

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.946 OF 2023

DISTRICT : PUNE

Sub.:- Transfer

Shri Yashawant Hanmant Yadav.)
Age : 53 Yrs, Working as Clerk-cum-Typist)
in the Office at Assistant Director Public)
Prosecutor's Office Gala No.04,)
Kridasankul, Kumthanaka, Solapur,)
Residing at B/302, Phinix Vrundawan)
Co-op. Housing Society, Wadachi Wadi)
Road, Undri, Pune – 411 060.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Director,)
Directorate of Prosecution,)
Maharashtra State, Khetan Bhavan,)
Room No.8, 5th Floor, J. Tata Road,)
Churchgate, Mumbai – 400 020.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.

CORAM : Debashish Chakrabarty, Member-A

DATE : 02.04.2024

JUDGMENT

1. The Applicant who is 'Clerk-cum-Typist' in office of 'Assistant Director and Public Prosecutor, Solapur' has invoked provisions of 'Section 19' of 'Administrative Tribunals Act 1985' to seek transfer to post of 'Clerk-cum-Typist' in offices of 'Deputy Director; Directorate of Prosecution, Pune' or 'Assistant Director and Public Prosecutor, Pune City/Daund/Saswad'.

2. The learned Advocate for Applicant stated that Applicant has been working on post of 'Clerk-cum-Typist' in office of 'Assistant Director and Public Prosecutor, Solapur' since 01.06.2016. Applicant had submitted 10 'Options' including for transfer to post of 'Clerk-cum-Typist' in offices of 'Deputy Director, Directorate of Prosecution, Pune' or 'Assistant Director and Public Prosecutor, Pune City/Daund/Saswad' at the time of (i) 'General Transfers : 2020' on 23.01.2020 and (ii) 'General Transfers : 2021' in 18.03.2021 citing 'Personal Reasons' which included (a) 'Old Age & Illness of Parents', (b) 'Medical Treatment of Wife & Son'. However, these were not considered by 'Director, Directorate of Prosecution, Maharashtra State, Mumbai'.

3. The learned Advocate for Applicant thereupon stated that Applicant was placed at 'Sr.No.24' in 'Seniority List' published by 'Director, Directorate of Prosecution, Maharashtra State, Mumbai' for 'General Transfers : 2022' but his request for transfer from post of 'Clerk-cum-Typist' in office of 'Assistant Director and Public Prosecutor, Solapur' where he has been working since 01.06.2016 was again not considered inspite of him being an 'Ex-Serviceman' with more than 24 Years of 'Meritorious Service' in 'Indian Army'. The 'Director, Directorate of Prosecution, Maharashtra State, Mumbai' was required to consider the request of Applicant at the time of 'General Transfers : 2022' as per 'Police Guidelines' in GAD GR dated 09.04.2018.

4. The learned Advocate for Applicant pointed out that neglect of repeated requests made by Applicant came to be accentuated during 'General Transfers : 2023' of 'Clerk-Cum-Typist' by 'Director, Directorate of Prosecution, Maharashtra State, Mumbai' because by this time, 'Ex-Serviceman' had been given precedence as per GAD GR dated 21.11.2022. The juniors to Applicant placed at Sr.Nos.28, 36, 39, 42, 60 and 110 of the 'Seniority List' were transferred by 'Transfer Order' dated 29.05.2023 of 'Director, Directorate of Prosecution, Maharashtra State, Mumbai'. Thereafter, by 'Transfer Order' dated 20.07.2023 of 'Director, Directorate of Prosecution, Maharashtra State, Mumbai' once again those junior to Applicant placed at Sr.No.01, 09 and 10 were transferred on requests; which has resulted in invidious discrimination against Applicant by 'Director, Directorate of Prosecution, Maharashtra State, Mumbai' considering the fact that he is an 'Ex-Serviceman'.

5. The learned PO relied on 'Affidavit-in-Reply' filed on 11.08.2023 on behalf of 'Director, Directorate of Prosecution, Maharashtra State, Mumbai' to state that in 'Pune District', there are total 16 posts of 'Clerk-cum-Typist' out of which 14 posts are filled-up and only 2 posts are vacant at Bhor and Baramati, but Applicant was interested only to be posted as 'Clerk-cum-Typist' in offices of 'Deputy Director, Directorate of Prosecution, Pune' or 'Assistant Director and Public Prosecutor, Pune City/Daund/Saswad'.

6. The learned PO relied again on Affidavit-in-Reply filed on 11.08.2023 on behalf of 'Director, Directorate of Prosecution, Maharashtra State, Mumbai' to state that 'Personal Reasons' cited by Applicant did not merit any higher consideration under the policy guidelines in GAD GR dated 09.04.2018. The Applicant therefore could not have earlier sought precedence to be posted as 'Clerk-cum-Typist' in offices of 'Deputy Director, Directorate of Prosecution, Pune' or 'Assistant Director and Public Prosecutor, Pune City/Daund/Saswad' as per GAD GR dated 21.11.2022 as it was issued much after 'General Transfers :

2022' of 'Clerks-cum-Typists' were effected by 'Director, Directorate of Prosecution, Maharashtra State, Mumbai'.

7. The learned PO thereupon relied again on 'Affidavit-in-Reply' filed on 11.08.2023 on behalf of 'Director, Directorate of Prosecution, Maharashtra State, Mumbai' to emphasize that there was no discrimination as such against Applicant because 'Clerk-cum-Typists' whose requests were considered during 'General Transfers : 2023' deserved higher precedence under policy guidelines in GAD GR dated 09.04.2018 because they were either 'Disabled Persons' or in few other cases 'Vacant Posts' were available to accommodate requests of some 'Clerk-cum-Typists'. Further, with respect to 'Solapur District', as only 17 posts out of 20 total posts of 'Clerk-cum-Typists' had been filled-up and one 'Clerk-cum-Typist' who had completed more than 9 Years tenure in 'Solapur District' was thus required to be transferred by giving precedence over Applicant who had done about 7 Years; the request of Applicant could not have been considered simultaneously, as it would have resulted in reaching critical threshold of vacant posts, because there is 'One- Court' of 'CJM' and 'Twelve-Courts' of 'JMFC' in 'Solapur District'.

8. The request of Applicant who is an 'Ex-Serviceman' should have been considered at the time of 'General Transfers : 2023' as per availability of posts of 'Clerk-cum-Typists' in offices of 'Deputy Director, Directorate of Prosecution, Pune' or 'Assistant Director Public Prosecutor, Pune City/Daund/Saswad' as he has already served for more than 6 Years in office of 'Assistant Director and Public Prosecutor, Solapur' since joining on 01.06.2016. The provisions of Section 3(1) of the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' provides for 'Normal Tenure' of 3 Years; whereas its 'Proviso Clause' made applicable only to 'Government Servants' in 'Group-C' provides for two consecutive 'Normal Tenures' of 6 Years. Therefore, Applicant had certainly become

eligible for transfer on 01.06.2022. Also coming into effect of policy guidelines in GAD GR dated 21.11.2022 had made Applicant who is an 'Ex-Serviceman' entitled to precedence at time of effecting 'General Transfers : 2023' of 'Clerk-cum-Typists' by 'Director, Directorate of Prosecution, Maharashtra State, Mumbai' on 29.05.2023.

9. The Director, Directorate of Prosecution, Maharashtra State, Mumbai thus appears to have overlooked the differentiated status of 'Applicant' amongst 'Clerk-cum-Typist' being an 'Ex-Serviceman' as policy guidelines in GAD GR dated 21.11.2022 had become applicable at time of 'General Transfers : 2023'.

10. The Director, Directorate of Prosecution, Maharashtra State, Mumbai had subsequently even approved transfer of one 'Clerk-cum-Typist' from office of 'Assistant Director and Public Prosecutor, Saswad' but yet did not consider the request of Applicant.

11. The decisions taken about transfers of 'Clerks-cum-Typists' by 'Director, Directorate of Prosecution, Maharashtra State, Mumbai' as 'Competent Transferring Authority' under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' would pass the test of 'Judicial Review' if there indeed was no invidious discrimination against Applicant which will be proven only if 'Clerk-cum-Typist' who was posted to office of 'Assistant Director and Public Prosecutor, Saswad' after it had fallen vacant was distinctly more eligible than Applicant having completed longer tenure or enjoyed higher precedence than Applicant while serving in office of 'Assistant Director of Public Prosecutor, Karegaon, Satara'. Otherwise, the Applicant being an 'Ex-Serviceman' certainly deserved to be posted on post of 'Clerk-cum-Typist' which had become available in office of 'Assistant Director and Public Prosecutor, Saswad'. No averments have been specially made in this regard in 'Affidavit-in-Reply' dated

11.08.2023 filed by 'Director, Directorate of Prosecution, Maharashtra State, Mumbai'.

12. The transfer of 'Clerk-cum-Typists' during 'General Transfers : 2023' and thereafter by 'Director, Directorate of Prosecution, Maharashtra State, Mumbai' thus shows deep shades of invidious discrimination against Applicant, as there is discernable incidence of 'Arbitrary Exercise' of 'Statutory Powers' under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

13. The **Hon'ble Supreme Court of India in East Coast Railway & Another Vs. Mahadev Appa Rao & Ors. (2010) 7 SCC 678** has unequivocally emphasized on '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."

14. The **Hon'ble Supreme Court of India in B Varadha Rao v State of Karnataka, 1986 (3) SLR 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 in K. Sivankutty Nair v. Managing Director, Syndicate Bank, 1984 (2) SLR 13 (Kant); Chief General Manager (Telecom) v.**

Rajendra Ch. Bhattacharjee, (1995) 2 SCC 532 : SC 813 : (1995) 2 SLR 1 has observed that an employee cannot, as a matter of right, seek transfer to a place of his choice.

15. The **Hon'ble Supreme Court of India in B Varadha Rao v State of Karnataka, 1986 (3) SLR 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, **Hon'ble Supreme Court of India in UOI v NP Thomas, AIR 1993 SC 1605 : (1993) Supp (1) SCC 704** has further 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. Also, **Hon'ble Supreme Court of India in UOI v S.L. Abbas, AIR 1993 SC 2444 : (1993) 4 SCC 357** has observed that who is to be transferred where, is a matter for the appropriate authority to decide.

16. The transfers of some 'Clerk-cum-Typists' are likely to happen during 'General Transfers : 2024' in observance of provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' read with policy guidelines in GAD GR dated 09.04.2018. Thus, the 'Director, Directorate of Prosecution, Maharashtra State, Mumbai' can be expected to accept the long standing request of Applicant by not sidestepping it once again; on due consideration is required to be given to specific provisions made by GAD GR dated 21.11.2022 for transfers of 'Government Servants' who are 'Ex-Servicemen'.

17. The 'Director, Directorate of Prosecution, Maharashtra State, Mumbai' has acknowledged this aspect in 'Para 17.2' of 'Affidavit-in-Reply' dated 11.08.2023 which is reproduced below :-

"The 2 vacant posts in Pune are in Bhor and Baramati and the Applicant is interested only in office of Assistant Director & Public Prosecutor,

Pune and Deputy Director, Pune in which there is no vacancy as of now. The staff working in both these offices will become due for transfer in next year i.e. in 2024. Hence, it is felt that the Applicant can be given posting in office of Assistant Director & Public Prosecutor, Pune or Deputy Director, Pune in the next year i.e. in 2024'.

18. The 'Director, Directorate of Prosecution, Maharashtra State, Mumbai' therefore directed to act without any exception to the affirmative averments made in 'Para 17.2' of 'Affidavit-in-Reply' dated 11.08.2023 to transfer Applicant to post of 'Clerk-cum-Typist' likely to be available at time of 'Grneral Transfers : 2024' in offices of 'Deputy Director, Directorate of Prosecution, Pune' or 'Assistant Director and Public Prosecutor, Pune City/Daund/Saswad' by taking sincere cognizance of the differentiated status of Applicant being an 'Ex-Serviceman' as per policy guidelines in GAD GR dated 09.04.2018 read with specific provisions of GAD GR 22.11.2022. Hence, the following Order.

ORDER

- (i) The Original Application is Allowed.
- (ii) No Order as to Costs.

Sd/-
(DEBASHISH CHAKRABARTY)
Member-A

Mumbai
Date : 02.04.2024
Dictation taken by :
S.K. Wamanse.

D:\SANJAY\SANJAY BACKUP\SANJAY WAMANSE\JUDGMENTS\2024\March, 2024\O.A.946.23.w.2.2024.Transfer.doc

Uploaded on 03.04.2024