

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.197/2019

DISTRICT: NANDURBAR

Shri Vijaykumar Pandharirao Narwade,
Age : 55 years, Occu. : Govt. Service,
Working as Superintendent (Group-B),
Public Trust Registration Office, Nandurbar,
R/o. C/o. Padmane House, Ganpati Mandir,
Saraswati Nagar, Dist. Buldhana-443001. ...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through: Principal Secretary,
Law and Judicial Department,
Mantralaya, Mumbai-400 032.
2. The Charity Commissioner,
(Maharashtra State),
83, Annie Beasant Road,
Worli Naka, Mumbai-40001. ...RESPONDENTS

APPEARANCE :Shri M. R. Kulkarni, Advocate for the
Applicant.
:Smt. Priya Bharaswadkar, Presenting
Officer for the respondents.

CORAM : B. P. Patil, Acting Chairman

Reserved on : 04-12-2019

Pronounced on : 06-12-2019

J U D G M E N T

1. By filing the present O.A., the applicant has challenged the order dated 10-07-2018 issued by the respondent no.2 rejecting his representations and prayed to quash and set aside the same and also prayed to direct the respondents to post him at Buldhana in view of the Circular dated 11-07-2000 and G.R. dated 06-08-2002.

2. The applicant was initially working in Rural Broadcasting department and came to be transferred on the establishment of Respondent No.2 on 11-02-2002 as a Junior Clerk. He worked as Junior Clerk at different places i.e. at Buldhana, Gadchiroli, Nanded, Akola and Washim during the year 2002 to 2011. He was promoted as Senior Clerk and posted at Buldhana, Nandurbar and Jalna. In the year 2017, he was promoted as Superintendent Group-B and posted in the office of Assistant Charity Commissioner, Nandurbar and since then he is working there. It is his contention that he was posted as Senior Clerk during the period from 27-10-2015 to 19-05-2016 at Nandurbar. Thereafter, again he was posted at Nandurbar from 20-05-2016 till today and he is working on the post of Superintendent there. Nandurbar district is

notified as a tribal area. It is his contention that except a period of 4 months, he is serving there since the year 2015. It is his contention that he has crossed age of 50 years. Therefore, he is entitled to transfer out of tribal area in view of the G.R. dated 06-08-2002 and Circular dated 11-07-2000.

3. Therefore, he submitted his representations dated 22-09-2017 and 24-09-2017 to the respondent no.2 and requested to post him at Buldhana as the employee working at Buldhana was due for transfer but the respondents had not considered his representations. Therefore, he has approached this Tribunal by filing the O.A.No.200/2018 which came to be disposed of by order dated 04-06-2018 with direction to the respondent no.2 to consider representation of the applicant and decide it within the period of 2 months. Thereafter, he filed fresh representations dated 04-06-2018 and 07-07-2018 reiterating his contentions raised in the earlier representations. The respondent no.2 rejected his representations on 10-07-2018 on the grounds that he has not completed his tenure of 2 years at Nandurbar and due to administrative difficulty and non-availability of post. It

has been further observed by the respondent no.2 while rejecting his application that a departmental enquiry is pending against him at Buldhana and there is every possibility that he will pressurize the witnesses and tamper the evidence in case of his transfer at Buldhana. The applicant protested the impugned order by filing representation dated 01-01-2019 to the respondent no.2. It is contention of the applicant that the impugned order is fallacious. It is his contention that the said order is in contravention of the policy decision taken by the Government in view of the Circular dated 11-07-2000 and G.R. dated 06-08-2002.

4. It is his contention that there are more than 45 persons who have never been posted in tribal area and below the age of 50 years. Not only this but 84 persons are working at the same station for more than 8 years to 30 years but the respondents have not considered the said facts while passing the impugned order. It is his contention that he requested the Enquiry Officer in the Departmental Enquiry to stop the departmental enquiry till the decision of the criminal case pending against him. It is his contention that in the enquiry the charges have been framed and

evidence of the witnesses has been recorded. Therefore, no question of tampering the evidence and pressurizing the witnesses arises. It is his contention that the respondents had not considered all these aspects while passing the impugned order. Therefore, he has approached the Tribunal by filing the present O.A. and challenged the impugned order dated 10-07-2018 passed by the respondent no.2. He has prayed to direct the respondents to post him at Buldhana in view of the Circular dated 11-07-2000 and G.R. dated 06-08-2002.

5. The respondent no.2 has filed affidavit in reply and resisted the contentions of the applicant. He has not disputed the fact regarding appointment of the applicant, service rendered by him at different places, his promotions etc. It is his contention that the Charity Commissioner is Administrative Head and disciplinary authority for Class-II and Class-III employees. He has denied that the applicant has been posted at Nandurbar since 27-10-2015 to 19-05-2016. It is his contention that he was posted at Jalna as Senior Clerk on 13-05-2017 and he worked there till September, 2017. Thereafter, the applicant was transferred and posted at Nandurbar since 29-09-2017 and

still he is working there. It is his contention that the applicant was transferred at Nandurbar on promotion. He has not completed his tenure of 2 years at Nandurbar. He has denied that he has been transferred at Nandurbar without any justification. It is his contention that it is the prerogative of the administration to transfer any employee to any place in view of the administrative exigency subject to the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. He submits that the transfer is an incident of Government service and who would be transferred where, is the right of appropriate authority to decide. It is his contention that the Civil Services Board has recommended transfer of the applicant at Nandurbar on promotion as Superintendent due to administrative difficulty. In view of the recommendations of the Civil Services Board, the respondent no.2 transferred the eligible employees. At the time of general transfer of 2018, the case of the applicant for request transfer was placed before the Civil Services Board. The Civil Services Board had not recommended the transfer of the applicant as he was not due for transfer and as there was administrative difficulty.

6. Thereafter, the applicant filed O.A.No.200/2018 requesting for transfer at Buldhana, Jalna or Washim. On 05-06-2018, this Tribunal had disposed of the said O.A. directing the respondent no.2 to consider representation of the applicant and to decide the same on merit within a period of 2 months. At that time, Advocate of the applicant submitted that post at Buldhana was vacant and not filled in but it was against the factual position. It is his contention that the applicant had given wrong instruction to his Advocate knowing fully well that two Superintendents were working at Buldhana office at that time against the two sanctioned posts. The applicant misled the Tribunal and got the said O.A. disposed of.

7. It is his contention that the applicant is facing Departmental Enquiry No.217/2014 at Buldhana. The Assistant Charity Commissioner, Buldhana is appointed as Enquiry Officer in the matter. The witnesses in the matter are from Buldhana, and therefore, it is likely that the applicant may pressurize the witnesses or tamper the evidence in the event of his transfer at Buldhana. Therefore, his request has not been accepted on that ground. Not only this but the applicant had also not

completed his normal tenure at Nandurbar as he has been posted there on promotion on 20-09-2017. The applicant has not made out any ground for his transfer on request as well as on the basis of different grounds mentioned in the Circular dated 11-07-2000 and G.R. dated 06-08-2002. Therefore, his application was rejected. It is his contention that the application has been rejected by recording reasons and therefore he has justified the impugned order and prayed to reject the O.A.

8. I have heard Shri M.R.Kulkarni Advocate for the Applicant and Smt. Priya Bharaswadkar Presenting Officer for the respondents. I have perused the documents placed on record by the parties.

9. Admittedly, the applicant was initially appointed in Rural Broadcasting Department of Government of Maharashtra. Thereafter, he came to be transferred on the establishment of respondent no.2 on 11-02-2002 as a Junior Clerk. He worked at different places as Junior Clerk i.e. at Buldhana, Gadchiroli, Nanded, Akola and Washim. Thereafter, he was promoted as Senior Clerk and posted at Buldhana. He worked as Senior Clerk at Buldhana, Nandurbar, Jalna during the period from 01-06-2011 to

28-09-2017. Thereafter, he was promoted as Superintendent Group-B and posted in the office of Assistant Charity Commissioner, Nandurbar 29-09-2017 and since then he is working there on the post of Superintendent.

10. Admittedly, the applicant moved representations dated 22-09-2017 and 24-09-2017 to the respondent no.2 and requested to post him at Buldhana as he is aged more than 50 years and working in tribal area. His representations were decided by the respondent no.2. Therefore, he has approached this Tribunal by filing the O.A.No.200/2018 which came to be disposed of by order dated 04-06-2018 with direction to the respondent no.2 to consider representations of the applicant and decide it within the period of 2 months. The applicant thereafter filed representations dated 04-06-2018 and 07-07-2018 reiterating the contentions raised in the earlier representations. Said representations were rejected by the respondent no.2 by impugned order.

11. Learned Advocate for the applicant has submitted that the applicant is more than 50 years old. He is serving at Nandurbar since 27-10-2015 till today except 4 months

when he was transferred to Jalna. He has submitted that the applicant has completed more than 2 years in tribal area i.e. at Nandurbar. Therefore, in view of the Circular dated 11-07-2000 and G.R. dated 06-08-2002, the applicant is entitled to get transfer out of tribal area. He has submitted that the said Circular and G.R. provide that the employee who has crossed 50 years of age cannot be posted in tribal area. He has submitted that the applicant made several representations with the respondent no.2 on the basis of said G.R. and Circular and requested to post him at Buldhana or other place but his request has not been considered. Therefore, he had approached this Tribunal by filing the O.A.No.200/2018 which came to be disposed of by order dated 04-06-2018 with a direction to the respondent no.2 to consider representation of the applicant and decide it within the period of 2 months. Thereafter, he filed fresh representations dated 04-06-2018 and 07-07-2018 reiterating his contentions raised in the earlier representations. The respondent no.2 rejected his representations on 10-07-2018. Learned Advocate for the applicant has submitted that the reasons mentioned by the respondent no.2 while rejecting the request of the applicant

are not just and proper. Therefore, he has prayed to quash the said order by allowing the present O.A.

12. Learned Advocate for the applicant has submitted that there are so many employees on the establishment of the respondent no.2 who never worked in tribal area and some of the employees are serving at one place for more than 8 to 30 years. He has submitted that there are several numbers of employees who are below 50 years but they are never posted in tribal area. He has argued that the respondent no.2 ought to have posted one of them at Nandurbar and transferred the applicant at the place of his choice in view of the above said Circular and G.R. But the respondent no.2 has not considered the said facts and rejected the request of the applicant, which is discriminatory. Therefore, he prayed to quash the impugned order and allow the O.A.

13. He has submitted that the said issue has been considered by the Hon'ble High Court in **Suo Motu Writ Petition No.3278/2010** in the case of **Purnima Upadhay V/s. Addl. Chief Secretary, Health, Government of Maharashtra** decided 13-09-2012 and the Hon'ble High Court issued direction to follow the provisions of G.R. dated

06-08-2002. He has further submitted that similar directions were given by the Hon'ble High Court of Judicature of Bombay Bench at Nagpur in **Writ Petition No.2770/2013** in case of **Ramtek Taluka High School Shikshak Anyay Nivaran Kruti Samiti through its President Sheshrao S. Neware V/s. The State of Maharashtra through its Secretary, Dept. of Rural Development and Water Resources and Another** decided on 17-01-2014.

14. He has further submitted that this Tribunal has also dealt with similar issue in case of similarly situated persons in number of O.As. i.e. O.A.No.761/2016 in case of Shri A.V.Warghade V/s. State of Maharashtra & Ors. decided on 01-09-2016, in case of Shri Raviraj Ganpat Ilawe V/s. The Principal Secretary, Industries, Energy and Labour Department, State of Maharashtra in O.A.No.392/2015 decided on 28-01-2016, in case of Dr. Sahil Vasantrao Patil V/s. State of Maharashtra & Ors in O.A.No.601/2016 decided on 22-08-2016, in case of Dr. Vilas Namdeorao Ghate V/s. State of Maharashtra & Ors. in O.A.No.607/2016 decided on 04-01-2017, in case of N.B.Patil V/s. State of Maharashtra & Ors. in

O.A.No.529/2016 decided on 27-06-2017, in case of Shrikant Dinkarrao Londhe V/s. State of Maharashtra & Ors. in O.A.No.81/2017 decided on 31-10-2017, in case of Shri Prashant Haribhau Lambade V/s. State of Maharashtra & Ors. in O.A.No.616/2017 decided on 22-03-2018, in case of Pramod Laxmanrao Meshram V/s. State of Maharashtra & Ors. in O.A.No.965/2017 decided on 28-03-2018, in case of C.M.Khairnar V/s. State of Maharashtra & Ors. in O.A.No.925/2017 decided on 16-04-2018, in case of Dinesh Rajatkar V/s. State of Maharashtra & Ors. in O.A.No.968/2017 decided on 16-04-2018, in case of Meghraj Sudhakar Morey V/s. State of Maharashtra & Ors. in O.A.No.36/2018 decided on 04-05-2018 and in case of Dilip Narayan Bhagat V/s. State of Maharashtra & Ors. in O.A.No.628/2018 decided on 08-02-2019 and issued directions to the respondents to consider cases of all those similarly situated employees in view of the abovesaid Circular and G.R.

15. He has submitted that case of the applicant is also squarely covered by the above said decisions and therefore it is necessary to quash the impugned order and to direct the respondents to consider the case of the applicant in

view of the Circular dated 11-07-2000 and G.R. dated 06-08-2002 by allowing the O.A.

16. Learned P.O. has submitted that the respondent no.2 has rightly rejected the request of the applicant by the impugned order by recording sound reasons. She has submitted that the applicant is serving at Nandurbar since the date of his promotion i.e. from 29-09-2017 on the post of Superintendent in the office of Assistant Charity Commissioner. He has not completed his normal tenure of posting at Nandurbar. He was not due for transfer in view of the provisions of the Transfer Act, 2005. Not only this but he has also not completed 2 years' tenure as provided in the Circular dated 11-07-2000 and G.R. dated 06-08-2002 at tribal area. Before completion of 2 years' period in tribal area, the applicant has moved representations and sought transfer from Nandurbar to Buldhana on request. She has argued that the respondent no.2 has rightly rejected the representations as the applicant has not completed 2 years' tenure as provided under G.R. dated 06-08-2002, the respondent no.2 had not given benefit of the said G.R. to the applicant.

17. Learned P.O. has argued that the applicant sought transfer at Buldhana where 2 posts of Superintendent are sanctioned but the said posts are already filled in. There is no vacancy at Buldhana, and therefore, the applicant cannot be posted there. Hence, the respondent no.2 has rightly rejected the request of the applicant. She has further submitted that the applicant has been promoted and posted at Nandurbar considering the vacancy there on account of administrative exigency. Therefore, the applicant has not been transferred at Buldhana, and therefore, his request has been rejected. She has argued that there is no illegality or irregularity in the impugned order. Therefore, she has supported the impugned order and prayed to dismiss the O.A.

18. On perusal of record, it reveals that the applicant has been promoted on the post of Superintendent Group-B in 2017. Thereafter, he has been posted in the office of Assistant Charity Commissioner, Nandurbar as Superintendent. He joined the said post on 29-09-2017. The applicant is seeking benefit of the Circular dated 11-07-2000 and G.R. dated 06-08-2002 and asking for request transfer. There is no dispute about the fact that

the Nandurbar district is a tribal area and naxalite affected area. The applicant is serving on Group-B post. For seeking benefit as per the Circular dated 11-07-2000 and G.R. dated 06-08-2002, he has to complete 2 years' service tenure satisfactorily in tribal and naxalite affected area. The applicant is serving at Nandurbar since 29-09-2017. He has not completed 2 years' tenure as provided in the said G.R. and Circular for seeking benefit of the same at the time of filing the representations. Prior to 29-09-2017, the applicant was serving at Jalna which is a non-tribal area. In order to seek benefit of the abovesaid G.R. and Circular, one must complete tenure as provided therein and that too his service must be satisfactory in that area. In the instant case, the applicant has not completed 2 years' tenure in tribal area when he moved the representations. Therefore, the respondent no.2 has rightly rejected the request/representations of the applicant seeking benefit of the Circular dated 11-07-2000 and G.R. dated 06-08-2002.

19. The applicant has requested his transfer at Buldhana by making representations. At that time, there was no vacancy at Buldhana. Two posts of Superintendent at Buldhana were already filled in. Therefore, it was not

possible to the respondent no.2 to transfer the applicant at Buldhana. Therefore, the respondent no.2 has rejected the representations of the applicant. In view thereof, I find no illegality in the impugned order issued by the respondent no.2. Not only this but the departmental enquiry is pending against the applicant and Assistant Charity Commissioner, Buldhana is the Enquiry Officer in the said Enquiry. Witnesses in the enquiry were from Buldhana, and therefore, respondent no.2 has rejected the application of the applicant to transfer him at Buldhana apprehending that there is probability of pressurizing the witnesses in the departmental enquiry of the applicant in case he is posted at Buldhana. There is no illegality in the said reasoning recorded by the respondent no.2 while rejecting the representations of the applicant. Therefore, I find no illegality in the impugned order.

20. Applicant's request to transfer him from tribal area on the basis of the Circular dated 11-07-2000 and G.R. dated 06-08-2002 was premature as he had not completed 2 years' tenure at Nandurbar. Therefore, his request has been rightly rejected by the respondent no.2.

21. I have gone through the above said judgments/ citations relied upon by the learned Advocate for the applicant. I have no dispute regarding the principles laid down therein. Facts in those cases are not identical with the facts in the present case. Therefore, principle laid down in the said decisions is not attracted in the present case. The applicant has not completed 2 year's tenure at Nandurbar as provided under the Circular dated 11-07-2000 and G.R. dated 06-08-2002. Therefore, he is not entitled to get transfer from Nandurbar on the basis of the Circular dated 11-07-2000 and G.R. dated 06-08-2002. Therefore, the abovesaid decisions are not much helpful to the applicant in the instant case.

22. Learned Advocate for the applicant has submitted that the applicant has now completed 2 years' tenure, and therefore, the directions may be given to the respondent no.2 to transfer him from Nandurbar on the basis of Circular dated 11-07-2000 and G.R. dated 06-08-2002. If the applicant intends to avail benefit of the abovesaid G.R. and Circular, he is at liberty to make representation with the respondent no.2 at appropriate time. Therefore, no such directions can be issued to the respondents in the

absence of specific representation of the applicant at present.

23. Considering the abovesaid facts and circumstances, in my view there is no illegality in the impugned order. Respondent no.2 has rightly rejected the representations of the applicant by recording said reasons. Therefore, no interference is called for in the impugned order. There is no merit in the O.A. Consequently, it deserves to be dismissed.

24. In view of the discussion in the foregoing paragraphs, O.A. stands dismissed without any order as to costs.

(B. P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 06-12-2019.