

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.669 OF 2019

DISTRICT : NASHIK

Shri Shivnath G. Nirmal)
Age : 55 years, Working as Block Edu.)
Officer, Sinnar, Dist. Nashik,)
Maharashtra.)...**Applicant**

Versus

1. The State of Maharashtra, through)
The Principal Secretary, School)
Education and Sports Dept., M.S.)
Mumbai 400 032.).....**Respondents**

Shri D. B. Khaire, Advocate for Applicant.

Ms S. P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 07.12.2019.

JUDGMENT

1. In the present O.A., the Applicant has challenged the impugned transfer order dated 28.05.2019 being aggrieved by not getting choice posting as per options given by him.

2. Shortly stated facts giving rise to the application are as follow:-

The Applicant is serving as Block Education Officer. At the time of transfer, he was servicing as Block Education Officer, Panchayat Samiti, Sinnar, Tal/Dist Nashik. As he was due for transfer, he had submitted options form and has given nine options from Ahmednagar and Nashik District. However, his options were not considered and by impugned order dated 28.05.2019, he was transferred to Block Education Officer, Sakari, Dist. Dhule on vacant post. Being aggrieved by it, he has filed the present O.A.

3. Shri D. B. Khiare, learned Counsel for the Applicant sought to assail the impugned transfer order contending that though the Applicant has given nine options which were vacant at relevant time, none of them was considered, and therefore, the impugned transfer order giving posting to the Applicant at Sakari, Dist. Dhule which is other than options given by the Applicant is contrary to the Government G.R. dated 09.04.2018, and therefore, it deserves to be quashed. He further raised the ground of discrimination contending that some of the employees were accommodated by giving posting as per their representation but the Applicant is subjected to discrimination.

4. Per contra, Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents submits that in terms of G.R. dated 09.04.2018, the Government has formulated the policy for the transfer of the Government servant by counseling and has set out certain guidelines and requisites to be observed while transferring Government servant. She has pointed out that as per one of the requirement of G.R. dated 09.04.2018, other Government servant was required to give two options from difficult area out of ten but the Applicant has failed to give a single option from difficult area, and therefore, he was transferred at Sakari, Dist. Dhule in terms of Government policy. She has further pointed out that the Government servants whose transfers were later modified were not giving posting as per their options but their transfer orders were changed in view of their representation by giving all together different posting, and therefore, the question of discrimination does not survive.

5. Needless to mention that transfer is incidence of service and it is prerogative of the Government as to where the employee needs to be transferred and no Government servant has vested right to claims the

posting at any particular place. Transfer orders cannot be interfered with unless it is in contravention of express provision of law, arbitrary, punitive or found made in colourable exercise of power. These are settled principle to be born in mind while considering challenge to the transfer order.

6. Now turning to the fact of the present case, indeed, the Government of Maharashtra by G.R. dated 09.04.2018 has formulated comprehensive policy in the matter of transfer so as to minimize the grievances of the Government servants and to see that as far as possible they should be accommodated as per choice given by them subjected to fulfillment of the condition set out in G.R. The Applicant is of Group-B category and admittedly his post is transferable throughout Maharashtra.

7. Undisputedly in terms of G.R. dated 09.04.2018, the Applicant was required to give at least two options from difficult area. There is specific stipulation to that effect in G.R. Besides, by letter dated 29.04.2019 again it was emphasized that they were to give at least two options and again opportunity was given to give two options from difficult area till 05.05.2019. Apart, by this letter dated 29.05.2019, it was made clear that the Government servants who would fail to give at least two options from difficult area, they would be transferred on vacant post as per the requirement of administration.

8. Suffice to note that in G.R. dated 09.04.2018 as well as by letter dated 29.04.2019, it was specifically pointed out that giving of two options from difficult area is mandatory and failing which the concerned Government servant would be transferred at any other place on vacant post from the point of administration. In the present case, admittedly the Applicant has not given two options from difficult

area. As such, the Applicant himself failed to abide the terms and conditions of G.R. dated 09.04.2018, and therefore, he cannot raise grievance of not giving posting from choices given by him. By his conduct, he himself invited disqualification to claim the benefit of G.R. dated 09.04.2018.

9. True, as pointed out by learned Counsel for the Applicant, in past the Applicant had worked at Peth, Dist. Nashik which falls under difficult area but that aspect is hardly relevant to condone the failure of Applicant to give again two options from difficult area. Only because in past the Applicant had worked at some point of time in difficult area that would not exempt him from giving options from difficult area. In view of specific stipulation in G.R. dated 09.04.2018, there is nothing in G.R. to suggest that where the employee in past worked in difficult area then he is not required to give choices from difficult area again. The stipulation mentioned in G.R. dated 09.04.2018 is quite specific which mandates that employee must give two options from difficult area.

10. Furthermore, as seen from the options (on page no.51 of PB), the Applicant has worked in Nashik District only from 2002 to 2019. As such, for seventeen years he served in Nashik District. From 1998 to 2002 for four years, he was at Ahmednagar. Whereas options given by him are again from Nashik and Ahmednagar District. Thus, it is apparent that the Applicant is claiming positing in same districts where he already worked and he appears not ready to go out of Nashik where he had already worked for seventeen years. Here, it may be noted that as per one of the stipulation/guidelines in G.R. dated 09.04.2018, the employee is not entitled for reposting at same place.

11. In so far as ground of discrimination is concerned, by subsequent order dated 20.06.2019, transfer orders of some of

employees were modified. It is rightly pointed out by learned C.P.O. that those employees were given posting at third place and not as per their options because of their failure to submit options from difficult area. The modification of transfer in the matter of Shri Kale also cannot be termed discrimination. He had earlier sought option from Pune District only. He was serving as Block Education Officer at Panchayat Samit, Jamkhed and by transfer order dated 28.05.2019, he was transferred to Panchayat Samiti, Dhule. He had given option from Pune District without giving options from difficult area. Thereafter, he made representation and by order dated 11.07.2019 his posting was modified and posted at Rahata, Ahemdnagar. Here again, Shri Kale was not given posting from choice given by him while submitting options. As such, it cannot be said that the employee who failed to give options from difficult area was again accommodated by giving posting as per options given by him in the form submitted before transfer.

12. This being the position, it cannot be said that the Applicant is subjected to discrimination. Applicant is at liberty to make representation claiming some other post, if desires and it can be decided appropriately by Respondents. Therefore, at this stage, the ground of discrimination is in fact premature and the impugned transfer order cannot be faulted with.

13. True, the Government has issued G.R. dated 09.04.2018 to accommodate the Government Servants as per their options but it is subject to fulfillment of condition set out in G.R. which were not complied with. Therefore, the Applicant himself is responsible for not getting posting as per his options and he should thank himself for the same. I, therefore, see no infringement of right much less legally enforceable so as to seek transfer on choice given by the Applicant.

Suffice to say, challenge to the impugned transfer order is devoid of merit.

14. It would not be out of place to mention that now the transfers are governed by the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. In so far as the facts of present case are concerned, learned Counsel for the Applicant could not point out contravention of any of the provision of Transfer Act, 2005. In this behalf, it would be appropriate to refer the judgment of the Hon'ble High Court in **2008 (2) Mh.L.J. 640 (Shri V.V. Gadekar, Deputy Engineer Vs. MHADA)**, wherein it has been held as follows :

“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power.”

15. The totality of the aforesaid discussion leads me to sum up that impugned transfer order does not suffer any illegality, arbitrariness or malice and there is no violation of express provisions of law and O.A. deserved to be dismissed.

ORDER

- (A) Original Application is dismissed with no order as to cost.
- (B) The Applicant is at liberty to make representation to the Respondent for change of posting which shall be considered by the Respondent in appropriate manner on its merit.

Sd/-
(A.P. KURHEKAR)
Member-J