

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 929 OF 2015

DISTRICT :PUNE

Mrs. Sital Yogesh Karanjekar)
(Miss Sital Vitthal Patil before marriage))
Working as:-)
Accounts Officer, in the office at District)
Rural Development Agency, Akola.)
(Currently on Child Nurturing leave).)
Address for the purpose of service:-)
C/o Shri. D.S. Bhujbal,)
293/B, Third Floor,)
Omkareshwar Road, Shaniwar Peth,)
Pune 30.)
)...Applicant

VERSUS

- 1) The State of Maharashtra)
through The Secretary, (Accounts)
and Treasury), Finance Department,)
Mantralaya, Mumbai - 400 032.)
- 2) The Director,)
Accounts and Treasury,)
Barrack nos.15 and 16,)
Free Press Journal Road,)
Mumbai 400 021.)
- 3) The Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032)
)....Respondents

Ms. S.P. Manchekar, learned Advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 02.03.2016

ORDER

1. Heard Ms. S.P. Manchekar, learned Advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.
2. This Original Application has been filed by the Applicant seeking transfer from Amravati Division to Pune Division in terms of G.R. dated 11.8.2014 which was issued in the context of the Divisional Cadre Structure and the Division Cadre Allotment for appointment by nomination to the posts of Group 'A' and Group 'B' (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2010 (Rules of 2010). The Applicant has challenged letter dated 14.11.2014 issued by the Respondent No.1 rejecting her request for transfer to Pune Division which was made on the ground of posting spouses together.
3. Learned Counsel for the Applicant argued that the Applicant was appointed as Accounts Officer, Group 'B' on the recommendations of the Maharashtra Public Service Commission on 1.1.2013. She was allotted to Amravati

Division as per Rules of 2010 notified on 8.6.2010. She was posted to District Rural Development Agency, Akola by order dated 31.8.2013. The Applicant's husband, Shri Yogesh Suresh Karanjkar was also selected as Account Officer in the same selection process and was allotted Pune Division. A G.R. dated 11.8.2014 was issued by the Government laying down guidelines for considering requests for change of divisions. One of the eight grounds mentioned in the aforesaid G.R. was "posting spouses together at the same place or location". Only the proposals satisfying conditions for request for change in division was required to be forwarded to the Committee, headed by the Additional Chief Secretary, Home for consideration. The Applicant during her pregnancy made an application for transfer to Pune Division, where her husband was posted. She submitted her application to the Respondent No.2, who is the head of department, who forwarded it to the Respondent No.1, who is the Mantralay Department, for the Respondent No.2. However, the Respondent No.1, rejected the representation of the Applicant, without reference to the Respondent No.3. Learned Counsel for the Applicant argued that her representation could not have been rejected by the Respondent No.1. The powers to do so were with the Respondent No.3. Also, the ground of rejection of her representation that there were large number of vacancies in Vidharbha is not borne out by facts. In fact, as per information given to the Applicant under the Right to Information Act, 26 posts of Account Officer, Group 'B' are

vacant in Amravati Division as against 28 posts in Pune Division. The ground for rejecting her representation was factually inaccurate. Learned Counsel for the Applicant contended that the Applicant's husband was allotted Pune Division as per his choice. He was therefore, not allowed to seek change in division as per the aforesaid G.R. dated 11.8.2014. Learned Counsel for the Applicant argued that the order dated 14.11.2014 is arbitrary and unreasonable and contrary to the provision of G.R. dated 11.8.2014 and it is required to be quashed and set aside.

4. Learned Presenting Officer (P.O.) argued that the request of the Applicant was duly considered by the Respondent No.1 on the ground of posting of spouses together. Considering the status of vacant posts in the cadre of Group 'B' (Gazetted) post of Accounts Officer in Pune and Amravati Divisions, it was concluded that it was not possible to post the spouses together at Pune. However, it was clearly mentioned that the Applicant's husband could be transferred to Amravati Division. Learned P.O. argued that the Applicant's grievance is that she must be posted to Pune, and not that she is not getting a posting along with her spouse at Amravati. The reason given is that her husband cannot make a request for transfer of division. However, when the Respondent No.1 has indicated willingness to post him to Amravati Division, it is a hollow claim. Learned P.O. contended that absolute number of vacancies in a division will not convey the real picture. The percentage of vacancies

in each division are considered at the time of allotment of divisional cadres under Rules of 2010. Learned P.O. argued that there is no merit in the present O.A. and it may be dismissed.

5. The Applicant has challenged the order dated 14.11.2014, which is a letter from the Respondent No.1 to the Respondent No.2 regarding representation of the Applicant to transfer her to Pune division. It reads:-

“ तथापि श्रीमती पाटील यांचे पती श्री योगेश करंजेकर, लेखाधिकारी हे सध्या पुणे महसूली विभागात कार्यरत आहेत. त्यामुळे पती-पत्नी एकत्रीकरण कारणांतर्गत त्यांचे पती श्री योगेश करंजेकर यांची अमरावती येथे बदली करता येईल.”

One would have thought that the relief sought by the Applicant that both she and her husband may be posted together, has been granted to her. However, the Applicant has challenged this communication on the following grounds:-

- (i) Her husband was posted to Pune Division as per his own request. Rules of 2010 do not permit him to seek change in division. In fact clause (c) (3) of G.R. dated 11.8.2014 reads:-

“(३) विभागीय संवर्ग वाटपात ज्या अधिकारी/कर्मचारी यांना त्यांच्या पसंतीनुसार विभागीय संवर्ग वाटप झाले आहे. त्यांनी पुन्हा विभागीय संवर्ग बदलून देणेबाबत विनंती अर्ज केल्यास त्यांचा अर्ज विचारात घेतला जाणार नाही.”

It is quite clear that the Applicant is not ready that her husband may be transferred to Amravati Division to be with her. If the Government is ready to relax the condition, it is not understood, why the Applicant is not ready to grasp it.

The only reason appears to be that the Applicant wants to be posted to Pune Division. The Respondent No.1 has rightly rejected the request of the Applicant to be posted to Pune Division, as she was not entitled to be allotted to Pune Division on her nomination for the post on the basis of her place in the select list. However, the policy of posting spouses together can be achieved, if the husband of the Applicant is transferred to Amravati Division.

(ii) The Applicant has stated that her application should have been dealt with by the Competent Authority, which is the Respondent No.3. The Applicant is relying on clause (16) of the G.R. dated 11.8.2014. However, she is overlooking the last line in this clause, which reads:-

“----- व तपासणी करताना विहित कारणांमध्ये अधिकरी / कर्मचा-यांचा अर्ज बसत नसेल तर विभागाने सामान्य प्रशासन विभागाकडे असे अर्ज समितीकडे ठेवण्यास मान्यतेसाठी पाठवू नयेत.” (emphasis supplied).

It is clear that the administrative Mantralaya Department (Respondent No.1 in present case) is not required to forward the representation to G.A.D. unless it is satisfied about the genuineness of the request. The Respondent No.1 has taken a perfectly reasonable decision by letter dated 14.11.2014 and it was not at all necessary to refer the matter to the Respondent No.3.

6. As regards the number of vacant posts in Pune and Amravati, that was considered at the time of original allotment of cadres. The Applicant never challenged her allotment to Amravati Division. As rightly contended by

learned P.O., absolute number of vacancies at a particular point of time will not be relevant.

7. Learned Counsel for the Applicant has cited judgments of Hon'ble S.C. in the case of State of **M.P. Vs. Yogendra Shrivastava (2010) 12 SCC 538**. It is held that rights and benefits already acquired under unamended rules, cannot be taken away by amendment of the rules with retrospective effect.

It is seen that the Respondents have offered to extend the benefit of G.R. dated 11.8.2014 to the Applicant by transferring her husband to Amravati Division. Her request is not rejected for posting husband and wife together, as per the amended rules. This judgment has no relevance in the present case.

8. The case of Y.U. Rangaih and others Vs. J. Sreenivasa Rao & others: (1983) 3 SCC 284, is also regarding applying old rules for old vacancies. As stated above, this judgement also has no application in the present case as the Applicant's request has been accepted as per old rules.

9. I find that the Respondent No.1 has taken a just and reasonableness decision. If the Applicant wants to be posted with her husband, it is not necessary that she may be transferred to Pune Division. Her husband can be transferred to Amravati Division, for which the Respondents

have shown willingness. There is no merit in this O.A. and it is dismissed with no order as to costs.

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 02.03.2016

Place : Mumbai

Dictation taken by : SBA

D:\savita\2016\February, 2016\O.A.NO.929 of 2015 Vc & MJ Rejection of request of change of divison.doc