

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 799/2021(S.B.)**

Sachin Bhashkar Asode,  
Aged about 31 years.  
Occu: Protection Officer (Jr.) at Dharni,  
R/o. Office of Protection Officer (ICDS)  
Panchayat Samiti Dharni, Dharni,  
Dist. Amravati.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Principal Secretary,  
Department of Women and Child Development,  
Mantralaya, Mumbai-32.
- 2) Women and Child Development  
Commissioner, Maharashtra State,  
28 Queen's Garden, Near Old Circuit  
House, Pune-1.
- 3) District Women and Child  
Development Officer, Amravati,  
"Dattatray Sadan" Dasra Maidan Road,  
Bhuteshwar Square, Deshpande Wadi,  
Amravati-444605.
- 4) Smt.Sonali D/o. Subhashrao Wakode,  
Aged about 28 years, Occ.Protection  
Officer (Jr.), O.A. Office of Protection  
Officer, OSC Centre Dafrin Hospital,  
Amravati Road, Amravati.
- 5) Praful Vasant Puri,  
Aged about 33 years, Occ. Protection Officer (Jr.),  
O/A. Office of Protection Officer above  
SDPO Office, Daryapur, Dist. Amravati.

- 6) Ishwar Ramrao Makode,  
Aged about 38 years, Occ. Protection Officer (Jr.),  
O/A. Office of Protection Officer,  
Ladode Plot, Near Kadu Hospital,  
Anjangao Surji, Dist. Amravati.

**Respondents**

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Shri S.O.Ahmed, Ld. counsel for the applicant.  
Shri M.I.Khan, Ld. P.O. for the respondents.

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**Coram:- Hon'ble Shri M.A.Lovekar, Member (J).**  
**Dated: - 01 July 2022.**

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**JUDGMENT**

**Judgment is reserved on 22<sup>nd</sup> June, 2022.**

**Judgment is pronounced on 01<sup>th</sup> July, 2022.**

Heard Shri S.O.Ahmed, learned counsel for the applicant and  
Shri M.I.Khan, learned P.O. for the Respondents.

2. Case of the applicant is as follows.

By order dated 13.01.2015 (Annexure A-1) the applicant was posted as a Junior Protection Officer at Dharni, Dist. Amravati, which is a notified Tribal area. He joined on 23.01.2015 (Annexure A-2). In January, 2020 he became due for transfer. As per G.Rs. dated 11.07.2000 and 06.08.2002 (Annexure A-3, collectively) he was entitled to be posted at a place of his choice on account of having served in a Tribal area for three years. G.R. dated 09.04.2018

(Annexure A-4) prescribes the procedure for regular transfers. On 18.06.2021 respondent no.2 prepared a list of persons due for transfer as per station seniority for Dist. Amravati (and other Districts) (Annexure A-6). The applicant had joined on 23.01.2015 whereas respondent no.4 had joined later i.e. on 05.02.2015. However, her date of joining was wrongly shown to be 20.01.2015. Because of this, respondent no.4 was shown above the applicant i.e. at Sr.No.2 instead of Sr.No.4 and the applicant was relegated to Sr.No.4 instead of Sr.No.3. In the order of completion of period of probation (Annexure A-5) dates of joining of the applicant and respondent no.4 are correctly shown as 23.01.2015, 05.02.2015, respectively). On 30.06.2021 the applicant received a message on his whatsapp number (Annexure A-7) from the office of respondent no.3 and in response thereto the applicant gave choices (Annexure A-8). While effecting the impugned transfers by order dated 09.08.2021 (Annexure A-10), provisions of G.R. dated 29.07.2021 (Annexure A-9) were not followed. Had inter-se seniority of the applicant and respondent no.4 been correctly fixed, and had the transfers been effected as per G.R. dated 29.07.2021, the applicant could have been posted at a place of his first choice while passing the impugned order. On 25.08.2021 the applicant received a copy of order dated

09.08.2021 from the office of respondent no.3. Hence, this application for following reliefs.

***A) Modify the list of persons (Protection Officers) due for transfer dated 18/06/2021 with regard to Amravati District is concerned in the interest of Justice and direct the respondent no.2 to show the name of the applicant at Sr.No.3 of the said list as per the seniority of the applicant in the interest of justice.***

***B) Quash and set-aside the order of transfer dated 09/08/2021 passed by the respondent No.2 and direct the respondent No.2 to transfer the applicant at the place of the choice of the applicant at Daryapur which has already been submitted by the applicant on 30/06/2021 in the interest of justice.***

3. Reply of respondent nos.1 to 3 is at pp.112 to 124. They have opposed the application on the following grounds.

***1) The applicant herein has not raised any objection in respect of the list, dated 18.06.2021 within 7 days and without availing the remedies, he directly approached before this Tribunal, hence the present Original Application is not tenable according to Section 20 of the administrative Tribunal Act, 1985.***

***2) The Government, vide notification, dated 12.05.2006 enacted the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act 2005.***

*Accordingly, the General Administrative Department, vide circular, dated 7.6.2006 made clear that, all the orders in respect of the transfers of the Government Employees which were issued before the date of this Act are superseded since 1.7.2006, as the said Act is being implemented from 1.7.2006. Hence the provisions in respect of the transfers in the Government Resolution, dated 6.8.2002 have been superseded.*

*3) In spite of the telephonic communication and Whats App message and letter dated 24.6.2021 vide outward No.807/2021 issued, applicant never came to visit the office of Respondent No.3 to submit original hard copy choice of preference list and not taken any objection about the list of the persons due for transfer.*

4. In support of these contentions the respondents have relied on letter dated 24.06.2021 (Annexure R-I) calling upon objections to list of employees due for transfer, within seven days. Said list is said to have been posted on the whatsapp group of which the applicant himself is admin (Annexure R-II & R-III).

5. Rejoinder of the applicant is at pp. 129-151. In this rejoinder the applicant has contended-

*1) The applicant would have taken objection but there was no occasion for taking objection as the said list dated 18/06/2021 was never supplied to the applicant and applicant got knowledge when all the*

*transfers were effected and impugned order of transfer dated 09/08/2021 was passed.*

*2) The present respondents have seemingly erred in completely ignoring the Circular dated 09/04/2018 published by the General Administration Department which clearly states that the seniority list of the tribal areas should be given the first preference while considering and effecting the transfers of employees. This particular resolution dated 09/04/2018 is not yet superseded by any Government Resolution.*

*3) Respondent no.3 ought to have published / list dated 18.06.2021 in his office premises which he failed to do.*

*4) Mr. Gawai had informed the present applicant about the due list of transfer and also told him that if he had any objection to the said transfer list he may raise an objection within a period of seven days from the day when the transfer list was made available to the officers due for transfer. However, it is the contention of the present applicant that Mr. Gawai had only asked about the preference for his transfer.*

*5) The respondents have also made a reference to outward letter bearing no.807/2021 whereby contents of the letter specifies that the outward letter bearing No.2626/2021 dated 18/06/2021 regarding the due transfer list which is made available to all eligible transferees and the time period of seven days is made available to raise any objection to the same. It*

*is at this juncture the present applicant submits that this admission of outward letter bearing no.807/2021 by the respondent may be the final act of them being caught completely off guard as the said letter bearing no.807/2021 only depicts the acknowledgment of only two officers; wherein the first acknowledgment is of respondent No.4 and second acknowledgment is of respondent No.6. Furthermore it is of utmost importance to mention here that the respondent No.4 and 6 have while signing the said Annexure-R1 have not put date when they have received the same, as to when the date of receipt plays very vital role in taking objection from the date of knowledge and this fact also makes the suspicion in the mind of the applicant to be true that a severe illegality has been committed by the respondents. Hence the contents of this para are vehemently denied. Had it been the case that assuming not admitting that Mr. Gawai has word with the applicant on mobile and informed the applicant about the list dated 18/06/2021, then in that circumstances Mr. Gawai ought to have sent the said list along with letter bearing outward No.807/2021 to the present applicant on his whatsapp as Mr. Gawai had sent the Format of making preference of transfer place to the applicant on his whatsapp and the same was sent after filing by whatsapp to Mr. Gawai by the applicant. Therefore, the said contention of the respondents are an afterthought and absolutely false*

*and frivolous for which they will definitely face the consequences.*

*6) It is not possible for any member of whatsapp group of 232 members to see each and every post on the whatsapp group and much less for a person like petitioner who is a responsible officer working in the interior Tribal area where there is also network problem.*

6. It is apparent than in the list dated 18.06.2021 (Annexure A-6), while showing inter-se seniority a mistake was committed because of which respondent no.4 was placed at Sr.No.2 instead of Sr.No.4 and the applicant was relegated to Sr.No.4 instead of Sr.No.3. This mistake was occasioned by wrongly showing date of joining of respondent no.4 in the list (Annexure A-6). She had, in fact, joined on 05.02.2015 and not on 20.01.2015.
7. It is the submission of the applicant that-

*On 29/07/2021 a Government Resolution pertaining to the regular transfer and request transfer has been issued by the State of Maharashtra. That, as per the said Government Resolution 25% of the regular transfer in the District was to be made as per the seniority and that was required to be done till 09/08/2021 and thereafter, the procedure of request*



***transfer would start from 10/08/2021 to 30/08/2021 and that has to be only on the post which has remained vacant after completing the procedure of the regular transfer and the post which is not vacant on that post request transfer cannot be made.***

Aforequoted submission is fully supported by contents of G.R. dated 29.07.2021 (Annexure A-9). It is also apparent that had name of the applicant been shown at correct Sr.No. i.e. 3 in list Annexure A-6, he would have fallen in the group of 25 % and transferred at the first instance. It is further apparent that Shri Praful Puri and Shri Abhijeet Ganorkar ought not to have been transferred on request by order dated 09.08.2021 (Annexure A-10). These conclusions are fully supported by paras 2 to 4 of G.R. dated 29.07.2021 (Annexure A-9) which read as under-

२) २५ टक्के मर्यादित सर्वसाधारण बदल्या करत असताना, संबंधित पदावर विहित कालावधी पूर्ण झालेल्या सर्व पात्र अधिकारी /कर्मचारी यांच्यापैकी ज्यांचा संबंधित पदावर जास्त कालावधी पूर्ण झाला आहे अशा अधिकारी/कर्मचा-यांची प्राधान्याने बदली करण्यात यावी.

३) सर्वप्रथम सर्वसाधारण बदल्यांची कार्यवाही दि.९ ऑगस्ट, २०२१ पर्यंत पूर्ण करण्यात यावी.

४) सर्वसाधारण बदल्यांची कार्यवाही पूर्ण झाल्यानंतरच, जी पदे रिक्त राहतील केवळ अशा रिक्त पदांवरच विशेष कारणास्तव बदल्या दि.१० ऑगस्ट, २०२१ ते दि. ३० ऑगस्ट, २०२१ या कालावधीपर्यंत अनुज्ञेय राहतील. सबब, जे पद रिक्त नाही अशा पदावरील कार्यरत अधिकारी/कर्मचारी यांची अन्यत्र बदली करून अशा पदावर विशेष कारणास्तव बदली करता येणार नाही.

8. At pp.152 to 173 there is G.R. of G.A.D. dated 09.04.2018. It refers to Transfer Act of 2005 and policy of counselling preceding General Transfers.

9. With covering letter at page 175 the applicant has filed extract of outward register maintained in the office of respondent no.3.

10. It is the contention of the applicant that letter presumably sent on 24.06.2021(Annexure R-1) was prepared subsequently so as to make it appear that the applicant, inspite of clear notice, failed to object to the list within the stipulated period of seven days. This letter bears outward no.807. Relevant contents of this letter state-

उपरोक्त संदर्भिय विषयान्वये आपणास कळविण्यात येते की महिला व बाल विकास विभागाकडील संरक्षण अधिकारी कनिष्ठ, गट-क या संवर्गातील कार्यरत कर्मचारी संभाव्य बदली पात्र कर्मचा-यांची यादी व त्यासोबत सदरस्थितीत विधि आस्थापनेवर नमुद संवर्गात असलेली रिक्त पदांची यादी या पत्रान्वये प्रसिध्द करण्यात येत आहे. वरील प्रमाणे प्रसिध्द करण्यात आलेली यादी आपण या कार्यालयात येऊन अवलोकन करावे. मा.आयुक्त यांनी प्रसिध्द केलेली यादी पाहून आपला कोणाचे आक्षेप असल्यास तात्काळ पुराव्यासह ७ दिवसाचे आत घेण्यात यावे जेणेकरून मा. आयुक्तालय पुणे यांना सादर करणे सोईचे होईल. सदर आक्षेप ७ दिवसाच्या आत सादर न केल्यास आपले कोणतेही आक्षेप नाही असे समजण्यात येईल याची नोंद घेण्यात यावी.

आयुक्तालयामार्फत प्रसिध्द करण्यात आलेल्या विविध संवर्गातील संबंधित बदलीपात्र कर्मचारी यांची शासन निर्णय दि.९.४.२०१८ मधील परिशिष्ट-९ सोबत विवरणपत्र-९ मध्ये तात्काळ विहित मुदतीत दिनांक २९/६/२०२१ या कार्यालयास सादर करण्यात यावी.

11. Extract of outward register at pp.176/177 contains several over writings. This would adversely affect credibility of said letter purportedly issued on 24.06.2021.

12. Circumstances discussed so far may be summed up thus. In the list of seniority at station (Annexure A-6) the applicant and respondent no.4 ought to have been placed at Sr.Nos.3 & 4, respectively. There were 13 persons from Amravati Dist. who were due for transfer. As per para 2 for G.R. dated 29.07.2021 25% transfers were to be effected. While effecting these transfers preference was to be given to the person who was senior at the station regard being had to his / her date of joining at the station. In the instant case first three persons in the list would have been due for transfer (as per para 2 of the G.R.) since total number of such persons in Amravati Dist. was 13. Thus, the applicant would have been transferred as per para 2 of this G.R. had his placement in seniority list been correctly shown at Sr.No.3. The impugned order dated 09.08.2021 shows that Shri Puri (respondent no.5) and Shri Ganorkar were given transfers on request. This could not have been done in view of para 4 of G.R. dated 29.07.2021 quoted above. Material placed on record by the respondent department that letter dated 24.06.2021 was in fact issued on that day does not inspire

confidence as can be gathered from perusal of extract of outward register (pp.176-177) filed with covering letter at page 175. Assuming that the applicant failed to take objection to the list of seniority at station within seven days, the fact remains which is beyond dispute, that in this list the applicant and respondent no.4 ought to have been shown at Sr.Nos.3 & 4, respectively. Instead they were shown at Sr.Nos.4 & 2 respectively.

13. Relief claimed by the applicant as per prayer clause A has become irrelevant. It may be reiterated that the respondent department has not disputed that in the said list at Annexure A-6, regard being had to the respective dates of joining, the applicant and the respondent no.4 ought to have been shown at Sr.Nos.3 & 4, respectively.

14. The other relief claimed by the applicant vide prayer clause B is that the impugned transfer memo (Annexure A-10) be quashed and set aside and he be posted at Daryapur which was his first preference while giving choices last year.

15. In the list of seniority at station for Amravati District which included 13 names respondent no.5 was at Sr.No.10. He could not have been transferred in the first phase because during this phase only regular transfers to the extent of 25% could be effected as per

para 2 of G.R. dated 29.07.2021. His case for request transfer could have been considered only after first phase of 25% regular transfers was over. In the instant case the first phase, which was to conclude by 09.08.2021 as per para 2 of G.R. dated 29.07.2021, by passing the impugned order, along with regular transfers request transfers were also effected though such request transfers could have been effected only in the second phase between 10.08.2021 and 30.08.2021 as per para 4 of the G.R.. Had this mandate been adhered to request for transfer made by respondent no.5 would have been considered only after effecting 25 % regular transfers. The applicant was due for transfer. He ought to have been transferred during the first phase because his proper placement in the list of station seniority was 3 and in all 13 persons in the District were due for transfer. Because of transfer of respondent no.5, on request, during the first phase of transfers at the place of first choice given by the applicant i.e. Daryapur, the applicant was deprived of such posting. Considering all these circumstances, the impugned order of transfers (Annexure A-10) needs to be quashed and set aside to the extent of transfer of respondent no.5 so that the applicant can be transferred as per the first preference given by him last year. Hence, the order.

**ORDER**

1) The application is allowed in the following terms-

It is hereby held that in the list of station seniority (Annexure A-6) for Amravati Dist. names of the applicant and respondent no.4 ought to have been shown at Sr.Nos.3 & 4, respectively instead of Sr.Nos.4 & 2 respectively.

The impugned order of transfer (Annexure A-10) is quashed and set aside to the extent of transfer of respondent no.5. In case the applicant opts to be posted in Dhamangao Railway, Taluka as per option (Annexure A-8) given by him at the time of last year's general transfers he shall be accordingly posted since during the ensuing general transfers one post is going to fall vacant in Dhamangao Railway Taluka as per letter dated 19.04.2022 placed on record by respondent no.3 at page 178. In case the applicant does not opt to be posted in Dhamangao Railway Taluka he shall be posted in Daryapur Taluka during the ensuing general transfers as per prayer clause A. No order as to costs.

(M.A.Lovekar)  
Member (J)

Dated – 01/07/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Member (J) .  
Judgment signed on : 01/07/2022.  
and pronounced on  
Uploaded on : 01/07/2022.