

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.764 of 2020

District : MUMBAI

Shri Pratap Panditrao Hikke,)
Aged 36 Yrs., Working as Higher Grade)
Stenographer (Marathi) in the office of)
General Manager, Grater Mumbai Milk Scheme,)
Worli Dairy, Mumbai 18.)
R/O Room No.10, Building No.C, Mother Dairy)
Quarter, Nehru Nagar, Kurla (E), Mumbai 24.) **...Applicant**

Versus

1. The State of Maharashtra,)
Through Principal Secretary, Agriculture)
Animal Husbandry, Dairy Development &)
Fisheries Department (Dairy Development)
Room No.520, (Extn.) 5th floor, M. K. Marg)
Mantralaya, Mumbai 400 032.)
2. The Commissioner, Dairy Development)
(M.S.) Mumbai, O/at Administrative)
Building, A. G. Marg, Worli Sea Face,)
Mumbai 18.)
3. The Director General & Inspector)
General of Police (M.S.), Mumbai)
Having office at Old Council Hall, Shahid)
Bhagatsingh Marg, Mumbai 400 039.) **...Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondent.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 05.08.2021

J U D G M E N T

The Applicant has challenged the order dated 15.10.2020 passed by the Respondent No.1 thereby rejecting his inter division transfer application invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to Original Application are as under :-

In pursuance of the advertisement issued by M.P.S.C. dated 23.02.2012 the Applicant had applied for the post of Higher Grade Stenographer (Marathi) (which was mentioned as Group -B post in the advertisement). The Applicant participated in the recruitment process and was appointed by order dated 01.02.2013 as Higher Grade Stenographer (Marathi) on the establishment of Respondent No.2 - Commissioner Dairy Development, Mumbai. The Applicant hails from Basmat, Tal District Hingoli. On 09.05.2016, he made request application for inter division transfer in Nanded, Aurangad, Parbhani and Latur citing reason that his wife is required to stay at Basmat to look after his mother and he was to visit Basmat from Mumbai constantly. Since he had completed five years tenure he had sought inter division transfer in terms of G.R. dated 03.06.2011. Thereafter, there were exchange of correspondence in between Respondent No.2 and Respondent No.3. The Respondent No.3 by its letter dated 10.01.2019 gave no objection for absorption of the Applicant in Nanded region on the establishment of Special Police Inspector General Range, Nanded. However, thereafter no further steps were taken by Respondent No.2 to process the request of the Applicant in terms of G.R. dated 03.06.2011.

3. In the meantime, Respondent No.1 had issued another G.R. dated 15.05.2019 in supersession of old G.R. dated 03.06.2011. As per one of the condition in G.R. dated 15.05.2019 pending proposals will be considered on the basis of new G.R. Accordingly, Respondent No.2 Commissioner Dairy Development Department processed the application of the Applicant in terms of fresh G.R. and informed to the Government that he does not fulfill the requirement of new G.R. dated 15.05.2019. The Respondent No.1 accordingly rejected the proposal by impugned order dated 15.10.2020 which is under challenge in the present O.A.

4. Shri A. V. Bandiwadekar, learned Counsel for the Applicant submits that the Applicant's request for inter division transfer ought to have been processed in terms of G.R. dated 03.06.2011 but there was delay and lethargy on the part of Respondent No.2 Commissioner, Dairy Development in forwarding the proposal to the Government within reasonable time, and therefore, Applicant's right to get inter division transfer in terms of G.R. dated 03.06.2011 cannot be taken away. Thus, according to him, if the Respondent No.2 had processed the request of the Applicant with expedition and urgency, the Applicant would have got inter division transfer. In this behalf, he refers to Section 10 of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005) which *inter -alia* provides that no file should remain pending in the department for outer limit of 45 days and failing to which concerned Government servant shall be liable for disciplinary action for dereliction from official duties. He has pointed out that once the Respondent No.3 Director General of Police by his letter dated 10.01.2019 has conveyed his willingness for absorption of the Applicant on his establishment, it ought to have been sent to the Government expeditiously but no such step was taken within reasonable time and in the meantime, the Government had issued G.R. dated 15.05.2019. He has further raised the issue of discrimination stating that in the matter of some of the employees their requests for inter division absorption have been accepted by the Government.

5. Per contra, Shri A. J. Chougule, learned Presenting Officer for the Respondents submits that on receipt of application of the Applicant after necessary compliance, the Respondent No.2- Commissioner, Dairy Development Department had examined the matter in the light of new G.R. dated 15.05.2019 and found the Applicant was not eligible for inter division transfer. During the course of hearing, he has tendered the copy of proposal which is taken on record and marked by letter 'X'. He thus submits that since the matter was pending, it was required to be processed in the light of new G.R. which has been issued in supersession of old G.R. dated 03.06.2011. As regard the issue of discrimination, he has pointed out that the orders sought to be relied upon by the Applicant (Page No.85 to 87 of PB) are transfer orders issued under Section 4(5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and not inter division transfer orders, and therefore, the question of discrimination does not survive.

6. In view of the submissions advanced at a bar and material placed on record, the issue posed for consideration is whether the Applicant is entitled for inter division transfer after issuance of new G.R. dated 15.05.2019.

7. Earlier the Respondent No.1- Government of Maharashtra had taken policy decision in terms of G.R. dated 03.06.2011 whereby considering the difficulties faced by the employees, the decision was taken to consider their request transfers after completion of five years tenure amongst other conditions of forfeiting seniority, availability of post in other departments etc. It is on the basis of G.R. dated 03.06.2011 the Applicant made request for transfer in Aurangbad or Nanded division citing personal difficulties. There was correspondence between the Respondent No.2 and Respondent No.3. The Applicant has given willingness to abide by all conditions mentioned in G.R. dated 03.06.2011. The Respondent No.3 by its letter dated 10.01.2019 also conveyed its readiness to absorb the Applicant on his establishment.

However, no further steps were taken and in meantime the Government had issued new G.R. dated 15.05.2019 in supersession of old G.R. dated 03.06.2011.

8. Material to note that the conditions and parameters for inter division transfers were substantially changed in G.R. dated 15.05.2019. It is now made applicable to Group-C employees subject to fulfillment of the conditions mentioned therein. At this juncture, it needs to be clarified that though the advertisement classifies the post as Group-B (non gazetted), learned P.O. fairly concedes that in view of pay-scale of the Applicant it is 9300-34800/- with G.P. of Rs.4400/- it is Group –C post. However, he has pointed out that now the request transfer in terms of G.R. dated 15.05.2019 is restricted to the following grounds :-

(A) A Government servants who are suffering from disability in terms of right of a person with Disability Act, 2016.

(B) A Government servants whose children comes within the category classified as specified disability in terms of right of a person with Disability Act, 2016.

(C) A Government Servants whose dependents suffer from serious illness like cancer, paralysis, heart disease, brain tumor etc.

(D) A Government servants who are widow or widower.

(E) A Government servants who made request for transfer so that husband and wife should reside together at one place.

Admittedly, the Applicant's case does not fall within any of the categories mentioned in G.R. dated 15.05.2019.

9. Material to note that the Respondent No.2 – Commissioner Dairy Development Department had sent proposal to the Government belatedly on 29.09.2019 thereby stating that the Applicant does not fulfill the conditions mentioned in G.R. dated 15.05.2019 and the Applicant is not

entitled for inter division transfer. It is on the basis of this proposal, the Government rejected the request of the Applicant.

10. At this juncture, it would be material to reproduce the relevant portion from the proposal submitted by the Respondent No.2 which is as under in vernacular :-

“सदर परिशिष्टात सदर शासन निर्णयातील कायमस्वरूपी समावेशनाच्या कार्यवद्धतीनुसार श्री.हिक्के यांचे प्रकरण तपासण्यात आले.

१. या शासन निर्णयातील अनुक्रमांक ३ अन्वये परिशिष्ट एक मध्ये नमूद कारणास्तव कायमस्वरूपी समावेशन अनुज्ञेय राहिल, असे नमूद आहे. १) स्वतः अपंग २) असक्षम या शब्दात अंतर्भूत आजार असलेल्या मुलांचे पालक ३) शासकीय कर्मचारी किंवा यथास्थिती पती वा पत्नी, मुले किंवा आई, वडील यांचे गंभीर आजार ४) विधवा/विधुर कर्मचारी ५) पती - पत्नी एकत्रिकरण या कारणास्तव कायमस्वरूपी समावेशन अनुज्ञेय आहे. श्री. हिक्के यांनी या कारणास्तव कुठलेही कागदपत्रे अर्जासोबत सादर केलेली नाहीत व विनंती अर्जात तसे कारणेही नमूद केलेले नाही.

२. शासन निर्णयातील अ.क्र.६ नुसार कायमस्वरूपी समावेशनाचे धोरण महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतील गट क च्या पदावरून कायमस्वरूपी समावेशन करता येणार नाही असे नमूद केले आहे. श्री.हिक्के यांची आयुक्त कार्यालयात लोकसेवा आयोगामार्फत नियुक्ती झालेली आहे. त्यांचे नियुक्ती आदेशात अनुक्रमांक १० वर लघुलेखक उच्चश्रेणी (मराठी) सदर पदे मंत्रालयीन विभाग बृहन्मुंबईतील कार्यालयात असल्याचे परिक्षेच्या जाहिरातीत स्पष्ट करण्यात आले होते. त्यामुळे अन्य जिल्हयामध्ये नियुक्ती/बदली देण्याची विनंती मान्य केली जाणार नाही व या संदर्भातील अर्जांची दखल घेतली जाणार नाही, असे स्पष्टपणे नमूद करण्यात आले आहे. त्यामुळे सदर अटीची पूर्तता श्री.हिक्के यांचेबाबतीत होत नाही.

३. शासन निर्णयातील अ.क्र.७ नुसार कायमस्वरूपी समावेशनासाठी कार्यमुक्त करण्याचे व नियुक्ती देण्याचे अधिकार संबंधित नियुक्ती प्राधिका-यांना देण्यात आलेले आहेत.

४. शासन निर्णयातील अ.क्र.८ नुसार प्रशासनाचे हित, सार्वजनिक सेवेचे हित विचारात घेऊन संबंधित कर्मचा-याच्या विनंतीवरून त्याचे अन्य कार्यालयात कायमस्वरूपी समावेशन करण्यास परवानगी/मंजूरी द्यावी किंवा कसे याचा आणि कायमस्वरूपी समावेशनाद्वारे संबंधित कर्मचा-यास त्यांच्या कार्यालयात घ्यावे किंवा कसे याचा निर्णय घेण्याचा पूर्ण अधिकार संबंधित नियुक्ती प्राधिका-यांना राहिल. श्री.हिक्के यांचेबाबतीत कोणतेही प्रशासनाचे हित, सार्वजनिक हित दिसून येत नाही.

५. त्याचप्रमाणे शासन निर्णयातील अ.क्र.११ अन्वये या शासन निर्णयातील कोणत्याही अटी शिथिल केल्या जाणार नाहीत असे नमूद आहे.

उपरोक्त वस्तुस्थिती लक्षात घेता कायमस्वरूपी समावेशन करण्यासाठी शासन निर्णय दिनांक १५.०५.२०१९ मधील अटीची पूर्तता होत नसल्याने व या निर्णयातील

कोणतीही अट शिथिल करावयाची नसल्याने श्री.प्रताप पं.हिवके, लघुलेखक (उच्चश्रेणी) हे विभाग बदलीस पात्र नाहीत. सदर बाब मा.राज्यमंत्री महोदयांच्या निदर्शनास आणून देण्याकरिता सादर करण्यात येत आहे. ”

11. Thus, there is no denying that the Respondent No.2 had examined the proposal in the light of G.R. dated 15.05.2019 and obviously it was not fulfilling the requirement of G.R. dated 15.05.2019.

12. Pertinent to note that there is a specific mention in G.R. dated 15.05.2019 that none of the condition mentioned in G.R. will be relaxed and it is further clarified that all the pending proposals in the department as on 15.05.2019 will be examined in the light of new G.R. dated 15.05.2019 even if, those proposals were made on the basis of G.R. dated 03.06.2011.

13. No doubt, the Respondent No.3 had given consent for absorption of Applicant on its establishment on 10.01.2019 but no further formal proposal was forwarded to the Government in terms of G.R. dated 03.06.2011 which is competent authority. In the meantime, the Government issued new G.R. dated 15.05.2019. However, it cannot be said that the Applicant has got vested right for inter division absorption unless the competent authority accept the proposal and passed the order to that effect. Therefore, pendency of proposal itself could not create any right of inter division transfer in favour of the Applicant unless it is accepted by the Government. Even if, there was some delay on the part of Respondent No.2 to forward the proposal to the Government in terms of G.R. dated 03.06.2011, it cannot be said that his proposal was acceptable to the Government. Therefore, the submission advanced by learned Counsel for the Applicant that had Applicant's proposal has been processed in terms of G.R. dated 03.06.2011, he would have got inter division transfer is based on assumption only. There could be no such vested right.

14. In so far as the orders in favour of some employees (page 85 to 87 of PB) are concerned, those seem to be the orders of transfer passed invoking provisions of 'Act 2005' and those are not the orders of inter division transfers.

15. The reliance placed by learned Counsel for the Applicant on the judgment delivered by this Tribunal in O.A.No.134/2020 on 19.01.2021 is misplaced. In that case, the proposal was moved by the Deputy Director Health Services, Pune to Director of Health Services, Pune favourable to Applicant in terms of G.R. dated 03.06.2011 but no further steps were taken by the Director of Health Services, Pune who was the competent authority for more than one year and thereafter it was rejected in view of new G.R. dated 15.05.2019. It is in that context, the Tribunal had allowed the O.A. with directions to pass appropriate order on the proposal forwarded by the Deputy Director of Health Services, Pune by G.R. dated 03.06.2011. As such, in that case full-fledged proposal favourable to the Applicant was already forwarded to the competent authority but no action was taken for more than one year. It is in that context in reference to provisions of Section 10 of 'Act 2005' which speaks for disciplinary action for not passing appropriate order within outer limit where discussed and O.A. was allowed. Whereas in present case, no such concrete proposal recommending the name of the Applicant was forwarded to the Government. Before making any such proposal, new G.R. dated 15.05.2019 came into force and consequently the Respondent No.2 had to examine the matter in the light of G.R. dated 15.05.2019 and ultimately the Applicant found not fulfilling the requirement of G.R. dated 15.05.2019.

16. In this view of matter, I have no hesitation to sum up that the order passed by Government rejecting request of the Applicant for inter division transfer needs no interference and O.A. liable to be dismissed. Hence the following order :-

ORDER

Original Application is dismissed with no order as to costs.

Sd/-

**(A.P. KURHEKAR)
MEMBER (J)**

Date : 05.08.2021

Place : Mumbai

Dictation taken by :

Vaishali Santosh Mane

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