

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 62 OF 2018

(Subject – Posting)

DISTRICT: JALGAON

Dr. Machhindra s/o Madhavrao Shinde,)
Age: 51 years, Occu. : Service,)
(as Asstt. Commissioner, Animal)
Husbandry, Taluka Mini Veterinary)
Policlinic, Muktai Nagar),)
R/o C/o. Dr. Manoj P. Patil,)
Godavari Nagar, Muktai Nagar,)
Dist. Jalgaon.) ..
APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**)
Through its Principal Secretary,)
Agriculture, Animal Husbandry,)
Dairy Development & Fisheries)
Department, M.S., Mantralaya,)
Mumbai- 32.)
- 2) **The Commissioner,**)
Animal Husbandry,)
M.S., Pune.) .. **RESPONDENTS**

APPEARANCE : Smt. Vidya Taksal, Advocate holding for Shri
A.S. Deshmukh, Advocate for the Applicant.

: Shri M.P. Gude, Presenting Officer for the
Respondents.

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

DATE : 26.06.2018.

O R D E R

1. By filing the present Original Application, the applicant has sought direction to the respondent No. 1 to consider his representation for making transfer on request on his

choice posting in pursuance of the policy of the State Government in the General Transfers of the year 2018.

2. The applicant possesses qualification of Bachelor in Veterinary Science. He belongs to O.B.C. category. He entered in the service of respondents on 20.04.1992 as a directly recruited Live Stock Development Officer upon his due selection and recommendation by the M.P.S.C. He served in the cadre of Live Stock Development Officer till 2012. He worked in the Tribal area for a period of 12 years. On 03.10.2012, he entered in the cadre of Asstt. Commissioner of Animal Husbandry as direct recruitment upon due selection and recommendation by the M.P.S.C. and since then, he is working in that cadre. He was appointed as Asstt. Commissioner at Navapur in Nandurbar District, which is Tribal area. He worked on that post till 09.06.2014 for a period of 1 year and 8 months and thereafter, he was posted as Project Officer in Tribal Development Department at Nandurbar on deputation from 10.06.2014 to 17.07.2015 and he worked there for a period of 1 year and 1 month till 17.07.2015. Thereby he continuously worked for a period of 3 years and 1 month during June 2012 to 17.07.2015 in Tribal area. On 16.07.2015, the Tribal Development Department issued the order thereby repatriated him to his

parent department viz. the Department of Animal Husbandry by terminating his deputation and accordingly, he has been relieved from the Tribunal Development Department. Consequently, he reported to respondent No. 2 on 18.09.2015 and submitted request application with a request to post him as Animal Husbandry Officer either in Nashik Zilla Parishad or in Thane Zilla Parishad by extending the benefit of policy decision of the State Government vide G.R. dated 30.10.2006. The said request has been forwarded by the respondent No. 2 to respondent No. 1 with a specific recommendation that he be given posting as District Animal Husbandry Officer in Nashik Zilla Parishad, but the respondent No. 1 posted him as Assistant Commissioner in Taluka Mini Veterinary Policlinic, Muktaingar, Dist. Jalgaon, without following the provisions of G.R. and issued order dated 09.12.2015 accordingly. The said order is in violation of the G.R. issued by the Government. The applicant has joined the said post belatedly on 23.06.2017 due to his ill-health and started discharging duties as Asstt. Commissioner. Thereafter, he has again filed representation dated 28.11.2017 to the respondent No. 1 urging that he may be given choice posting as District Animal Husbandry Officer either at Rajguru Nagar (Khed) or Shirur in Pune District or Sinnar in Nashik District or Akole in Ahmednagar District in view of the policy decision taken by the

Government in that regard. It is his further contention that the applicant has also mentioned the fact that his father has undergone operation due to which he was bedridden and therefore was required to take care. It is his contention that in spite of representation dated 28.11.2017, no response has been received from the respondent No. 2 and therefore, he approached this Tribunal by filing the present Original Application and prayed to direct the respondent No. 1 to consider his representation and to post him in one of the choice posts given by him in pursuance of the Government policy at the time of General Transfers of the year 2018.

3. The respondent Nos. 1 and 2 have resisted the contention of the applicant by filing their affidavit in reply. It is their contention that the G.R. dated 30.10.2006 referred by the applicant is not a G.R., but it is a Government Circular issued by the Animal Husbandry, Dairy Development and Fisheries Department and therefore, the applicant cannot be take benefit of the said Circular as G.R. It is their contention that the transfer from Naxalite affected and Tribal area is governed by the guidelines of the Government resolution issued in General Administration Department on 06.08.2002 and as per para no. 2(d)(3) of the said G.R., the concerned Government employee,

who worked in Tribal area should make an application 3 months in advance before completion of his tenure of posting to the competent transferring authority stating three districts of his choices for posting and the copy has to be marked to the District Collector/Divisional Commissioner. But the applicant has not made said application well in advance before his transfer and therefore, he has been posted at Jalgaon, which near to Nashik district, which is his place of choice. It is their contention that the applicant has not completed his normal tenure of posting at Muktai Nagar as provided in Section 3 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short the 'Transfer Act 2005'). He is not due for transfer at the time of General Transfers of the year 2018 and therefore, his case cannot be considered for transfer. It is their contention that since the applicant has not complied the requirement of G.R. issued by the Government regarding the transfer of the employees, who worked in the Tribal area or Naxalite affected area, the applicant cannot seek direction as prayed for. On these ground, they have prayed to reject the present Original Application.

4. I have heard Smt. Vidya Taksal, learned Advocate holding for Shri A.S. Deshmukh, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

5. Admittedly, the applicant entered the services in the Animal Husbandry Department as directly recruited Live Stock Development Officer upon his due selection and recommendation by the M.P.S.C. w.e.f. 20.04.1992. He worked in that cadre from 1992 to 2012. There is no dispute about the fact that in the cadre of LDO the applicant worked in the Tribal area for a period of about 12 years. Admittedly, the applicant was appointed in the cadre of Assistant Commissioner of Animal Husbandry as a direct recruit upon due selection and recommendation by M.P.S.C. w.e.f. 03.10.2012 and thereafter, he was posted at Navapur in Nandurbar District as Assistant Commissioner and he worked on the said post till 06.06.2014. Thereafter, he was posted as Project Officer in Tribal Development Department on deputation. On 16.07.2015, the Tribal Development Department repatriated him to his parent department viz. the Department of Animal Husbandry on 18.09.2015 and the applicant has submitted application to give him posting as Animal Husbandry

Officer either in Nashik Zilla Parishad or in Thane Zilla Parishad by extending the benefit of policy decision taken by the Government in respect of the transfers of the officer, who worked in the Tribal or Naxalite area. On 09.12.2015, the respondent No. 1 issued transfer order and posted the applicant at Muktainagar, Dist. Jalgaon as Assistant Commissioner in Taluka Mini Veterinary Polyclinic, Muktaingar, Dist. Jalgaon. The applicant has not joined the said posting immediately, but he joined the new posting belatedly on 23.06.2017 after lapse of 1 year and 6 months and since then, he is serving there. Thereafter, on 28.11.2017, the applicant has filed the application to the respondent No. 1 with a request to post him either in Nashik, Thane, Ahmednagar, Solapur or Pune District, but no decision has been taken by the respondents on his application.

6. Learned Advocate for the applicant has submitted that in view of the policy decision taken by the Government, the Government has to consider the request of the employees, who rendered services in the Tribal or Naxalite area to post them in the district of their choice. He has submitted that the G.R. dated 11.07.2000 has been issued accordingly. Thereafter, circular has been issued by the Animal Husbandry Department on 31.10.2006. He has submitted that till the year 2015, the

applicant worked in the Tribal area i.e. in Nandurbar District more particularly in Navapur, Dist. Nandurbar and therefore, he is entitled to get benefit of the said G.R. and to claim his next posting at the place of his choice. He has submitted that after repatriation of the applicant to his parent department i.e. the Department of Animal Husbandry, the applicant made request to the respondents to post him either at Nashik Zilla Parishad or at Thane Zilla Parishad. But his request has not been considered by the respondents and he has been posted as Assistant Commissioner at Taluka Mini Veterinary Polyclinic, Muktaingar, Dist. Jalgaon by order dated 09.12.2015. He has submitted that the said order is in violation of the G.R. dated 11.07.2000 and therefore, the applicant made another representation with the respondents on 28.11.2017 and claimed his posting by giving options of his choice, but the respondents have not taken decision on it. The respondents ought to have considered the representation of the applicant at the time of General Transfers of the year 2018 and ought to have given him posting as per his choice as per the G.R. dated 11.07.2000 and therefore, he prayed to allow the present Original Application.

7. Learned Presenting Officer has submitted that as per the G.R. dated 11.07.2000, the applicant ought to have file the

application three months prior to completion of his tenure giving options or choices of his posting and to give names of three districts where he wishes to be posted and thereafter, the respondents has to give him posting in those districts as per the administrative convenience and availability of the vacancy. He has submitted that the applicant has been transferred in the year 2015 and he has been posted at Muktai Nagar, District Jalgaon which is near to Nashik, the district for which the applicant has given his choice. He has submitted that the applicant has not complied the requirements of the G.R. well in advance and therefore, he cannot claim benefit of the said G.R. At present the applicant is serving at Muktai Nagar, Dist. Jalgaon, which is not a Tribal area or Naxalite affected area and therefore, he prayed to dismiss the present Original Application.

8. On perusal of the record, it reveals that the Government has taken a policy decision to give posting to the employees, who worked in the Tribal area on the place of their choice and issued G.R. dated 11.07.2000. The provisions of said G.R. are material and therefore, I reproduce the material provisions, which are incorporated in the G.R. in Paragraph no. 2 as under:-

“

आदिवासी क्षेत्रात चांगल्याप्रकारे काम
केलेल्या अधिकारी/कर्मचारी यांना

पसंतीच्या ठिकाणी बदली देणेबाबत.

महाराष्ट्र शासन,
सामान्य प्रशासन विभाग,
शासन परिपत्रक क्रमांक-टीआरएफ-२०००/एम/८/प्र.क्र./बारा,
मंत्रालय, मुंबई ४०० ०३२,
दिनांक - ११ जुलै, २०००

संदर्भ :- १.....
२.....
३.....

शासन परिपत्रक

१

२. संदर्भाधीन क्रमांक ३ येथील दिनांक २७ नोव्हेंबर, १९९७ च्या परिपत्रकानुसार शासकीय सेवकांच्या नियतकालिक बदल्यासंदर्भात सर्वसाधारण स्वरूपाची मार्गदर्शक तत्वे विहित करण्यात आलेली आहेत. या मार्गदर्शक तत्वांचे संदर्भात आदिवासी क्षेत्रातील कर्मचारी/अधिकारी यांच्या बदल्यासंबंधी दिनांक ७ जानेवारी, १९९१ च्या परिपत्रकान्वये देण्यात आलेल्या आदेशांचे पुनर्विलोकन करण्याची बाब शासनाच्या विचाराधीन होती. याबाबत आता **सोबतच्या परिशिष्टात नमूद केलेल्या** आदिवासी क्षेत्रांकरिता खालीलप्रमाणे सुधारीत आदेश निर्गमित करण्यात येत आहेत:-

अ) आदिवासी क्षेत्रात ३ वर्षे चांगले काम केलेल्या गट 'क' व गट 'ड' च्या कर्मचा-यांना त्यांच्या पसंतीच्या जिल्हयात सोईप्रमाणे नेमणूका देण्यात याव्यात.

ब) आदिवासी क्षेत्रात किमान २ वर्षे चांगले काम केलेल्या गट 'अ' व 'ब' च्या अधिका-यांना देखिल त्यांच्या पसंतीच्या जिल्हयात सोईनुसार नेमणूका देण्यात याव्यात.

क) वरीलप्रमाणे पसंतीच्या जिल्हयांत बदली मिळण्यासाठी, आदिवासी क्षेत्रात काम करणा-या अधिकारी/कर्मचारी यांनी उपरोक्त विहित कार्यकाळ संपण्यापूर्वी किमान ३ महिने आधी त्यांच्या पसंतीच्या जिल्हयांची तीन नावे सक्षम प्राधिका-यांना कळवावीत व त्याची प्रत तो कार्यरत असलेल्या क्षेत्राच्या जिल्हाधिकारी/विभागीय आयुक्त यांना देण्यात यावी.

ड) मात्र महसूल व पोलीस विभागातील अधिकारी/कर्मचा-यांना त्यांच्या स्वतःच्या किंवा कुटुंबियांच्या नावे स्थावर मालमत्ता असलेली ठिकाणी वगळून त्यांच्या पसंतीच्या अन्य जिल्हयातील ठिकाणी नेमणूका देण्यात याव्यात.”

As per the said provisions, the Government employee, who worked in the Tribal area has to give names of three districts of his choice to the competent authority three months in advance

before completion of his tenure on the said posting and copy of the same has to be addressed to the Collector/Divisional Commissioner. On receiving the said choices, the competent authority has to act upon and to give posting to the said officer in the district. in respect of which he has exercised the options as per the administrative convenience and considering the vacancy therein. The said G.R. confers the right on the employees, who worked in the Tribal area or Naxalite affected area to give names of districts of their choice, wherein they wishes to be posted. But the said right has to be exercised by the concerned employee three months before the transfer when he was serving in the Tribal area. The said options cannot be exercised later on when such employees posted at other places, which is not tribal area. In the instant case, the applicant has not exercised the said right conferred by him in view of the G.R. dated 11.07.2000 before his transfer from Muktainagar. He simply made a request to the respondent No. 1 to post him in Thane Zilla Parishad or Nashik Zilla Parishad. Not only this, but thereafter, he has not challenged the transfer order dated 09.12.2015, by which he has been posted at Muktainagar, Dist. Jalgaon, but he has accepted the order and he joined the said posting at Muktainagar, Dist. Jalgaon belatedly on 23.06.2017 after expiry of a period of one and half year. The applicant is serving at Muktainagar, Dist.

Jalgaon which is not a Tribal area or Naxalite affected area and therefore, now he cannot claim benefit of the G.R. dated 11.07.2000. Therefore, no such direction can be issued to the respondents for considering the case of the applicant for transfer on the basis of the G.R. dated 11.07.2000 at the time of general transfer of the year 2018. Not only this, but the applicant has not completed his normal tenure of posting at Muktainagar, Dist. Jalgaon, as provided under Section 3 of the Transfer Act 2005. He is not due for transfer and therefore, his case cannot be considered for transfer in the General Transfers of the year 2018. Therefore, no such direction as prayed for by the applicant is granted. There is no merit in the present Original Application. Consequently, the O.A. deserves to be dismissed.

9. In view of the discussions in foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

PLACE : AURANGABAD.

DATE : 26.06.2018.

KPB S.B. O.A. No. 62 of 2018 BPP 2018 posting

(B.P. PATIL)
MEMBER (J)