

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.854 OF 2017**

**DISTRICT : NASHIK**

Shri Gulab Damodar Jadhav. )  
Age : 58 Yrs., Retired as Sub-Divisional )  
Officer from the Office of Small Scale )  
Irrigation [Water Conservation], Division )  
Ahmednagar Sinchan Bhavan, )  
Ahmednagar and R/o. Vyankat Raman )  
Row House No.2, Behind Akash Petrol )  
Pump, Dindori Road, Nashik. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
[CADA], Water Resources Dept., )  
Mantralaya, Mumbai – 400 032. )  
2. The Chief Engineer. )  
Small Scale Irrigation [Water )  
Conservation], having Office at )  
Bunglow No.12, Yerawada, )  
Pune – 6. )...**Respondents**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 18.12.2019**

### **JUDGMENT**

1. The Applicant has filed this O.A. being aggrieved by the impugned orders dated 07.11.2014 as well as 13.10.2017 thereby rejecting his request to treat absence period from 05.07.2012 to 12.03.2013 as 'Compulsory Waiting Period'.

2. Shortly stated facts giving rise to this application are as under:-

At the relevant time, the Applicant was serving as Sub-Divisional Officer, Minor Irrigation, Sub-Division, Nashik Zilla Parishad, Nashik. He was working there in pursuance of transfer order dated 29.09.2010. As such, he was not due for transfer. However, the Respondent No.1 – State Government by order dated 20.06.2012 transferred him on the establishment of Chief Engineer, Minor Irrigation, Pune with a note that he will be posted at any place in Z.P. except Nashik Z.P. It was made clear by order dated 20.06.2012 that subsequent posting orders will have to be issued by Chief Engineer. In pursuance of transfer order dated 20.06.2012, the Applicant was relieved on 04.07.2012. The Applicant contends that, though Chief Engineer, Minor Irrigation, Pune was to issue posting order, he did receive any such specific posting order and was left without any posting. It is only by order dated 04.03.2013 in terms of order issued by Assistant Chief Engineer, Minor Irrigation, Pune, he was given posting in the Office of Executive Engineer, Minor Irrigation, Sub-Division, Nandurbar. Accordingly, he joined the said post on 13.03.2013. Thereafter, he made representation to the Government on 03.04.2013 contending that he was left without posting from 04.07.2012 to 12.03.2013, and therefore, the said period be treated as 'Compulsory Waiting Period'. However, the Government rejected his representation and the said period is treated as 'Extra-Ordinary Leave' by orders dated 07.11.2014 and 13.10.2017.

3. The present O.A. was filed on 12.09.2017 seeking direction to the Respondents to sanction the proposal forwarded by Superintending Engineer and his compulsory waiting period from 05.07.2012 to 12.03.2013 be treated as 'Duty Period with all Pay and Allowances with interest'. However, during the pendency of O.A, the Government comes with a plea that his proposal is already rejected on 07.11.2014 and again, it was confirmed by another order dated 13.10.2017 contending that it does not fall within Rule 9(14)(f) of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (hereinafter referred to as 'General Conditions of Services Rules 1981' for brevity). His absence is treated as 'Extra-Ordinary Leave without Pay and Allowances". Accordingly, the Applicant has amended the O.A. on the ground that the order dated 07.11.2014 was never communicated to him and by way of amendment challenged the orders dated 07.11.2014 as well as 13.10.2017.

4. The Respondents resisted the application by filing Affidavit-in-reply thereby denying the entitlement of the Applicant to the relief claimed. It is not in dispute that the Applicant was transferred by order dated 20.06.2012 mid-term and mid-tenure. It is also not in dispute that, in pursuance of transfer order dated 20.06.2012, the Applicant was relieved on 04.07.2012. In pursuance of order dated 20.06.2012, the Applicant was transferred on vacant post of Z.P. other than Nashik Z.P. under the control of Chief Engineer, Minor Irrigation (Local Sector), Pune. The Respondents denied that the Applicant was left without specific posting order. In this behalf, the Respondents contend that indeed, the Chief Engineer, Minor Irrigation, Pune by order dated 28.06.2012 posted the Applicant as Deputy Executive Engineer, Minor Irrigation, Z.P, Nandurbar. However, the Applicant preferred not to join there and kept himself away from duty. Therefore, it cannot be said that the Applicant was kept without posting orders. Consequently, it cannot be termed as 'Compulsory Waiting Period' as contemplated under Rule 9(14)(f) of

'General Conditions of Service Rules 1981'. It is only on 03.04.2013, the Applicant for the first time made representation to the Government that there was no specific posting orders and requested to treat the period from 04.07.2012 to 12.03.2013 as 'Compulsory Waiting Period'. The Respondents in this behalf contend that the Applicant remained totally silent for about eight months without making any grievance of non-issuance of posting order, though in fact, specific posting order was issued by Chief Engineer, Minor Irrigation, Local Sector, Pune by giving him posting at Nandurbar by order dated 28.06.2012, and therefore, the absence of the Applicant for about eight months being unauthorized, it was rightly rejected by order dated 07.01.2014 and again by order dated 13.10.2017, it was confirmed and the absence period was treated as 'Extra-Ordinary Leave'. Thus, the sum and substance of the Respondents' contention is that the Applicant was well aware about his posting at Nandurbar, but he preferred not to join, and therefore, the question of treating absence period as 'Compulsory Waiting Period' does not survive. The Respondents, therefore, prayed to dismiss the O.A.

5. The whole thrust of the submission advanced by the learned Advocate for the Applicant is that, by transfer order dated 20.06.2012, the Applicant was transferred without giving any specific posting and he was not at all made aware of posting order dated 28.06.2012 issued by Chief Engineer. He emphasized that there was no service of the transfer order dated 28.06.2012 on the Applicant, and therefore, the Applicant cannot be said abstained himself from joining the post at Nandurbar. On this line of submission, he submits that the Applicant was kept waiting, and therefore, the said period there being no fault on the part of Applicant deserves to be treated as 'Compulsory Waiting Period'

6. Per contra, Ms. S.P. Manchekar, learned CPO submits that the Applicant is Class-I Officer in the cadre of Sub-Divisional Officer and

his conduct to remain silent for eight months is quite unnatural. She has further pointed out that at no point of time, the Applicant made a representation raising grievance of non-issuance of posting order and for the first time, after joining at Nandurbar, he made representation on 03.04.2013 for treating absence from 05.07.2012 to 12.03.2013 as 'Compulsory Waiting Period'. She has further pointed out that such situation does not fall within the ambit of Rule 9(14)(f) 'General Conditions of Service Rules 1981', and therefore, the rejection of the representation by impugned orders cannot be faulted with. She has further pointed out that, in pursuance of directions issued in transfer order dated 20.06.2012, the Chief Engineer immediately issued posting order of the Applicant on 28.06.2012 by giving posting him at Nandurbar but the Applicant himself did not join.

7. At the very outset, let us see Rule 9(14)(f) of 'General Conditions of Service Rules 1981', which is as follows :-

**“9(14)(f)** – the period for which a Government servant is required to wait compulsorily until receipt of his posting orders in the cases mentioned below :-

- (i) whose order of transfer are held in abeyance, cancelled or modified while in transit.
- (ii) who, on return from leave or deputation or on abolition of the post held by him, has to await receipt of posting orders or
- (iii) who, on arrival at the headquarters of the post to which he is posted is not in a position to take charge of the post from the Government servant to be relieved.”

8. Admittedly, the Applicant has not challenged the transfer order dated 20.06.2012 nor the said order was kept in abeyance, cancelled or modified by the Government. By the said order, the directions were issued to Chief Engineer to issue appropriate posting order. True, there is no specific posting order of the Applicant in transfer order issued by Government dated 20.06.2012, but it should not be

forgotten that it was specifically mentioned in the order dated 20.06.2012 that the Applicant be posted under the control of Chief Engineer, Minor Irrigation, Pune except Nashik. Meaning thereby, the Applicant was to be given posting in Z.P. on any vacant post except Nashik Z.P. In fact, in pursuance of the directions in transfer order dated 20.06.2012, the Chief Engineer, Pune had issued posting order, thereby specific posting was given to the Applicant as Deputy Executive Engineer at Nandurbar. True, there seems to be no direct evidence of service of posting order dated 28.06.2012 on the Applicant. He tried to contend that he had no knowledge of the said posting order, and therefore, could not join at Nandurbar. Indeed, the copies of transfer order dated 28.06.2012 was marked and sent to various concerned authorities including the Applicant through Chief Executive Officer, Z.P, Nashik. This being the position, it cannot be said that the Applicant was ignorant of the said transfer order.

9. It should not be forgotten that it is for the first time, after joining at Nandurbar, the Applicant made representation on 03.04.2013 for treating his absence from 05.07.2012 to 12.03.2013 as 'Compulsory Waiting Period'. Material to note that in between 05.07.2012 to 12.03.2013, at no point of time, he made any application or representation either to Government or to Chief Engineer raising grievance that he is left without specific posting order. His silence for eight months speaks in volume that he was not willing to join at Nandurbar. As stated above, the transfer order dated 20.06.2012 was mid-term and mid-tenure, whereby the Applicant was transferred on complaint from Nashik. It is his own case in O.A. that some disgruntle person made false allegations against him during the tenure at Nashik. As such, there are reasons to say that the Applicant was unhappy because of mid-tenure transfer from Nashik, which necessarily goes to show that he was not willing to join at Nandurbar and it is for this reason, he remained totally silent for eight months. The Applicant being Class-I Officer, it is very unlikely

that he was not aware of the course of action to be adopted to seek immediate posting. Indeed, it is common experience that where the Government servant is transferred without giving any specific posting, he rush to the Tribunal seeking direction for issuance of posting orders. Whereas, in the present case, the Applicant remained totally silent for eight months without making any representation or challenging the transfer order dated 20.06.2012 and this conduct of the Applicant is quite unnatural and does not stand to the test of behavior of prudent person. It is obvious that the Applicant is trying to exploit the benefit of technical issue of non-service of posting order dated 28.06.2012 upon him. Though, indeed, there is specific posting order dated 28.06.2012, whereby the Applicant was posted at Nandurbar. Had the Applicant really interested in deserving duties, he ought to have approached Executive Engineer, Pune who was to issue specific posting order in terms of direction given by the Government in the transfer order dated 20.06.2012.

10. True, there is reference in transfer order dated 04.03.2013 issued by Assistant Chief Engineer that the transfer of the Applicant was made on request, but not such application of the Applicant for request is forthcoming. Adverting to this aspect, the learned Advocate for the Applicant sought to contend that this reference of transfer was purposely inserted in transfer order though in fact, there was no such request by the Applicant. In this behalf, the learned CPO submits that the said file of request application is destroyed, and therefore, it could not be produced before the Tribunal. Initially, by order dated 28.06.2012, the Chief Engineer issued posting order of the Applicant whereby he was posted at Minor Irrigation (Z.P. Nandurbar) under Chief Executive Officer, Nandurbar Z.P. However, then came another order dated 15.02.2013 whereby the posting of the Applicant was modified and he was posted under the control of Chief Engineer at Minor Irrigation, Local Sector Sub-Division, Nandurbar. On the basis of it, the Assistant Chief Engineer, Minor Irrigation again issued order

dated 04.03.2013 with partial modification of posting under the control of Superintending Engineer, Minor Irrigation, Nashik and he was posted as Sub-Divisional Officer, Minor Irrigation Sub-Division, Nandurbar. As such, instead of Z.P, he was posted as Sub-Divisional Officer, Minor Irrigation, Nandurbar under the control of Superintending Engineer, Minor Irrigation, Nashik. This modification is shown on request of the Applicant as mentioned in transfer order dated 04.03.2013 (Page No.30 of Paper Book). True, no record in the form of request application is forthcoming. However, that does not wipe out the Applicant's total inaction of eight months, which necessarily gives inference that he was not at all willing to join in terms of transfer order dated 28.06.2012.

11. In view of above, needless to mention that Applicant's case does not fall within the ambit of Rule 9(14)(f) of 'General Conditions of Service Rules 1981' as set out above.

12. The totality of aforesaid discussion leads me to sum-up that the Applicant himself was responsible for not joining the posting at Nandurbar, and therefore, the period of eight months cannot be treated as 'Compulsory Waiting Period'. It does not fall within the scope of Rule 9(14)(f) of 'General Conditions of Service Rules 1981'. I, therefore, see no illegality in the impugned transfer order.

13. The cumulative effect of aforesaid discussion leads me to sum-up that the challenge to the impugned order is devoid of merit and O.A. deserves to be dismissed. Hence, the following order.



**ORDER**

The Original Application stands dismissed with no order as to costs.

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

Mumbai  
Date : 18.12.2019  
Dictation taken by :  
S.K. Wamanse.

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