greater)
Mumbai Region, Sasmira)
Building, 2nd floor, Sasmira Road, Worli)
R/at. Chintamani Apartment Flat No.)
370, 2nd floor, Room No.201,)
Koparkairane, Sector 19, Navi Mumbai)
Dist. Thane 09.).....Applicant

VERSUS

- 1) The State of Maharashtra, through)
The Secretary, Law & Judiciary Dept.)
Mantralaya, Mumbai 32.)
- 2) The Charity Commissioner,)
Dharmaday Aukt Bhavan, Sasmira)
Building, Annie Bazent Road,)
Worli Mumbai 400 030.).....Respondents

Shri R. G. Panchal, Advocate for the Applicant.

Shri A. J. Chougule, Presenting Officer for the Respondents.

CORAM : Shri Debashish Chakrabarty, Member (A)

DATE : 29.02.2024

JUDGEMENT

1. The Applicant who is working as 'Inspector' in establishment of 'Charity Commissioner Maharashtra State, Mumbai' has invoked provisions of 'Section 19' of the 'Administrative Tribunal Act 1985' to challenge the 'Transfer Order' dated 19.05.2023 of 'Charity Commissioner Maharashtra

State, Mumbai' by which he was transferred from 'Public Trust Registration Office, Greater Mumbai' to 'Public Trust Registration Office, Solapur'.

2. The learned Advocate for Applicant stated that Applicant is aggrieved by 'Transfer Order' dated 19.05.2023 of 'Charity Commissioner Maharashtra State, Mumbai' to transfer him from 'Public Trust Registration Office, Greater Mumbai' to 'Public Trust Registration Office, Solapur' in contravention of 'Policy Guidelines' given by GAD GR dated 09.04.2018.

3. The learned Advocate for Applicant then stated that Applicant was called upon to submit 10 Options for 'General Transfers: 2023'. The Applicant had then brought to the notice of 'Charity Commissioner Maharashtra State, Mumbai' that his 'Wife' was working as 'Head Clerk' in 'Central Dairy' at Aarey, Goregaon, Mumbai. The Applicant while giving 10 options, therefore had requested that in view of 'Policy Guidelines' in GAD GR dated 09.04.2018 to post 'Husband and Wife' together, he be retained in 'Public Trust Registration Office, Greater Mumbai' or be transferred to 'Public Trust Registration Office, Thane'.

4. The learned Advocate for Applicant contended that 'Charity Commissioner Maharashtra State, Mumbai' 'Transfer Order' dated 19.05.2023 was issued to post Applicant to 'Public Trust Registration Office, Solapur' without giving due consideration to contents of 'Annexure 2' of 'Statement 1' of GAD GR dated 09.04.2018 which requires 'Husband and Wife' to be posted together because 'Wife' of Applicant is working as 'Head Clerk' in the 'Central Dairy' at Aarey, Goregaon, Mumbai.

5. The learned Advocate for Applicant then argued that from 'Transfer Order' dated 19.05.2023 of 'Charity Commissioner Maharashtra State, Mumbai' it was evident that while many 'Inspectors' working along with Applicant in 'Public Trust Registration Office Greater Mumbai' had been given 'Extensions of Tenure' of 1 Year, however for reasons not known, similar request which had been made by Applicant was not considered; indicating discrimination against Applicant by 'Charity Commissioner Maharashtra State, Mumbai'.

6. The learned Advocate for Applicant emphasized that representation had been submitted by Applicant on 08.05.2023 before issue of 'Transfer Order' dated 19.05.2023 by 'Charity Commissioner Maharashtra State, Mumbai' and another representation was submitted soon thereafter on 22.05.2023; but both were not considered by 'Charity Commissioner Maharashtra State, Mumbai'.

7. The learned P.O. relied on the 'Affidavit in Reply' dated 24.07.2023 filed on behalf of 'Charity Commissioner Maharashtra State, Mumbai' to state that representation which was submitted by Applicant on 08.05.2023 had been placed before 'CSB' which had met on 18.05.2023 for due consideration and after taking into account all options which had been received upto 13.04.2023 from many 'Inspectors' including Applicant for 'General Transfers 2023', the 'CSB' submitted its considered recommendations for approval to 'Charity Commissioner Maharashtra State, Mumbai'.

8. The learned P.O. based on Affidavit in Reply dated 24.07.2023 filed on behalf of 'Charity Commissioner Maharashtra State, Mumbai' further stated that as per guidelines in GAD G.R. dated 09.04.2018, any Government Servant who is due for transfer must give all '10 Options'. Thus, if any Government Servant has not given all '10 Options'; then his choices were not required to be considered and concerned Government Servant can thereafter be transferred to any suitable post by the 'Competent Transferring Authority'.

9. The learned P.O. then on the basis of 'Affidavit in Reply' dated 24.07.2023 filed on behalf of 'Charity Commissioner Maharashtra State, Mumbai' explained the actual reason why Applicant was recommended by 'CSB' for transfer to post of 'Inspector' in 'Public Trust Registration Office, Solapur'. She mentioned that Applicant had given only 3 Options for 'General Transfer: 2023', one of which was to be posted in 'Head Office' of 'Charity Commissioner, Maharashtra State, Mumbai'. He was already working in the 'Public Trust Registration Office Greater Mumbai' which is co-located in same 'Office Building' as 'Head Office' of 'Charity Commissioner Maharashtra State, Mumbai'. The office of 'Public Trust Registration Office Greater Mumbai' and 'Head Office' of 'Charity Commissioner Maharashtra State, Mumbai' are co-located in 'Sasmira Building' at Worli Mumbai and thus are considered as one office for purposes of transfers of all employees including 'Inspectors'. As the applicant was working in these co-located offices in 'Sasmira Building' at Worli Mumbai since 2012, the 'CSB' did not recommend 'Extension of Tenure' of Applicant in 'Public Trust Registration Office Greater Mumbai' or even did not consider transfer of Applicant to 'Head Office' of 'Charity Commissioner

Maharashtra State, Mumbai'. The 'CSB' had noted that 14 posts out of the 15 total Posts of 'Inspectors' been already filled up in 'Public Trust Registration Office Thane'. However, at 'Public Trust Registration Office, Solapur', 7 Posts out of 15 total Posts of 'Inspectors' were vacant. Thus, taking into consideration the overall administrative requirements of various field officers under 'Charity Commissioner Maharashtra State, Mumbai' the 'CSB' had recommended transfer of Applicant to post of 'Inspector' in 'Public Trust Registration Office, Solapur'.

10. The learned P.O. based on Affidavit in Reply dated 24.07.2023 on behalf of 'Charity Commissioner Maharashtra State, Mumbai' also mentioned that subsequent representation made by Applicant on 22.05.2023 has been securely placed along with such other requests for due consideration in subsequent meetings of 'CSB'.

11. The grounds on which Applicant has challenged the 'Transfer Order' dated 19.05.2023 of 'Charity Commissioner Maharashtra State, Mumbai' by which he came to be transferred on post of 'Inspector' in 'Public Trust Registration Office, Solapur' is non consideration of any of his 3 Options which included request to be posted as 'Inspectors' in (i) Public Trust Registration Office, Thane (ii) Public Trust Registration Office, Raigad which were required to be considered as per guidelines in 'Annexure-2' of Statement-1 of GAD GR dated 09.04.2018 because 'Wife' of Applicant is also Government Servant and working as 'Head Clerk' in 'Central Dairy' at Aarey, Goregaon, Mumbai. The Applicant's main contention is that these 2 options had to be considered as it had been consciously decided that he could not be retained

either in 'Public Trust Registration Office Greater Mumbai' or posted to 'Head Office' of 'Charity Commissioner Maharashtra State, Mumbai' because they are co-located in 'Sasmira' Building at 'Worli Mumbai'.

12. The 'Minutes of Meeting' of 'CSB' which had met on 18.05.2023 to recommend posting of 'Inspectors' under 'General Transfer 2023' had recorded the fact that Applicant had been working in either 'Head Office' and 'Public Trust Registration Office Greater Mumbai' since 2012. Therefore, no further 'Extension of Tenure' of 1 Year could be granted to Applicant in 'Public Trust Registration Office Greater Mumbai' nor could he be considered to be posted in 'Head Office' of 'Charity Commissioner Maharashtra State, Mumbai'. Further 'CSB' had also recorded that Applicant's request to be posted in 'Public Trust Registration Office, Thane' could not also be considered as 14 out of 15 total posts of 'Inspectors' had already been filled up and there was no need for more 'Inspectors' to work in 'Public Trust Registration Office, Thane'. Hence, for 'Administrative Reasons' alone the 'CSB' which had met on 18.05.2023 recommended Applicant to be posted as 'Inspector' in 'Public Trust Registration Office, Solapur'.

13. The 'Minute of Meeting' of 'CSB' held on 18.05.2023 shows that there were several instances where requests for 'Extension of Tenures' of '1 Year' had been considered in respect of 'Inspectors' including those serving in 'Head Office' by the 'Charity Commissioner Maharashtra State, Mumbai' such as those at Sr.No.3, 6, 12, 16 & 19 in the list under caption of 'Non-Difficult

Areas'. The 'Inspector' at Sr. No.22 was granted 'Extension of Tenure' of '1 Year' even in 'Public Trust Registration Office Greater Mumbai'. Further the request for 'Husband-Wife' to be posted together was duly considered for "Inspector' at Sr No.10 who was granted 'Extension of Tenure' of 1 Year in 'Head Office', while for same reason, 'Inspector' at Sr. No.11 was given posting in 'Public Trust Registration Office, Thane'. The reasons recorded by 'CSB' while recommending 'Extension of Tenure' of '1 Year' to some 'Inspectors' serving in 'Head Office' of 'Charity Commissioner Maharashtra State, Mumbai' was that there were 10 vacant posts of 'Inspectors'. The 'Minutes of Meeting' of 'CSB' however did not record any specific grounds other than 'Administrative Reasons' for transfer of Applicant to 'Public Trust Registration Office, Solapur' and as to why the request of Applicant came to be considered differently from those of other 'Inspectors' at Sr. Nos.3, 6, 10, 11, 12, 16, 19 & 22 in the list under caption of 'Non-Difficult Areas'. Hence, there is substantial evidence to indicate that 'in toto' acceptance of recommendations submitted by 'CSB' by 'Charity Commissioner Maharashtra State, Mumbai' had indeed resulted in 'Arbitrary Exercise' of 'Statutory Powers' under the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 as well as non-observance of policy guidelines in 'Annexure-2' of 'Statement-1' of GAD GR dated 9.04.2018 regarding posting 'Husband-Wife' together especially when both are Government Servants.

14. ***The Hon'ble Supreme Court of India Judgment in B Varadha Rao v State of Karnataka, 1986 (3) Serv LR 60 (SC) : (1986) 4 SCC 624 : AIR***

1987 SC 287 is an authority for the proposition that transfer is an ordinary incident of service and therefore does not result in any alteration of any condition of service to his disadvantage. **The Supreme Court in B Varadha Rao v State of Karnataka, 1986 (3) Serv LR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287** has also noted 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** it was 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 and in **UOI v SL Abbas, AIR 1993 SC 2444 : (1993) 4 SCC 357** it was observed that who is to be transferred where, is a matter for the appropriate authority to decide.

15. The Hon'ble Supreme Court of India has nonetheless been considerate about the cause of 'Husband -Wife' to be posted together and has not stood in the way of the spouses being brought together by orders of transfer to accommodate them so as to avoid undue 'Personal Hardships'. In **Shilpi Bose vs. State of Bihar, AIR 1991 SC 532 : 1991 Supp (2) SCC 659 : 1991 Lab IC 360** many Lady Teachers in Primary Schools of Bihar who were transferred to places where their Husbands were serving and had thus displaced several other teachers who had subsequently challenged such Transfer Orders. The Hon'ble Supreme Court of India however declined to interfere on the finding that such considerations were reasonable and upheld those Transfer Orders. Further in **Deepa Vishishtha v State of U.P., 1996 (1) ESC 148 (All - DB)** following pertinent observations were made regarding

transfers of 'Husband and Wife' together with nuanced differentiation between 'Personal Hardships' of Government Servants and omnibus grounds of 'Administrative Exigencies' or 'Public Interest' :

"In other words, in the garb of public interest or administrative exigencies, it is not at the whims of the authority to disturb the family by transferring one of the husband and wife to a different place since the guidelines are not in imperative form or they have no force of law. If the administrative exigencies or public interest so requires, certainly husband and wife may be transferred to different places but only in exceptional cases i.e. respect of rare cases, for which no illustration can be given."

16. The Transfer Order dated 19.05.2023 of 'Charity Commissioner Maharashtra State, Mumbai' to transfer Applicant to post of 'Inspector' in 'Public Trust Registration Office, Solapur' does exhibit vulnerability on grounds of 'Arbitrary Exercise' of 'Statutory Powers' by 'Charity Commissioner Maharashtra State, Mumbai' as 'Competent Transferring Authority' under the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. Be that as it may; considering facts and circumstances mentioned above, it would suffice to direct the Applicant to submit 'Fresh Representation' to 'Charity Commissioner, Maharashtra State, Mumbai'. The 'Charity Commissioner Maharashtra State Mumbai' thereafter can be expected to consider the judicial observations referred to above which lean towards amelioration of 'Personal Hardships' caused to 'Government Servant' if 'Husband and Wife' were not to be posted together when this is benchmarked against overarching grounds of 'Administrative Exigency' or 'Public Interest'. The 'Charity Commissioner Maharashtra State, Mumbai' to accordingly take appropriate decision within

'Two Weeks' about 'Fresh Representation' of Applicant and consider transferring him to any vacant post of 'Inspector' outside 'Public Trust Registration Office, Greater Mumbai' but in other 'Public Trust Registration Office' located in any district in 'Mumbai Metropolitan Region'.

ORDER

- A) The Original Application is partly Allowed.
- B) No Order as to Costs.

Sd/-
(Debashish Chakrabarty)
Member(A)

Place: Mumbai
Date: 29.02.2024.
Dictation taken by: VSM
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