

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 654 OF 2016

DISTRICT: - LATUR.

Murlidhar Hiranmanrao Suryawanshi,

Age : - 45 years, Occu: Service,
House No. 7, Police Colony,
Vivekanand Chowk, Nanded Road,
Latur District Latur.

.. APPLICANT.

V E R S U S

- 1. The State of Maharashtra,**
Through its Secretary
Home Ministry,
M.S., Mumbai.
- 2. Inspector General of Police,**
Nanded Region, Nanded.
- 3. Director General of Police,**
State of Maharashtra, Mumbai.
- 4. Superintendent of Police,**
S.P. Office,
Ambajogai Road, Latur.

.. RESPONDENTS

APPEARANCE : Shri R.P. Adgaonkar – learned
Advocate for the applicant.
: Smt. Resha S. Deshmukh – learned
Presenting Officer for the
respondents.

CORAM : **HON'BLE SHRI B.P. PATIL,**
MEMBER (JUDICIAL)

DATE : **23RD MARCH, 2018.**

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ORDER

1. The applicant has challenged the impugned communication dated 21.04.2016 issued by respondent No. 2 informing the applicant that his request for transfer from the post of Police Constable to Clerical Cadre cannot be accepted and also prayed to quash and set aside the said communication and direct the respondents to consider his claim of transfer from Police Constable to Clerical Cadre, by filing the present Original Application.

2. The applicant has joined the service in the Police Department in Latur District as Police Constable on 10.3.1993. Since then he is rendering unblemished services with Police Department.

3. On 29.11.1999, the applicant was on escorting duty of the then Health Minister. He was travelling in Jipsy Vehicle bearing No. MH-24/A-7957. At that time he met with an accident and in the accident he sustained grievous injury to the spinal cord. Because of the injury caused to him he is not able to do his daily pursuits in

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ordinary manner. He has to apply belt to his neck and so also he is unable to stand for longer time. He is suffering pains in his waist since the year 2003 because of the injury caused to him. Therefore, he moved an application to respondent No. 2 and prayed to consider his physical disability and to transfer him in clerical cadre. The applicant had produced the relevant medical certificate in support of his contentions mentioned in his application. But the respondent No. 2 had not given heed to his request.

4. The applicant has moved several applications regularly to the concerned authority for redressal of his grievance, but the concerned authority neglected to consider his request. It is his contention that when he collected information under Right to Information Act, it was disclosed to him that the respondents considered several applications of similar nature and granted relief to other employees. It is his contention that since the year 2004 he is engaged in clerical work and, therefore, he acquired enough experience and requisite qualification to

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work as a Clerk. Despite of fulfilling all the requisites he has not been transferred and posted in Clerical cadre. It is his contention that the respondent No. 2 is empowered to make such transfer in view of the Police Manual, Part 1, Schedule 6, Rule 27, sub rule 36, but the respondents had not exercised the said power and not transferred him. Therefore, he approached this Tribunal by filing O.A. No. 544/2014 for redressal of his grievance. The respondents have filed affidavit in reply in that matter and that time he came to know that his claim has been rejected by the respondents. Therefore, he had withdrawn that O.A. with liberty to file fresh representation and the Tribunal granted liberty to him and disposed of the O.A. No. 544/2014.

5. Accordingly, he moved a fresh application on 22.2.2016 along with all the relevant documents, but the respondents without considering his qualification, physical disability and the powers vested with the respondent No. 2, rejected his application and informed him by the impugned communication dated 21.4.2016.

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The applicant has challenged the said communication by filing the present Original Application and prayed to direct the respondents to consider the transfer of the applicant from Police Constabulary to Clerical Cadre.

6. Respondent No. 2 has affidavit in reply and resisted the contentions of the applicant. He has not disputed the fact regarding appointment and the accident in which the applicant sustained injury. He has not disputed the fact that since the year 2004 the clerical work is assigned to the applicant and he is discharging the said work accordingly. It is admitted fact that the applicant moved the application for making his transfer to the clerical cadre and it has rejected during the pendency of the earlier O.A. No. 544/2014 and thereafter the applicant moved a fresh representation on 22.2.2016 and the same came to be rejected on 21.4.2016. It is his contention that the Government of Maharashtra, Home Department, vide confidential circular dated 11.6.2008 banned the transfer, change of the cadre of Police Constable to the Clerical cadre and since then no transfers of any Police Personnels

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are effected by the respondents to the clerical cadre. He has submitted that the instances cited by the applicant are the transfers made prior to 11.6.2008. It is his contention that in the year 2004 i.e. on 15.6.2004 the applicant has submitted his application for transfer through Superintendent of Police, Latur. The said application was examined considering the rules. As per the recruitment rules, the educational qualification for appointment on the post of Clerk in the Police Department is that candidate must pass 30 W.P.M. English Typewriting Examination and 40 W.P.M. Marathi Typewriting Examination. The applicant was not fulfilling the said condition of passing of Marathi Typing Examination 30 W.P.M. It is his contention that the Home Department of Government of Maharashtra issued confidential Circular dated 11.6.2008 and directed not transfer Policeman from Executive Force to Clerical cadre, as the huge amount has been spent on the training given to the Policeman and said training expenditure will be wasted due to the transfer of the Police Personnel in the

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cadre of Clerk. As per the Circular dated 6.8.2008 it has been specifically mentioned that the establishment of clerical cadre is totally different from the Executive cadre and concerned Range Special I.G.P. is not empowered to issue transfer order of changing cadre as per Rule 65 (5) of the Maharashtra Police Manual. The action to issue order of change of cadre is totally against the Government policy. It is his contention that the application of the applicant has been rightly rejected and there is no illegality and, therefore, he supported the impugned order.

7. Respondent No. 4 has filed affidavit in reply and resisted the contentions of the applicant. He has raised similar contentions to that of the contentions raised by the respondent No. 2 in his affidavit. It is his contention that eligibility criteria for an employee to transfer from executive cadre to administrative cadre is that the said employee must pass MS-CIT examination; English typing examination 40 w.p.m. & Marathi typing examination 30 w.p.m. The applicant moved application dated 12.4.2016 for transfer from executive cadre to administrative cadre,

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but on that date he was not possessing requisite qualification and he had not passed Marathi typing examination 30 w.p.m. and was also not possessing certificate of MS-CIT. He has also contended regarding the ban imposed by the Government on such transfers. It is his contention that the clerical work was assigned to the applicant and he is working in non-executive post and, therefore, no question of transferring him from Police Constabulary to Clerical cadre arises. It is his contention that the application of the applicant has been rejected rightly and, therefore, he has justified the impugned order and prayed to dismiss the Original Application.

8. I have heard Shri R.P. Adgaonkar, learned Advocate for the applicant and Smt. Resha S. Deshmukh, learned Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in reply filed on behalf of the respondents. I have also perused the documents placed on record by both the sides.

9. Admittedly, the applicant has joined the service in

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the Police Department in Latur District as Police Constable on 10.3.1993. Admittedly, on 29.11.1999, the applicant was on escorting duty of the then Health Minister and he was travelling in Jipsy Vehicle bearing No. MH-24/A-7957. Admittedly, at that time the said vehicle met with an accident and the applicant sustained grievous injuries to the spinal cord. Admittedly, because of the injury caused to him he is not able to do his daily pursuits in ordinary manner. He has to apply belt to his neck and so also he is unable to stand for longer time. He is suffering from pains in his waist since the year 2003 because of the injury caused to him. Since the year 2004 the clerical work has been assigned to the applicant and since then he is discharging the said duty. Admittedly, in the year 2003 the applicant moved an application to respondent No. 2 and prayed to consider his physical disability and to transfer him in clerical cadre. He has also filed several applications with the similar request, but his applications have not been decided. Therefore, he approached this Tribunal and filed O.A. No. 544/2014.

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Admittedly, during the pendency of that O.A. the respondents therein filed affidavit in reply and that time the applicant came to know that his application claiming transfer in clerical cadre has been rejected. Therefore, he had withdrawn that O.A. with liberty to file fresh representation and accordingly the O.A. was disposed of on 19.1.2016. Admittedly, the applicant moved another representation dated 22.2.2016 along with relevant record to the respondents claiming the similar request, but the said request of the applicant has been turn down by the respondent No. 2 and the same was communicated to him by the communication dated 31.6.2016.

10. The learned Advocate for the applicant has submitted that the applicant met with an accident in the year 1999 when he was on escorting duty of the then Health Minister. He sustained grievous injury to the spinal cord and, therefore, he was not in a position to do his daily pursuits in ordinary manner. He has to apply belt to his neck and so also he is unable to stand for longer time. The learned Advocate for the applicant has further

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submitted that the applicant is suffering from pains in his waist since the year 2003 because of the injuries caused to him. He has submitted that in the year 2003 he had moved an application for transfer him from the Police Constabulary to the cadre of Junior Clerk on the ground of his ill-health. He has submitted that thereafter he made several representations to the respondents, but the respondents have not decided the same. Therefore, he approached this Tribunal by filing O.A. No. 554/2014 seeking directions to the respondents to decide his representation. He has submitted that he had withdrawn that O.A. with liberty to file fresh representation with the respondents and the Tribunal has granted liberty to him and, therefore, he filed representation dated 8.2.2016 with the respondent No. 2. He has submitted that the respondent No. 2 by its order dated 21.4.2016 rejected his representation and the said decision was communicated to him by respondent No. 3 by the communication dated 13.6.2016. He has submitted that as per the provisions of Police Manual and more particularly Rule 61, the

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respondent No. 2 is empowered to make such transfer, but the respondent No. 2 had not considered the said aspect and rejected his application. Therefore, he prayed to allow the O.A. and direct the respondents to consider his request and transfer him in the Clerical cadre from the Police Constabulary.

11. Learned Presenting Officer has submitted that initially the applicant filed the application for transferring him in the cadre of clerical from Police Constabulary in the year 2003, but his application was rejected by the respondents by order dated 1.7.2014 on the ground that the applicant was not possessing necessary qualification required for the appointment on the post of clerk. The applicant has not passed Marathi Typing Examination 30 w.p.m. at that time and, therefore, his application came to be rejected. He has argued that thereafter the applicant passed Marathi Typing Examination on 11.8.2006.

12. He has further argued that meanwhile on 20.6.2006 the Director General of Police, M.S., communicated that

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some of the employees made complaint regarding such transfer with the Government. The issue was under consideration. Therefore, he informed all the Special IGPs in that regard. Thereafter the respondents have not transferred any of the employees working in the Police Constabulary to the Clerical cadre. Director General of Police issued a circular to make transfer of the Police Personnel in the cadre of Clerk on 2.4.2004, but the said circular has been cancelled later-on by another circular dated 6.8.2008. Thereafter, the Home Department issued circular dated 11.6.2008 and informed all the concerned that the Government has banned transfers of the employees working in the Police Constabulary to the cadre of Junior Clerk. He has argued that in the year 2010 the applicant moved an application in that regard, but his application was rejected in view of the above said facts and he was informed accordingly by order dated 20.12.2010 of the Director General of Police. He has argued that thereafter also the applicant moved similar application in the year 2016 i.e. on 8.2.2016. The said

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application was considered by the respondent No. 2 sympathetically and after considering the various circulars and the rules he has held that the request of the applicant cannot be considered since the Government has banned the transfer of employees working in Police Constabulary to the cadre of Junior Clerk. He has submitted that the respondents issued the impugned order in view of the Government Resolution and Circulars. He has argued that instances cited by the applicant regarding transfer of the Police Constable to the cadre of Junior Clerk were prior to the year 2006. He has argued that since the year 2006 no transfer was made from the cadre of Police Constable to the cadre of Junior Clerk and, therefore, no question of discrimination arises. He has submitted that the respondent No. 2 has passed the reasoned order and, therefore, there is no illegality in it. Hence, he prayed to reject the present Original Application.

13. On perusal of the record, it reveals that in the year 2003 and 2004 the applicant filed several applications with the respondents to appoint him in the cadre of Junior

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Clerk on the ground that he possessed the requisite eligibility and qualification required for the appointment on the post of Junior Clerk. On considering his application, the respondents rejected his application on the ground that the applicant was not possessing necessary qualification required for the appointment on the post of Junior Clerk, as he had not passed Marathi Typing Examination 30 w.p.m. and accordingly, he was informed. Thereafter, the applicant passed Marathi Typing Examination on 11.8.2006 and thereafter applied for transfer, but in the meanwhile the Director General of Police issued Circular dated 16.8.2008 and thereby cancelled the earlier Circular issued by him on 2.4.2004 allowing transfer of the Police Personnel working in the cadre of Police Constable to the cadre of Junior Clerk. Not only this, but meanwhile the Government issued the circular and prohibited/banned to transfer a Police personnel working in the cadre of Police Constable to the cadre of Junior Clerk vide Home Department letter dated 11.6.2008. The said circular has been circulated by the

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Director General of Police to all the Police Officers by his letter dated 20.12.2010. Therefore, the respondent No. 2 has informed the applicant by communication dated 21.4.2016 that his request for transfer cannot be considered, as there is ban to make such transfer and, therefore, his application was not considered. The said fact shows that at present the Government has banned the transfers of the Police Personnel working in the cadre of Police Constable to the cadre of Junior Clerk and, therefore, the request of the applicant has not been considered by the respondent No. 2. Consequently he has not been transferred to the cadre of Junior Clerk. There is no illegality in the impugned order passed by the respondent No. 2. The Government has not taken decision on the said issue and the issue is pending with the Government and, therefore, the respondent No. 2 is not competent authority to take decision to make transfers as claimed by the applicant.

14. It is also material to note that in the year 2004 the clerical work has been assigned to the applicant because

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of injuries caused to him and since then he is discharging the said work. This fact shows that the applicant is engaged in the clerical work due to his physical disability and illness. Therefore, no inconvenience will be caused to the applicant even if he is not transferred to the clerical cadre. There is no apprehension to the applicant that he would be asked to discharge work assigned to the Police Constable. Therefore, on that count also there is no merit in the contention of the applicant.

15. In view of the aforesaid discussion, in my view, the impugned order passed by the respondent No. 2 is as per the Government Circular issued by the Government and as per the directions given by the Government. No discrimination has been made by the respondents in rejecting the application of the applicant and rejecting his request to transfer him in the cadre of Junior Clerk as no such appointment has been given by the respondents since the year 2006, because of the directions given by the Government. The impugned order has been passed by the respondent No. 2 by recording sound reasons. There is no

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illegality in the impugned order. Therefore, no question of making interference in the impugned order arises. There is no merit in the Original Application. Consequently, it deserves to be dismissed.

16. In view of the aforesaid discussions, the present Original Application stands dismissed with no order as to costs.

PLACE : AURANGABAD
DATE : 23RD MARCH, 2018

(B.P. PATIL)
MEMBER (J)

O.A.NO.365-2017(SB)-HDD-2018-Transfer