

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD
ORIGINAL APPLICATION NO.617 OF 2021
(Subject:- Transfer)**

DISTRICT: - JALGAON.

Kiran Purushottam Chaudhari,)
Age :53 Years, Occu. Service as)
Joint Sub-Registrar, Class-2,)
R/o. Flat no.5, Plot No.10,)
Sai Pushpa Aarked, Vishnunagar,)
Jalgaon.)
Mob. No.9423185366.) **..APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through: The Principal Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai-32.)
 2. **The Inspector General of**)
Registration & Stamp Controller,)
Maharashtra State,)
New Administrative Building,)
Pune-1.)
 3. **The Joint District Registrar,**)
Class-1 & Collector of Stamps,)
Jalgaon.)
 4. **S.R. Thakre,**)
Age: Major, Occ: Service as)
Joint Sub-Registrar, Class-2,)
R/o. c/o. Joint Sub-Registrar,)
Class-2, Jalgaon No.1,)
Collector Office Compound, Jalgaon.) **..RESPONDENTS**
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APPEARANCE : Shri K.B. Jadhav, learned Advocate for the applicant.

: Smt. Deepali S. Deshpande, learned Presenting Officer for the respondent Nos.1 to 3.

: Shri K.M. Nagarkar, learned Advocate for the respondent No.4.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **06.06.2022**

ORDER

By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the impugned transfer order of the applicant dated 09.08.2021 (Annex. 'A-6') issued by the respondent No.1, thereby transferring the applicant from the post of Joint Sub-Registrar, Class-2, Jalgaon no.1 to the post/office of Joint Sub-Registrar, Class-2, Aurangabad no.2 and also challenging the impugned transfer order of the respondent No.4 dated 06.09.2021 (Annex. 'A-9') issued by the respondent No.1, thereby transferring him to the present post held by the applicant.

2. The facts in brief giving rise to this application can be summarized as follows:-

- (i) The applicant is physically handicapped person. He is suffering from 40% permanent disability as per disability certificate dated 23.06.1992 (Annex. 'A-1'). The applicant was recommended by the Regional Sub Services Selection Board, Pune for the post of Junior Clerk from physically handicapped category (Blind) as per recommendation letter dated 08.07.1997 (Annex. 'A-2'). Thereafter, the applicant was initially appointed on the post of Junior Clerk from that category by order dated 20.09.1997 (Annex. 'A-3'), issued by Joint District Registrar and Stamp Collector, Pune. The applicant was promoted to the post of Senior Clerk in the year, 2005 and was posted in the office of Deputy Inspector General, Nashik. The applicant was further promoted to the post of Sub-Registrar, Grade-1 in May, 2010 and was posted in the office of Sub-Registrar, Shirpur, Dist. Dhule. Thereafter, the applicant was promoted to the post of Joint Sub-Registrar, Class-2 in May, 2016 and was posted in the office of Joint Sub-Registrar, Class-2, Jalna no.1 in Aurangabad Division. Thereafter, by order dated

11.04.2018 (Annex. 'A-4'), the applicant was transferred from Jalna to the office of Joint Sub-Registrar, Jalgaon no.1 on vacant post, which is present posting of the applicant.

- (ii) Before general transfer of the year 2021, the applicant submitted representation dated 06.04.2021 (part of Annex. 'A-5' collectively) to the respondent No.3 (wrongly stated as respondent No.4 in O.A.) along with options for general transfer and more particularly seeking extension on the same post for further one year contending that his old aged parents aged about 85 and 82 are residing with him and he is physically handicapped person. It is the contention of the applicant that without considering his request for extension of one year, the respondent No.1 issued impugned transfer order dated 09.08.2021 (Annex. 'A-6') by transferring him from Jalgaon to Aurangabad.
- (iii) After issuances of the said impugned transfer order, the applicant submitted his representation dated 10.08.2021 (Annex. 'A-7' collectively) to the respondent Nos.1 & 2 contending that he is physically handicapped person and his old aged parents are living with him and he be accommodated on any of five

vacant posts available in Jalgaon District namely Jalgaon-2, Bhusaval, Pachora, Amalner and Chalisgaon-1. The applicant is relieved from his post on 01.09.2021 in order to join at transferred place.

- (iv) By impugned order dated 06.09.2021 (Annex. 'A-9'), the respondent No.4 has been transferred to the post of Joint Sub-Registrar, Class-2, Jalgaon which was held by the applicant. The respondent No.4 on his request seems to have been accommodated under political pressure and in order to accommodate the respondent No.4 only, the applicant seems to have been transferred. In these circumstances, both impugned order are not liable and proper.
- (v) As per G.R. dated 15.12.2004 (Annex. 'A-11'), it is incumbent upon the Government to transfer physically handicapped persons in their nearest places of residence. However, the said benefit is not given to the applicant. Due to pandemic situation as per G.R. dated 29.07.2021 (part of Annex. 'A-12'collectively) general transfers were to be issued by 09.08.2021 whereas the orders under exceptional circumstances and special reasons were to be made from 10.08.2021 to 30.08.2021. However, the impugned order of

transfer of the respondent No.4 is issued on 06.09.2021. It is issued in contravention of said G.R. dated 29.07.2021. It seems to have been issued only to accommodate the respondent No.4 by displacing the applicant. In view of same, the impugned transfer order of the applicant as well as the respondent No.4 are liable to set aside.

- (vi) Lastly it is contended that the applicant has been discriminated to not consider his representation. The respondent No.1 after issuance of general transfer orders of some of the Joint Sub-Registrar, they are accommodated on their requests and accommodated them as per their choice on nearby places as reflected in modified transfer order dated 06.09.2021 (Annex. 'A-15' collectively).

3. Affidavit-in-reply is filed on behalf of the respondent Nos.1 & 2 by one Rajesh Govindrao Raut working as Deputy Inspector General of Registration and Deputy Controller of Stamps, Nashik Division, Nashik.

- (i) Thereby he denied all the adverse contentions raised in the application. At the outset, it is submitted that representation dated 10.08.2021 filed by the applicant was not received within the expected period and it was

received only on 11.11.2021 and therefore, the said representation of the applicant dated 10.08.2021 could not be considered, which fact is reflected in a letter dated 11.11.2021 (Annex. 'R-1') issued by the respondent No.1.

- (ii) As regards the impugned order of transfer of the applicant, it is contended that the said order is issued by placing the proposal before the requisite Civil Services Board and in accordance with guidelines issued in G.R. dated 29.07.2021 as reflected in documents at Annex. 'R-2'. The applicant was due for transfer in general transfer of the year, 2021. The Civil Services Board recommended the name of the present applicant for transfer at Aurangabad. Accordingly, the applicant is transferred, which is reflected in documents at Annex. 'R-3' dated 05.08.2021. So far as the averments of discrimination are considered, no specific contention is raised in this affidavit-in-reply.

3. The affidavit-in-reply is separately filed on behalf of the respondent No.4, who is a private respondent and who is transferred to the post held by the applicant by issuing another impugned order dated 06.09.2021 (Annex. 'A-9'). According to him

on medical ground he filed request application dated 08.04.2021 (Annex. 'R-1') through proper channel addressing to the respondent No.2. He had given as many as ten options for transfer and accordingly, he has transferred on the vacant post. In the circumstances, allegations made by the applicant are totally baseless. Accordingly, the respondent No.4 was relieved from Nashik office on 15.09.2021 as per orders dated 14.09.2021 (Annex. 'R-3') and dated 15.09.2021 (Annex. 'R-4'). Thereafter, he has joined on his transferred post at Jalgaon on 17.09.2021. In the circumstances, application is liable to be dismissed.

4. I have heard at length the arguments advanced by Shri K.B. Jadhav, learned Advocate for the applicant on one hand and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondent Nos.1 to 3 and Shri K.M. Nagarkar, learned Advocate for the respondent No.4 on other hand.

5. Upon perusal of rival pleadings, it is evident that the applicant had completed his normal tenure of three years on the post of Joint Sub-Registrar, Class-2, Jalgaon no.1 and as such he was due for transfer in the year, 2021. As per G.R. dated 09.07.2021 (part of Annex. 'A-12'collectively), date for general transfer to limited extent was to be issued by 14.08.2021. By subsequent G.R. dated 29.07.2021 (part of Annex. 'A-12' collectively), the date of general transfer was extended to

09.08.2021 and transfers on exceptional circumstances and special reasons were to be effected from 10.08.2021 to 30.08.2021.

6. It appears that the applicant made application dated 06.04.2021 in proforma giving options for retention of one year on his present post at Jalgaon no.1 on the ground that he is physically handicapped person and his old aged parents are living with him and he would be facing hardship, if he is transferred. So admittedly, the applicant was due for transfer.

7. It is not disputed that the applicant is physically handicapped person. The applicant has produced on record his requisite disability certificate dated 23.06.1992 (Annex. 'A-1'), which shows that he is suffering from 40% permanent disability (blindness). In view of same, certain requisite circular dated 15.12.2004 (Annex. 'A-11') would be applicable so far as transfer of the applicant is concerned. The said circular provides that by taking into consideration the availability of vacancy and administrative convenience, the physically handicapped person can be accommodated at nearby places of his residence. In order to appreciate the contentions raised on behalf of the applicant, it is to be seen that as to whether while giving options the applicant pleaded for nearby places. The option of retention given by the applicant cannot be said to be an option strictly in accordance with requisite G.R. dated 09.04.2018 (Annex. 'A-13'). It can be termed

as an alternate option. However, such options are given by the applicant by subsequent representation dated 10.08.2021 (part of annex. 'A-7' collectively) to the respondent Nos.1 & 2. However, in view of G.R. dated 29.07.2021 according to the respondent Nos.1 & 2 the same cannot be considered having been received only on 11.11.2021. It was accordingly communicated to the respondent No.1 by letter dated 11.11.2021 to the Deputy Inspector General of Registration and stamp Controller, Nashik under whom the applicant was working.

8. Perusal of the affidavit-in-reply and the documents annexed therewith would show that the applicant's case was placed before the requisite Civil Services Board for transfer and the Civil Services Board recommended the transfer of the applicant to the post of Joint Sub-Registrar, Class-2, Aurangabad no.2. In view of same, the impugned order of transfer of the applicant is issued by following requisite procedure in accordance with law. Impugned order of transfer of the respondent No.4 is dated 06.09.2021 (Annex. 'A-9'). Thereby the respondent No.4 has been transferred on the post which fell vacant on transfer of the applicant. In this regard, it is the contention of the respondent No.4 that he made request application on 08.04.2021 (Annex. 'R-1' page no.124 of P.B.). Perusal of the said impugned order dated 06.09.2021 in respect of the respondent No.4 would show that it is issued under

Section 4(4) and 4(5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act, 2005'). I have to consider the transfer of the respondent No.4 incidentally only from the point of view that the respondent No.4 is likely to be affected, if the transfer order of the applicant is set aside. So I have to examine that order from limited angle. In the case in hand so far as the impugned transfer order of the applicant is concerned, it reveals that no proper representation or options were given by the applicant in general transfer as he was due for transfer. In view of the same, impugned transfer order of the applicant dated 09.08.2022 (Annex. 'A-6') came to be issued by the respondent No.1 by adopting appropriate procedure by placing the matter before the Civil Services Board. In view of the same, no fault can be found with the impugned order. The applicant has pleaded discrimination contending that he made representation dated 10.08.2021. But the same was not considered not being received in time.

9. In this regard, however, the respondent Nos.1 & 2 have stated that the said representation was received only on 11.11.2021, which was beyond the period fixed in G.R. dated 29.07.2021 from 10.08.2021 to 30.08.2021. In this regard letter dated 11.11.2021 is produced at page Nos.87 to 91 of their

affidavit-in-reply which is addressed by the respondent No.1 to Deputy Inspector General of Registration and Stamp Controller, Nashik under whom the applicant was serving. In this regard it is the further contention of the applicant that the officers in the equivalent rank of the applicant were considered for modification in general transfer order. The applicant has produced on record transfer orders of such Government servants namely Dhananjay Ramchandra Joshi, Smt. Ankita Tandale and R.S. Deshkar which orders are produced at Annex. 'A-15', page Nos.75 to 77 of P.B. It appears that by separate orders dated 06.09.2021, their representations were considered. The respondent Nos.1 & 2, however, in that regard have not offered any comments. The applicant in this regard filed documents along with the affidavit-in-rejoinder as Annex. 'R-J-1' at page Nos.106 to 108 of P.B. Perusal of the said documents would show that the respondent No.2 had submitted his report about the request application received in that regard. However, it appears that the application of the applicant dated 10.08.2021 was not received by the respondent No.2 before stipulated date and therefore, his name does not appear.

10. In this regard, it is evident that the applicant is a physically handicapped person (blindness). The applicant in his rejoinder has produced on record the postal receipt showing that he sent representation on 10.08.2021. However, the same was not

received by the respondent Nos.1 & 2 before stipulated date. It was received only on 11.11.2021. In view of the same, though the averments of discrimination made by the applicant cannot be strictly entertained, still on humanities ground the respondent Nos.1 & 2 can be directed to consider the representation dated 10.08.2021 in accordance with G.R. dated 15.12.2004 applicable to physically handicapped persons on vacant post. Thereby no irretrievable prejudice would not cause to any other Government servant. The respondent Nos.1 & 2 can consider the representation of the applicant on that regard on it's one merit. In the result, I proceed to pass the following order:-

ORDER

- (A) The Original Application is dismissed so far as impugned transfer orders of the applicant dated 09.08.2021 (Annex. 'A-6') and the respondent No.4 dated 06.09.2021 (Annex. 'A-9') are concerned.
- (B) However, the respondent Nos.1 & 2 are directed to consider the representation of the applicant dated 10.08.2021 (Annex. 'A-7') in accordance with law and more particularly in the backdrop of the G.R. dated 15.12.2004 (Annex. 'A-11') on it's own merit and also on sympathetic ground.

(C) Learned P.O. is directed to communicate this order to the respondent Nos.1 & 2 for its compliance in accordance with law.

(D) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad

Date :- 06.06.2022

SAS O.A.617/2021