

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.646 OF 2023

**DISTRICT: Ratnagiri
Subject: Transfer**

Shri Suresh Rangnath Bhadange)
Age 45 years, working as Clerk Typist,)
O/o Assistant Director, Department of)
Archeology, Thiba Palace, Ratnagiri.)
R/o room no.7, Patil Park, Bldg.No.3/C,)
Chunchale Shivar, S.No.109, Satpur)
Ambad Link Road, Nashik 422010.).....Applicant

VERSUS

- 1) The State of Maharashtra, through)
The Secretary, Tourism and)
Cultural Affairs Department,)
Mantralaya, Mumbai 400 032.)
- 2) The Director, Archeology and)
Museums, St. George Fort, St.)
George Hospital Complex, near)
C.S.T.Terminus, Mumbai 400 001.)
- 3) The Assistant Director, Department)
Of Archeology, 1411, Sarkarwada,)
Saraf Bazar, Bhorpati, Nasik)
422001.).....Respondents.

Shri U. V.Bhosale, learned Advocate for the Applicant.

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

CORAM : Shri Debashish Chakrabarty, Member (A)

DATE : 15.02.2024.

J U D G M E N T

1. The Applicant who is 'Clerk Typist' in establishment of 'Director of Archeology & Museum, Mumbai' has challenged 'Transfer Order', dated

11.05.2023 by which he has been transferred from office of Assistant Director Archeology, Nashik to office of Assistant Director Archeology, Ratnagiri.

2. The Applicant is represented by learned Advocate Shri U. V. Bhosale, while the Respondents were represented by learned P.O. Smt. Archana B. K.

3. The learned Advocate for Applicant stated that Applicant had joined as 'Peon' on 10.01.2006. The Applicant was later promoted to the cadre of 'Clerk Typist' on 16.05.2011 and posted in office of Assistant Director Archeology, Nashik. The Applicant had thereafter continued to work as 'Clerk Typist' in offices of (i) Assistant Director Archeology, Nashik and (ii) Curator Regional Museum, Nasik till he came to be transferred to office of Assistant Director Archeology, Ratnagiri on 11.05.2023. The Applicant has joined in office of Assistant Director Archeology, Ratnagiri on 25.05.2023.

4. The learned Advocate for Applicant then stated that after having been posted as 'Clerk Typist' in office of Assistant Director Archeology, Ratnagiri on 11.05.2023 and before joining on 25.05.2023, the Applicant had not only submitted representation but even personally met the 'Director of Archeology and Museum, Mumbai' in his office on 15.05.2023 to convey his difficulties on account of certain 'Personal Reasons'. The Applicant had then requested 'Director of Archeology and Museum, Mumbai' that he be transferred to 'Vacant Post' of 'Clerk Typist' in office of either (i) Curator Regional Museum, Nasik or (ii) Assistant Director, Archeology, Aurangabad.

5. The learned Advocate for Applicant contended that the 'Director of Archeology and Museum, Mumbai' did not observe guidelines in GAD GR of 09.04.2018 by not publishing the 'Seniority List' of 'Clerk-Typists' who were eligible for 'General Transfer: 2023'. Neither did he call for '10

Options' from Applicant; nor considered request made in person to 'Director of Archeology and Museum, Mumbai' on 15.05.2023. Instead for unknown reasons 'Director of Archeology and Museum, Mumbai' has kept few 'Vacant Posts' of 'Clerk Typist' in office of 'Assistant Director; Archeology, Aurangabad'.

6. The learned Advocate for Applicant contented that Applicant has been discriminated against because the 'Director of Archeology and Museum, Mumbai' had considered similar requests of other 'Clerk Typists' while rejecting the request of Applicant. The Applicant has also mentioned that he was discriminated against by 'Director of Archeology and Museum, Mumbai' as he belongs to the 'Backward Classes'.

7. The learned P.O. relied on the contents of Affidavit-in-Reply dated 18.07.2023 filed by 'Director of Archeology and Museum, Mumbai' to mention that under the 'Directorate of Archaeology and Museums' there are 6 'Divisional Offices' and 13 'Museums' which have 25 'Sanctioned Posts' of 'Clerk Typists'. The day to day management of 386 'State Protected Ancient Monuments' which are spread over several districts is the prime responsibility of 'Director of Archeology and Museum, Mumbai'. The activities related to 'Conservation, Development and Maintenance' of all these 'State Protected Ancient Monuments' are done by 6 'Divisional Offices'. Therefore, quantum of work in these 6 'Divisional Offices' are much more as compared to those in 13 'Museums'. Hence, more experienced 'Clerk Typists' are required to be posted in these 6 'Divisional Offices'.

9. The learned P.O. further mentioned that 'Director of Archeology and Museum Mumbai' in Affidavit in Reply dated 18.07.2023 has specifically highlighted the fact that activities related to 'Conservation, Development and Maintenance' of the well-known 'Thiba Palace' at Ratnagiri and several 'Ancient Forts' located Konkan Region are the main responsibilities of the office of Assistant Director, Archeology, Ratnagiri.

Therefore, as Applicant being more experienced as 'Clerk Typist', was transferred to work in office of Assistant Director, Archeology, Ratnagiri.

10. The learned P.O. thereupon emphasized that 'Director of Archeology and Museum, Mumbai' has strongly denied in Affidavit in Reply, dated 18.07.2007 the allegations made by Applicant regarding 'Caste Discrimination' on grounds that he belongs to the 'Backward Classes'. She emphatically stated that Applicant was transferred only for 'Administrative Reasons'. Further, the requests made by other 'Clerk Typists' for cancellation of 'Transfer Order' which came to be considered by 'Director of Archeology and Museum, Mumbai' were purely on merit and irrespective of their 'Social backgrounds'. So, there was no prejudice against Applicant on grounds that as he belonged to the 'Backward Classes' and hence intentionally transferred to the office of 'Assistant Director Archeology, Ratnagiri'.

11. The learned P.O. also stated that Applicant was issued 'Show Cause Notice' for his grievous misbehavior on 15.05.2023 in the office of 'Director of Archeology and Museum, Mumbai' and added that Applicant had been issued 'Show Cause Notices' for misconduct even on earlier occasions on 05.09.2018, 12.12.2019 and 09.12.2020.

12. The Director of Archeology and Museum, Mumbai in Affidavit-in-Reply dated 18.07.2023 has emphasized on the point that Applicant had completed more than 11 year tenure in offices of (i) 'Assistant Director Archeology, Nasik' and (ii) 'Curator Regional Museum Nashik' and therefore was overdue to be transferred out of Nashik. The Applicant was thus transferred to office of 'Assistant Director Archeology, Ratnagiri' for 'Administrative Reasons' because experienced 'Clerk Typist' was required to be posted there for activities related to 'Conservation, Development and Maintenance' of several 'Ancient Forts' in Konkan Region and especially of the unique 'Thiba Palace' at Ratnagiri.

13. The 'Director of Archeology and Museum, Mumbai' in Affidavit in Reply dated 18.01.2023 has mentioned that Applicant has been prone to misconduct as he was issued 'Show Cause Notices' on several occasions for violation of 'Maharashtra Civil Services (Conduct) Rules 1979'. The 'Director of Archeology and Museum Mumbai' has recorded details of the incident of misconduct of Applicant during visit to his office on 15.05.2023.

14. The 'Director of Archeology and Museum Mumbai' in Affidavit-in-Reply dated 18.07.2023 has stated that exceptions which were made in cases of some other 'Clerk Typists' cited by Applicant are not factual because they had all done less than longest tenure of 11 years by Applicant at Nasik. No 'Clerk-Typists' had not been retained back in any of 6 'Divisional Offices' but by exception only in 'Head Office' of 'Director of Archeology and Museum Mumbai' for justiciable 'Administrative Reasons'.

15. The facts of the case of Applicant does indicate that overall 'Cadre Management' of 'Clerks-Typists' by 'Director of Archeology and Museum Mumbai' has not been commendable; as many 'Clerk Typists' including Applicant have been allowed to continue as their posts for extended tenures of more than 10 years in direct contravention of 'Proviso Clause' of 'Section 3(1)' of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' which allows only two 'Normal Tenures' of 'Six Years' at 'One Office on Department' for employees in 'Group C'. The Applicant who is in 'Group C' working as 'Clerk Typist' has undoubtedly benefited from slack implementation of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 by 'Director of Archeology and Museum Mumbai'.

16. The Hon'ble Supreme Court of India in its Judgment in ***B Varadha Rao v State of Karnataka, 1986 (3) Serv LR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287*** has observed that transfer is an ordinary incident of service and therefore does not result in any alteration of any condition of service to disadvantage of Government Servants. The Hon'ble Supreme Court of India has also observed that an employee

cannot, as a matter of right, seek transfer to a place of his choice in **K. Sivankutty Nair v. Managing Director, Syndicate Bank, 1984 (2) Serv LR 13 (Kant); Chief General Manager (Telecom) v. Rajendra Ch. Bhattacharjee, (1995) 2 SCC 532 : SC 813 : (1995) 2 Serv LR 1.**

17. The Hon'ble Supreme Court of India in **B Varadha Rao v State of Karnataka, 1986 (3) Serv LR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287** has observed 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** Hon'ble Supreme Court of India has 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. In **UOI v SL Abbas, AIR 1993 SC 2444 : (1993) 4 SCC 357** it has been observed by Hon'ble Supreme Court of India that who is to be transferred where, is a matter for the appropriate authority to decide.

18. The Hon'ble Supreme Court of India in **(1997) 3 SCC 87 (Laxmi Narain Mehar V/s Union of India)** has upheld the unenforceability of guidelines or instructions in cases relating to Government Servants belonging to Scheduled Caste and Scheduled Tribe and has observed "that even though there were instructions that the SC and ST candidates should be posted nearest to their hometown, yet such instructions would be subject to administrative exigencies e.g. where the officer is an experienced persons and there is a need for such an officer at the place of transfer".

19. The prayer of Applicant to quash and set aside the 'Transfer Order' dated 11.05.2023 of 'Director of Archeology and Museum, Mumbai' thus merits no consideration on grounds of 'Caste Discrimination'. However, the prayer of Applicant to consider his request to be posted on 'Vacant Post' of 'Clerk Typists' in office of 'Assistant Director of Archeology, Aurangabad' merits some consideration even if were to be only for 'Administrative

Reasons'; as admittedly there are 3 posts of 'Clerk Typist' in office of 'Assistant Director, Archeology, Aurangabad' out of which just 1 post of 'Clerk Typist' has been filled up while 2 posts of 'Clerk-Typist' have been lying vacant for substantial periods of time and thus held by way of 'Additional Charge'. Further the averment of 'Director of Archeology and Museum Mumbai' in Affidavit in Reply dated 18.07.2023 that Applicant on grounds of more experience as 'Clerk Typist' was transferred to office of Assistant Director of Archeology, Ratnagiri so that he can also be entrusted with some activities related to 'Conservation, Development and Maintenance' of several 'Ancient Forts' in Konkan Region and the architecturally beautiful 'Thiba Palace' at Ratnagiri is beyond rational contemplation; as these 'Specialized & Technical' responsibilities can only be discharged by knowledgeable as well as trained experienced 'Field Staff' serving under 'Director of Archeology and Museum Mumbai' and not by those who are required to work only in 'Staff Positions' such as 'Clerk Typists'

20. The decision of 'Director of Archeology and Museum Mumbai' to transfer Applicant from Nashik but to retain few other 'Clerk Typists' beyond tenures of 'Six Years' which is not permissible under 'Proviso Clause' of 'Section 3(1)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' just because they happen to work in 'Head Office' at Mumbai is thus liable to be quashed and set aside as it amounts to 'Arbitrary Exercise' of 'Statutory Powers'.

21. The Hon'ble Supreme Court of India in the case of ***East Coast Railway & Another Vs. Mahadev Appa Rao & Ors. (2010) 7 SCC 678*** which has unequivocally emphasized on the application of mind and recording of reasons by Public Authority so that there is no scope of arbitrariness in taking decisions. The Hon'ble Supreme Court of India has observed the following :-

"There is no precise statutory or other definition of the term "arbitrary". Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making an order is only one of them. Every order passed by a public authority

must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable.”

22. The request made by Applicant to be posted as ‘Clerk Typist’ in office of ‘Assistant Director of Archeology, Aurangabad’ therefore be considered afresh at the time of ‘General Transfer : 2024’ by the ‘Director of Archeology and Museum Mumbai’ based only on fair assessment of ‘Office Work’ which are required to be assigned to ‘Clerk Typists’ in office of ‘Assistant Director, Archeology, Aurangabad’ not involving activities of ‘Conservation, Development and Maintenance’ of ‘State Protected Ancient Monuments’. Hence, the following order :-

ORDER

- (A) Original Application is Partly Allowed.
- (B) No Order as to Costs.

Sd/-

(Debashish Chakrabarty)
Member (A)