

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 437 OF 2018
(Subject – Transfer)**

DISTRICT : Aurangabad

Vijay s/o Madhukar Suralkar,)
Age:53 years, Occ. Service,)
R/o: Plot No.10, Jai Siddheshwar Society)
Mayur Park Road, Harsul,)
Aurangabad, Tq. & Dist. Aurangabad.)....**APPLICANT**

V E R S U S

1) The State of Maharashtra)
Through its Principal Secretary,)
Higher Technical Education)
Department, Mantralaya, Mumbai-32.)

2) The Director of Art Maharashtra State)
Sir J.J. School of Art Campus,)
Dr. D.N. Road, Fort, Mumbai.)

3) The Desk Officer,)
Higher Technical Department,)
State of Maharashtra,)
Mantralaya, Mumbai.)

4) The Dean,)
Government School Art and Design,)
V.I.P. Road, Aurangabad.)
Dist. Aurangabad.)

5) The Registrar,)
Government School of Arts and Design,))
V.I.P. Road, Aurangabad.)

[Copy to be served on P.O. M.A.T.)
Mumbai, Bench at Aurangabad])....**RESPONDENTS**

APPEARANCE : Shri Ram Shinde, Advocate for the Applicant.

: Smt. Priya R. Bharaswadkar, Presenting
Officer forthe Respondents.

CORAM : B.P. PATIL, MEMBER (J).

DATE : 25.01.2019.

ORDER

1. The Applicant has challenged the impugned order dated 31.05.2018 issued by the Respondents, by which he has been transferred from Aurangabad to Nagpur by filing the Original Application and prayed to quash and set aside the impugned order.

2. The Applicant has entered in the service with the Respondents in the year 1996 and joined at Government Arts College, Nagpur. In the year 2000, he has been transferred to Aurangabad on administrative ground and since then he is working there. It is his contention that some of the employees are working in the Sir J.J. School of Arts at Mumbai since the date of their joining and those employees have not been transferred till today. It is his contention that the Sir J.J. School of Arts, Mumbai is most reputed institute in India and therefore, Lecturers working at Aurangabad and Nagpur are willing to serve there. But the Respondents have not transferred the employees working at Sir J.J. School of Arts, Mumbai since long. It is his contention that the Respondent No.2 used to call

options from the employees who were due for transfer. The Applicant used to fill the form every year and give preference to transfer at Mumbai. But he was never transferred to Mumbai. It is his contention that at the time of general transfer of the year 2018, though he had given his option for transferring him at Mumbai, he has been transferred at Nagpur from Aurangabad by impugned order dated 31.5.2018.

3. It is his contention that his father is old aged person and he is suffering from Urinary Track Infection and he was admitted in hospital. He is the only fit person to take care of his father. Therefore, he requested to transfer him at Mumbai. But his request for transferring at Mumbai has not been considered and he has been transferred at Nagpur by impugned order. It is his contention that the impugned order is in violation of provision of the Maharashtra Government Servants Regulation of the Transfers and Preventions of Delay in Discharge of Official duties Act, 2005 (in short "Act, 2005"). The impugned transfer order has been issued by the Respondents without considering choices given by the Applicant. It is his contention that Respondents are giving favorable treatment to the Lecturers working in the Sir J.J. School of Arts, Mumbai and they are discriminating the Lecturers working at Aurangabad and Nagpur. It is his contention that the impugned order is illegal. Therefore,

he has approached this Tribunal and prayed to quash and set aside the impugned order by allowing the Original Application.

4. Respondent Nos.1 to 5 have filed their affidavit-in-reply and resisted the contention of the Applicant. It is their contention that the Applicant was due for transfer at the time of general transfer of the year 2018. Therefore, Director sent the proposal of transfer of the Applicant and accordingly, he has been transferred from Aurangabad to Nagpur. It is their contention that the Sir J.J. School of Arts, Mumbai and Sir J.J. Applied Art, Mumbai has been given autonomy vide G.R. dated 27.2.2017. Therefore, the Lecturers who are senior faculty members in Sir J.J. School of Art and Sir J.J. Applied have not been recommended for transfer and only faculty members of Aurangabad and Nagpur were recommended to the Government. The Government/Competent Authority has taken decision and thereafter, transferred the Applicant accordingly. It is their contention that impugned order has been issued in view of the provisions of Transfer Act, 2005 and there is no violation of the provisions of Transfer Act, 2005. It is their contention that the Applicant is belonging to Group-"A" employee and therefore, G.R. dated 09.04.2018 is not applicable to the transfer of the Applicant. It is their contention that there is no illegality in the

impugned order. Therefore, they supported the impugned order and prayed to dismiss the Original Application.

5. I have heard Shri Ram Shinde, learned Advocate for the Applicant and Smt. Priya R. Bharaswadkar, Presenting Officer for the Respondents and perused the documents on record.

6. Admittedly, the Applicant has been selected by Maharashtra Public Service Commission (in short "M.P.S.C.) and thereafter, he has been appointed as Lecturer and posted at Government Arts College, Nagpur. He was working there upto the year 2000. In the year 2000, he was transferred to Aurangabad from Nagpur on administrative ground and since then, he is working there. Admittedly, the Applicant has completed his normal tenure of posting at Aurangabad and he is due for transfer at the time of general transfer of the year 2018. Admittedly, Sir J.J. School of Art and Sir J.J. School Applied Art have been given autonomy by the Government vide G.R. dated 27.02.2017.

7. Learned Advocate for the Applicant has submitted that the Respondents have not transferred the faculty members working in the Sir J.J. School of Arts and Sir J.J. Applied Art since their

joining, neither at Aurangabad or Nagpur. The Respondents used to transfer the Lecturers working at Aurangabad and Nagpur only. He has submitted that the Applicant has given option of Mumbai regarding place of his choice at the time of general transfer of the year 2018. But the Respondents had not considered his request for transferring him at Mumbai. He has submitted that the said decision of the Respondents, transferring the Applicant to Nagpur is arbitrary and malafide and therefore, he prayed to allow the Original Application and to quash and set aside the impugned order.

8. He has further submitted that the Respondents had not followed the guidelines given in the G.R. dated 09.04.2018. Not only this, but the Respondents have not considered family problems of the Applicant and issued the impugned transfer order. Therefore, it is illegal.

9. Learned P.O. for the Respondents has submitted that the Applicant was due for transfer and therefore, he has been transferred to Nagpur. She has submitted while effecting the transfer of the Applicant, the provision of Transfer Act, 2005 has been followed by the Respondents. She has submitted that the Sir J.J. School of Art, Mumbai and Sir J.J. Applied Art are autonomies bodies in view of the G.R. dated 27.02.2017 and

therefore, the Lecturers posted at Aurangabad and Nagpur cannot be transferred and posted there and vice versa. She has submitted that the impugned transfer order has been issued on account of administrative exigency. Therefore, she justified the impugned order and prayed to dismiss the Original application.

10. On going through the documents on record, it reveals that the Applicant is working as Group "A" employee. He is serving at Aurangabad since the year 2000. He was due for transfer at the time of general transfer of the year 2018. He has submitted option regarding place of his choice for transfer with the Competent Authority and requested to transfer him at Mumbai. His proposal for transfer has been placed before the Civil Services Board on 14.5.2018 and the Civil Services Board decided to transfer him at Nagpur on Administrative ground/exigency as there is vacancy at Nagpur. The documents show that there is no illegality in the process of transferring of the Applicant. The provision of Transfer Act, 2005 has been followed by the Competent Authority while transferring the Applicant and therefore, there is no illegality in it. There is nothing on record to show that the Respondents have effected the transfer of the Applicant with malafide intention and arbitrarily by abusing the powers. The Applicant has never requested to the Respondents for retaining him at Aurangabad or

for his transfer at Mumbai on account of ill health of his father. He raised the said ground for the first time only when he had requested the Respondents for cancellation of impugned transfer order. Therefore, the submission advanced by the learned Advocate for the Applicant in that regard is not acceptable.

11. Similarly situated persons have filed the Original Application No.462 of 2018 before this Tribunal challenging the impugned order to the extent of their transfer raising the similar contentions and grounds. Other similarly situated persons have filed another O.A.No.423 of 2018 before the Nagpur bench of this Tribunal on the same ground. Both the Original Applications have been dismissed on merit. It has been held that by this Tribunal in those matters that orders issued for transferring those employees are legal one. The preset case is squarely covered by the said decision. Therefore, on that ground also, in my view, there is no illegality in the impugned order.

12. It is also material to note here that the Applicant is serving as Group "A" employee. The G.R. dated 9.4.2018 is not applicable to the employees of Group "A" category. Therefore, the Applicant cannot take benefit of the said G.R. Therefore, I do not find any substance in the submission advanced by the learned Advocate for the Applicant in that regard.

13. On going through the documents on record and discussion in the foregoing paragraphs, it is crystal clear that there is no illegality in the impugned transfer order. As the Applicant had completed this normal tenure and was due for transfer, he has been transferred by impugned order on account of administrative exigency. There is no illegality in the impugned order. Therefore, no interference is called for in the impugned order. There is no merit in the Original Application. Consequently, it deserves to be dismissed.

14. In view of the discussion in the foregoing paragraphs, Original Application stands dismissed without any order as to costs.

PLACE : AURANGABAD.
DATE : 25.01.2019.

Sd/-
(B.P. PATIL)
MEMBER (J)

SAS S.B. O.A. No. 437 of 2018 BPP 2019 Transfer.