

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.715 OF 2015

DISTRICT : MUMBAI

Miss Samata Ramesh Shitut.)
Working as Assistant Commissioner of)
Fisheries, Civil Lines, Nagpur, in the)
Office of Assistant Commissioner of)
Fisheries and residing at "Sagar" Mahim)
CHS, 'A' Building, Flat No.32,)
Veer Sawarkar Marg, Mahim, Mumbai-16.)...**Applicant**

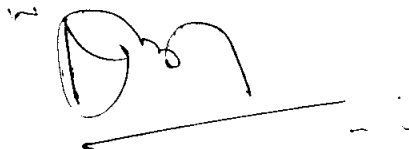
Versus

1. The State of Maharashtra.)
Through the Secretary (A.D.F) of)
Agriculture, Animal Husbandry,)
Dairy Development & Fisheries)
Department, Mantralaya, Mumbai.)
2. The State of Maharashtra.)
Through the Adl. Chief Secretary,)
General Admn. Department,)
Mantralaya, Mumbai - 400 032.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**



DATE : 14.06.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Original Application (OA) questions the allotment post promotion of the Applicant to Nagpur Revenue Division from Konkan Division and the rejection of her representation for transfer back to Konkan Division on the ground that she being a single lady has to look after her aged, infirm and illness afflicted parents.

2. We have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Mr. N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

3. The Applicant is unmarried lady. Since she is not a son, her parents are not required to be thankful to her for the care that she extends to them, but all the same she is the only one to take care of her aged parents.

4. The Applicant having joined as Assistant Fisheries Development Officer, Class-III on 5.10.1996 came to be selected to the higher post through M.P.S.C. as Class-II, Group 'B' Fisheries Development Officer on



20.1.2012. She came to be promoted as Assistant Commissioner of Fisheries, Class-I on 25.3.2015. Post promotion, the options were called from her for the allotment of Revenue Division under the divisional cadre structure and the divisional cadre allotment for appointment by promotion to the post of Group 'A' and Group 'B' (Gazetted and non-Gazetted) of the Government of Maharashtra Rules, 2010 (to be hereinafter called 2010 Rules). The Applicant gave the option for Konkan Division which Mumbai falls within. But she was allotted to Nagpur Division. On 6.4.2015, she reported there. She has referred to a G.R. of 11.8.2014. Having joined there, she made a representation apparently under 2014 G.R. above referred to. This she did on 13.4.2015 (Exh. 'E', Page 43 of the paper book). On 28.7.2015, the Respondent No.1 - State of Maharashtra in Agriculture, Fisheries and Animal Husbandry Department rejected that representation. This OA as already indicated above impugns both the revenue division allotment as well as the rejection of the representation dated 13.04.2015.

5. It needs to be noted that the matter as far as the Applicant is concerned, at the time of her promotion and allotment of Nagpur Division was in fact fully governed by the 2010 Rules. This is required to be emphasized because

A handwritten signature in black ink, consisting of a stylized 'D' followed by a horizontal line and a small flourish.

w.e.f. 28th April, 2015, the State of Maharashtra framed Rules under the proviso to Article 309 of the Constitution of India and by the said Rules for all practical purposes, 2010 Rules were superceded. However, the crux of the matter is that this OA, regard being had to its scope and the events that took place would be governed by 2010 Rules because as already held by the Hon'ble Vice-Chairman in **OA 536/2015 (Shri Umesh B. Sakpal and 10 others Vs. The Director General and Inspector General of Police and one another, dated 19.11.2015, Para 5)**, 2015 Rules would be prospective in operation. Even otherwise, on our own reading of 2015 Rules, there is absolutely nothing to suggest retroactivity. Therefore, since nothing can remain in vacuum, it must follow that 2010 Rules would be the governing Rules as far as the present OA is concerned. Further, by a G.R. of 11th August, 2014, the procedure was laid down in the matter of those that sought change of revenue divisions. One of the grounds on which such change could be sought was enshrined in Clause 8 which reads (in Marathi) as follows :

“८. विभागीय संवर्ग वाटपाच्या वेळी अविवाहित महिला अधिकारी / कर्मचारी वा विधवा वा परित्यक्त्या / घटस्फोटीत आहेत व जिच्यावर अवलंबून असलेले वृध्द आई / वडील, सासु/सासरे.”

6. It is, therefore, very clear that the case of the Applicant would in normal circumstances clearly fall within the above quoted Clause of 2014 G.R.

7. However, in the Affidavit-in-reply, a plea is raised which was pursued by the learned C.P.O. at the Bar before us. The case is that by the instrument of 2015, this position has changed and now, there is no Clause like Clause 8 and only if the relatives including the parents of a lady suffered from the dreaded decease like cancer, kidney transplant, etc., then only can she be allowed to set up such a ground. Now, as to this contention of the Respondents, we find that the representation made by the Applicant was on 13th April, 2015 although the Respondents may have taken their own sweet time of a little more than four months to decide it. The Applicant had reported at Nagpur on 6.4.2015 and the 2015 Rules came into existence on 28th April, 2015. Therefore, we find rejecting the contention to the contrary by and on behalf of the Respondents that even in that respect, the present matter would be governed by the G.R. of 11th August, 2014.

8. Quite pertinently, the Applicant was the only lady Officer having been promoted along with 5 of her male

A handwritten signature in black ink, consisting of a large, stylized initial 'M' followed by a flourish and a horizontal line extending to the right.

colleagues. The order dated 25th March, 2015 pursuant whereto, the Applicant reported at Nagpur on 6.4.2015 would show that S/S U.A. Chougule, M.H. Deore and A.B. Deshpande came to be posted at the place where they were posted earlier even post promotion i.e. Konkan, Nashik and Aurangabad respectively. Shri H.A. Dixit came to be transferred from Konkan to Amaravati while Shri V.B. Shikhare from Konkan to Pune and as far as the present lady Applicant is concerned, she was transferred to Nagpur from Konkan. In the Affidavit-in-reply, the only fact which is emphasized is that in one vacancy, Shri Chougule was accommodated. Now, there are two aspects of the matter. In the first place, that fact is hardly by itself sufficient to show that the authorities acted with the kind of impartiality that was expected of them when they had to consider the case of an unmarried lady namely the Applicant. We are conscious of our jurisdictional and judicial constraints and limitations. However, no such constraint of limitation can outweigh or override, the mandate enshrined *inter-alia* in Articles 309 and 311 and the entire Chapter 3 of the Constitution. In fact, there are provisions in the Constitution which make it perfectly legitimate and legal to give adequate protection to the weaker gender. Therefore, it was incumbent on the part of the Respondents, in our view, to place before us the

A handwritten signature in black ink, consisting of a stylized, cursive letter 'S' followed by a diagonal line.

material to show as to how as far as relative merit in the matter of allotment of revenue division between Shri Chougule and the Applicant, Shri Chougule could steal a march over her. No doubt, if the material was there, then to the minutest of the details, we perhaps could not have gone into and may be we would not just for the asking have substituted our conclusions for that of the authorities. A bald statement that one vacant post was given to Shri Chougule and there was no other vacancy, and therefore, the Applicant was straightway sent to Nagpur is something that is beyond comprehension. The stations which the others came to be posted at, have also just now discussed. We are at a complete loss to understand as to why at least a comparatively easier station like Nashik and Pune could not have been given to the lady.

9. Further, the 2nd impugned order of 28.7.2015 is a two line order in Marathi, in effect rejecting the representation of the Applicant. No reasons have been mentioned there. Assuming this curt looking response was in accordance with the official dome. But then, when the matter came to this Tribunal, we think it was incumbent upon the Respondents to place the material before us to



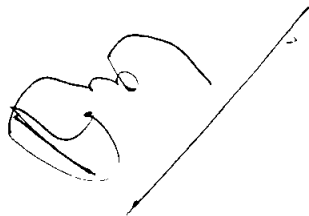
A handwritten signature in black ink, consisting of a large, stylized initial 'B' followed by a flourish and a horizontal line extending to the right.

justify the rejection of the representation of the Applicant. That quite clearly has not been done.

10. In the Affidavit-in-rejoinder, there are averments which have not been further controverted showing that there were vacancies in Konkan Division then and now and that is all the more the reason why we would have thought that such a material was placed before us. It is possible that along with Mr. Chougule, howsoever grudgingly though the Applicant could also be accommodated in Konkan Division.

11. Now, the case of the Applicant is that her father is an octogenarian and his mother is close thereto. They are suffering from various ailments for which the documents have been annexed. It is not necessary to read each and every medical document, but it does appear that the old couple is really ailing.

12. The family apparently has a premises at Sagar (Mahim) Cooperative Housing Society. It appears that the family has stayed there for long. The Applicant was born in 1968 and as already mentioned above, she is her parents only child.

A handwritten signature or set of initials, possibly 'S.M.', written in dark ink. The signature is somewhat stylized and appears to be written over a diagonal line that extends from the bottom right towards the center of the page.

13. It is not necessary for us to enter into any fact finding in detail, but let us proceed on the basis that the Applicant moved the Government and succeeded in getting a Government accommodation for her. Now, this much was sufficient for the Respondents to jump on their feet and try to set up a case that the Applicant was never bothered about her parents and once she got the Government accommodation, she stayed there leaving her aged and infirm parents to fend for themselves. The Applicant on her part has explained in effect that she had taken the Government accommodation as a possible answer to an event which could have happened, when the cooperative society premises might have gone for development or whatever. She has adopted a case that she along with her parents would visit the Government accommodation twice or thrice a week but they never stayed separately from one another and at one point of time though her name had been deleted from the family Ration Card, it was re-included and then she gave up the Government accommodation.

14. In our opinion, much as the Respondents would rely on the family matters of the Applicant the desperation in their case becomes more and more apparent. But we are at a complete loss to understand as to how when a



~


responsible gazetted Officer that the Applicant happens to be being the only child of her parents sets up a case that she is looking after her parents, the Respondents can be better qualified to know the details about her family. After-all, as one knows too well now, for undisclosed reasons as between the two Officers, the Applicant was chosen for Nagpur. We have discussed this aspect of the matter and do not want to repeat it all over again.

15. Now, the above observation notwithstanding and assuming and we insist, it is only an assumption and not a finding that the Applicant at one point of time stayed separately from her parents in Mumbai. She after-all did so in Mumbai only and by no stretch of imagination can it be said that Mumbai and Nagpur are one and the same when one considers the undisputed position that her parents stayed in Mumbai and they have been under treatment. Therefore, the maximum that one can say in favour of the Respondents is that the Applicant was staying separately and this is an assumption only, but that does not derogate against the fact that she was looking after her parents. Such family matters have to be understood in the context of the nature of the lis and the facts. Here, we are not called upon to and we do not decide any matter intra-family of the Applicant. We have



only to decide the issues that this OA throws up for determination. In our opinion, therefore, the Respondents have not been able to place any material on record to show that they acted in the manner they should be as model employers mandated by Constitution to act in a just manner. We reject the contention of the Respondents that 2015 Rules would govern the present matter. We hold that it was very much relevant to consider the case of the Applicant under the G.R. of 2014 and 2010 Rules. In this OA also, our findings would be based on the contemporaneous events and the instruments applicable such as they were in force in March/April, 2015, but before 28th April, 2015.

16. In view of the foregoing, we will have to direct the Respondents to reconsider the matter of the Applicant afresh. The communication of 28.7.2015 stands hereby quashed and set aside. In so far as the order of allotment of 25th March, 2015 is concerned, the matter is remitted back to the Respondents to reconsider the same bearing in mind the observations hereinabove made, including the relative merit in the matter of allotment of revenue division of Shri U.A. Chougule and the Applicant though we make it clear that we do not necessarily direct that Shri Chougule should not be retained wherever he is, but the case of the



A handwritten signature in black ink, consisting of a stylized 'B' followed by a horizontal line extending to the right.

Applicant nonetheless will have to be reconsidered. Compliance within four weeks from today. The OA stands allowed to this extent with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
14.06.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
14.06.2016

Mumbai
Date : 14.06.2016
Dictation taken by :
S.K. Wamanse.

E:\SANJAY WAMANSE\JUDGMENTS\2016\6 June, 2016\O.A.715.15.w.6.2016.doc