

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.740/2023**

**DISTRICT:- JALGAON**

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Hitesh Dharma Yadhav,  
Age : 35 years, Occ : Service as  
R/o. Waman Nagar, Pimple Road, Amalner,  
Tq. Amalner, Dist. Jalgaon. **...APPLICANT**

**V E R S U S**

1. The State of Maharashtra,  
Through its Principal Secretary,  
Soil and Water Conservation Department,  
Mantralaya, Mumbai-32.

2. The Soil and Water Conservation Department,  
The Commissioner, Soil and Water Conservation  
(Maharashtra State), Walmi Parisar, Kanchanwadi,  
Aurangabad-431002.

3. The District Water Conservation Officer,  
Soil and Water Conservation Department,  
Jalgaon. **...RESPONDENTS**

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APPEARANCE :Shri Vinod P. Patil, Counsel for  
Applicant.  
:Shri M.P.Gude, Presenting Officer for  
the respondents.

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**CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN**

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**Decided on: 13-10-2023.**

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**O R A L O R D E R :**

1. Heard Shri Vinod P. Patil, learned Counsel for  
the applicant and Shri M.P.Gude, learned Presenting  
Officer for the respondent authorities.

2. Aggrieved by the order dated 6.6.2023, whereby the applicant who is in the cadre of Clerk-Typist, has been transferred from Jalgaon to Nashik, the applicant has preferred the present Original Application. In the O.A. though several grounds are raised in exception to the impugned order, the prominent ground appears to be that the impugned order came to be served on the applicant on 3.8.2023 by which time the wife of the applicant had taken admission for Nursing Diploma and has also deposited the fees for the said course.

3. Learned counsel submitted that the transfer order, which has been served upon the applicant on 3.8.2023, must be held to be an order of midterm transfer. Learned counsel submits that in the office at Jalgaon there is shortage of the staff and as such the applicant was not expecting his transfer. It is further contended that since the transfer order was not served upon the applicant and the applicant was not made known about his transfer, he was bona fide believing that now he may not be transferred in the said academic year.

4. It is the further contention of the applicant that he has not been transferred at any of the places for which

he has recorded his choices/options. Learned counsel submitted that the applicant had given choices for his next posting at Parola, Bhusawal and Sub Division Jalgaon and at all these places the posts of Clerk Typist were vacant, where the applicant could have been accommodated. Learned counsel submitted that instead of giving posting to the applicant at any of the said places, he has been transferred to Nashik.

5. Learned counsel submitted that as per the guidelines, laid down in the Government Resolution dated 9.4.2018, the counseling is mandatory and as far as possible the choices of the employees are to be considered if the vacancies are available. Learned counsel submitted that there is no explanation from the side of the respondents as to why the applicant was not considered for any of the places of his choice. However, as I have earlier noted, at this juncture the entire thrust of the applicant is on the ground that it would be very inconvenient for the applicant to shift at transferred place, in view of the fact that his wife has taken admission for a diploma course at Jalgaon. Learned counsel in the circumstances, has prayed for setting aside the impugned order.

6. Respondents have filed their affidavit in reply resisting the contentions raised and the prayers made in the O.A. It is contended that since the applicant has been serving in Jalgaon District for more than six years, he was due for transfer. It is further contended that the transfer order was issued in the month of June and the Government has made known to all that period for making annual general transfers was extended up to 30<sup>th</sup> June, 2023. It is further contended that the proposal for transfer of the applicant was placed before the Civil Services Board and on recommendation of the Civil Services Board the applicant has been transferred at Nashik and the recommendation of the Civil Services Board has been accepted by the competent authority. It is further contended that before making transfer of the applicant the required procedure has been duly followed. It is also contended that the transfers are made considering the administrative need and few other factors like seniority of the employees etc.

7. Learned P.O. reiterated the contentions raised in the affidavit in reply filed on behalf of respondent nos.1 & 2. Learned P.O. also tendered the document evidencing

that the order of transfer was forwarded to the office at Jalgaon with a direction to serve the said order on the applicant. Learned P.O. submitted that the applicant was fully aware of the fact that he is due for transfer and would be transferred in the annual general transfers. Learned P.O. further submitted that the choices are taken for the sake of convenience and as far as possible they are considered having regard to the vacancy position, administrative need of the services of the applicant and number of employees, who have opted for the respective post, so that in order of their seniority the preferences can be considered. Learned P.O. further submitted that it is well settled that the employee cannot insist for his posting at a particular place or at a particular post, in view of the fact that it is a transferrable post. Learned P.O. submitted that in the present matter the entire procedure has been scrupulously followed by the respondents. Learned PO submitted that the problems like education of the family members or the admission taken by them, ill-health of the parents or the family members etc. are the difficulties which are faced by every Government employee and merely on the aforesaid ground the order of transfer cannot be held vitiated or held to be invalid. Learned P.O. submitted

that in the present matter the applicant has not made out any case for quashment of the order of the transfer. He has, therefore, prayed for dismissal of the O.A.

8. I have duly considered the submissions made on behalf of the applicant, as well as, the respondents. I have also gone through the documents placed on record. Though it is true that the order of transfer is issued on 6.6.2023, the same has been served upon the applicant on 3.8.2023. The applicant has taken a specific plea in his O.A. in that regard. The service of the transfer order is a crucial aspect in the present O.A. Since it was the contention of the respondents in their affidavit in reply that the order of transfer was served within time on the applicant, the directions were given to the respondents to produce on record the relevant documents evidencing the service of the impugned order on the applicant. Today, learned P.O. has placed on record some documents, however, he could not satisfy the Tribunal that the order of transfer was served upon the applicant on 6.6.2023 or immediately thereafter. On the contrary, from the documents it is apparently revealed that the order of transfer was served upon the applicant on 3.8.2023 and on

the same day the applicant was relieved from his existing post.

9. As I have noted hereinabove the order of transfer is challenged by the applicant on the following grounds: -

- (i) that it is against the guidelines issued in the Government Resolution dated 9.4.2018;
- (ii) that the choice places given by the applicant are not considered despite having vacancy at the said places; and
- (iii) that he has been transferred midterm.

The applicant has not denied or disputed that in the District of Jalgaon he has been serving from last more than six years.

10. The grievance of the applicant is that he has been given transfer at the place for which no option was given by him. It is true that the applicant has recorded choices for Parola, Bhusawal and Sub Division Jalgaon and he has not been transferred to any of the said places, but has been transferred at Nashik, for which the applicant admittedly has not given any choice. However, it is well settled and even in the guidelines which are

incorporated in G.R. dated 09.04.2018, it has been clarified that while giving posting the efforts will be made to give posting to the employee as far as possible in the district of his choice but the administrative need and related other aspects would also be considered. The recommendation of the Civil Services Board is a weighty circumstance in the matters of transfer. The Civil Services Board is a competent independent body, which has recommended transfer of the applicant at Nashik and the said recommendation has been accepted by the competent authority. Meeting of the Civil Services Board was held on 29.5.2023 and accordingly the transfer order has been issued on 6.6.2023. In sum and substance, posting given to the applicant at Nashik for which he had not given option cannot be held to be very weighty ground so as to cause interference in the order of transfer.

11. The ground which requires to be considered pertains to service of the transfer order belatedly. Though transfer order bears the date as 06-06-2023, according to the contentions raised by the applicant it was served upon him on 03-08-2023 and till the said date the applicant was discharging the duties on his existing post. Learned P.O.



was called upon to clarify as to on which date the order of transfer was served upon the applicant and to place on record the cogent proof thereof. Learned P.O. today has tendered certain documents which contain the communication dated 16-06-2023 made by respondent no.3 with Regional Water Conservation Officer, Nashik. From the said communication it is confirmed that the applicant was not relieved till the said date. The other documents which are produced on record by the applicant clearly demonstrate that the order dated 06-06-2023 was served upon the applicant on 03-08-2023 and on the same day the applicant was relieved from the charge of his post at the existing place.

12. The provisions under the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short 'Transfer Act, 2005') provides that the transfer of the Government servant shall ordinarily be made only once in a year in the month of April or May. In the present matter as I have earlier noted the period for making transfers was extended up to 30<sup>th</sup> June, 2023 and in that view the order passed on 6.6.2023 cannot be said

to be in contravention of the provisions as are made in the Transfer Act, 2005. However, mere issuance of order is not enough when the applicant has come out with a specific case that the order was not made known and was not served upon him till 3<sup>rd</sup> of August, 2023. The contention of the applicant that since the transfer order was not served upon him though the months of June and July have passed, he was *bona fide* believing that he was not likely to be transferred, is difficult to be ruled out.

13. The communication dated 16-06-2023 made by respondent no.3 with the Regional Water Conservation Officer, Nashik reveals that there was shortage of staff in his office and he had, therefore, not relieved the applicant. An inference can be drawn from the contents of the aforesaid letter that the services of the applicant were required at Jalgaon Office.

14. As noted by me hereinabove though the applicant has raised several grounds in exception of the order of transfer, his entire thrust is on the issue that order of transfer was served upon him on 03-08-2023 by which time his wife has taken admission for one diploma course at Jalgaon. There appears substance in the

contention raised on behalf of the applicant that in the entire month of June and thereafter July when the order of transfer was not served upon the applicant he was bona fide believing that he is not likely to be transferred in the present academic year. Further, as is revealing from the communication dated 16-06-2023 between respondent no.3 and the Regional Water Conservation Officer, Nashik there was shortage of the staff in the office at Jalgaon and respondent no.3, has therefore, not relieved the applicant until 03-08-2023.

15. In premise of the facts as aforesaid, though other grounds raised by the applicant that he was transferred at the place for which he has not given his choice or that the transfer guidelines are not followed etc., are not sufficient for causing interference in the order of transfer impugned by the applicant, having regard to the peculiar facts and circumstances of the case that the order of transfer came to be served on the applicant on 03-08-2023 by which time his wife had taken admission for one diploma course at Jalgaon and further that no one has yet been posted in place of the applicant, and also that respondent no.3 was unwilling to relieve the applicant as

there was shortage of the staff in the said office, it appears to me that it would be in the fitness of the things that the transfer of the applicant is kept in abeyance for the present academic year. If it is so done there would be no scope for the applicant to seek retention at the existing place thereafter.

16. It is informed that the applicant has been relieved from the charge of his existing post w.e.f. 03-08-2023 but has not resumed the charge at the transferred place. If this be so, applicant has taken a risk and will have to face its consequences.

17. For the reasons stated above, following order is passed: -

ORDER

(i) The order of transfer dated 6.6.2023 impugned in the present O.A. be kept in abeyance for the present academic year.

(ii) The respondents shall allow the applicant to resume his duties at the existing post and permit the applicant to discharge his duties of the said post for the current academic year.

(iii) The Original Application stands disposed of in the aforesaid terms.

(iv) There shall be no order as to costs.

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 13.10.2023.**

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