

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.335/2018

DISTRICT: JALNA

Suresh s/o. Mohanlal Jumani,
Age : 54 years, Occu. : Service
as Office Superintendent in the office of
Excise Superintendent, Jalna,
R/o. C/o. Superintendent of State Excise,
Collectorate Campus, Jalna.

...APPLICANT

V E R S U S

- 1) The Additional Chief Secretary to
Govt. of Maharashtra, Home Department,
Mantralaya, Mumbai – 400 032.
- 2) The Commissioner of State Excise,
Old Customs House,
Shahid Bhagat Singh Road,
Maharashtra State,
Fort Mumbai – 400 023.

...RESPONDENTS

APPEARANCE : Shri Ajay S. Deshpande, Advocate for the
Applicant.

: Smt. Deepali Deshpande, Presenting
Officer for the respondents.

CORAM : B. P. Patil, Member (J)

DATE : 7th January, 2019

J U D G M E N T
[Delivered on 7th day of January, 2019]

1. By filing the present O.A. the applicant has challenged the impugned transfer order dated 18-05-2018 and prayed to quash and set aside the said order and also prayed to direct the respondent no.2 to effect his transfer either at Mumbai or at Thane whenever vacancy arises, in view of the guidelines in the G.R. dated 08-06-2002.

2. The applicant has joined services of the respondents as Clerk on 07-12-1988. On 10-06-2005 he was promoted. On 30-12-2011 he was again promoted as Office Superintendent which is a Group-B (Non-gazetted) post. On promotion to the cadre of Office Superintendent, he came to be posted at Dhule and accordingly he joined his duty at Dhule on 30-12-2011. His wife is serving as Junior Telegraph Officer in BSNL Office at Mumbai. The applicant was working at Dhule since 30-12-2011 and thereafter he started working at Nandurbar since June, 2015. Both Dhule and Nandurbar are tribal districts. Applicant has submitted that he has discharged his duties with utmost sincerity and devotion. After completing his normal tenure of 3 years in tribal district, he started making

representations with the respondents for posting him at any of the vacancies at Mumbai or Thane on the basis of the policy decision of the Government.

3. It is his further contention that the applicant has suffered paralytic stroke and his left side is affected. He has also undergone brain surgery as he suffered from Brain T.B. On this ground also he has sought transfer either at Mumbai or at Thane but his request was not considered by respondent no.2. Not only this but in the month of June 2015, he was transferred to Nandurbar (which is a tribal district) from Dhule. Thereafter also the applicant made several representations with the respondents for making his transfer at Mumbai or Thane but the respondents had not considered his request. Therefore, he approached this Tribunal by filing the O.A.No.591/2015. It remained pending till April, 2016. In view of the ensuing transfer of that season, he got disposed of the O.A. with direction to the respondents to consider his representation dated 22-04-2016. No transfers from the cadre of Office Superintendent were effected in general transfer of the year 2016, and therefore, the applicant did not feel it appropriate to make any grievance regarding non-

consideration of the representation inspite of the direction given by this Tribunal. However, he had submitted representation dated 04-02-2017 to the respondents and requested to effect his transfer from Nandurbar to Mumbai in the general transfers of 2017 but his representation was not considered. It is his contention that in view of the policy decision of the Government by G.R. dated 11-07-2000 and 06-08-2002, the Government servants who rendered services in tribal areas should submit their options of choice posting three months before completion of the normal tenure to the competent authority and on receipt of the same, the competent authority should take necessary steps for giving choice posting to the said Government servants. In case of exceptional circumstances, if such transfer is not possible immediately, the competent authority is required to bring the said fact to the notice of the Government and should intimate accordingly to the concerned employee. However, while doing so, the choice of posting given by such employee should be continued for three years and it is imperative on the competent authority to effect his transfer at the place of his choice.

4. Applicant has further submitted that the respondent no.2 by communication dated 14-05-2018 sought information from all the incumbents who were due for transfer. The applicant submitted places of his choice posting in response to the said communication through E-mail on 14-05-2018 and requested them to transfer him either at Mumbai or at Thane. Respondent no.2 issued transfer order on 18-05-2018 and transferred the applicant from Nandurbar to Jalna without considering his request and without following the guidelines given in G.R. dated 06-08-2002. It is his contention that at least 4 Government servants are transferred from one table to another table within the Commissionerate at Mumbai by giving go-bye to the Government policy. Therefore, the applicant had submitted another representation and requested to effect his transfer at the place of his choice as he rendered almost 6 and half years' service in the tribal districts i.e. at Dhule and Nandurbar. Meanwhile, he has been relieved from Nandurbar on 19-05-2018. Thereafter also he again submitted another representation dated 24-05-2018 reiterating his earlier claim. He joined his new posting at Jalna and thereafter filed the present O.A. It is

his further contention that the impugned order of transfer is in violation of the guidelines given in G.R. dated 06-08-2002 and therefore he prayed to quash the impugned order and prayed to direct the respondents to transfer and post him either at Mumbai or at Thane whenever vacancy arises.

5. Respondent no.2 has filed affidavit in reply and resisted the contentions of the applicant. He has not disputed the fact that the applicant has worked in the office of Superintendent, State Excise Department, Nandurbar and he completed his normal tenure there. He has not disputed the fact that the applicant was due for transfer at the time of general transfer of the year 2018 and he has been transferred from Nandurbar to Jalna. It is contended by him that General Administration Department of Government of Maharashtra issued Resolution dated 09-04-2018 and provided parameters in respect of transfers by counselling. It is also provided therein that seniority also needs to be counted while transferring the Government servants. It is his contention that there are other senior-most and experienced Office Superintendents who were due for transfer. After considering their request and posting them at Mumbai or Thane there was no vacancy at Mumbai

or Thane, therefore, the transfer of the applicant has been made at Jalna. It is his contention that there is no violation of the provisions of any G.R. and the impugned order of transfer has been issued in view of the guidelines given in G.R. dated 09-04-2018. It is contended by him that the applicant is not subjected to any arbitrary or unequal treatment by the respondent authorities.

6. It is his further contention that the case of the employees who were due for transfer were considered by the Civil Services Board and after considering their seniority transfer orders have been issued. It is his contention that at present there is no vacancy in the cadre of Office Superintendent, in the office of State Excise, Mumbai or Thane or Commissioner Office at Mumbai. It is his contention that as and when the vacancy occurs either at Mumbai or Thane for the post of Office Superintendent then the case of the applicant would be considered on merit, provided that, he should make representation in this regard with the competent authority. He contends that there is no illegality in the impugned order of transfer and therefore, he prayed to dismiss the O.A.

7. I have heard Shri Ajay S. Deshpande Advocate for the Applicant and Smt. Deepali Deshpande Presenting Officer for the respondents. Perused documents placed on record by the parties.

8. Admittedly, the applicant joined services with the respondents as Clerk on 07-12-1988. He was initially promoted on 10-06-2005 and thereafter promoted as Office Superintendent on 30-12-2011 and posted at Dhule. He worked there upto the year 2015. In the month of June, 2015, he has been transferred to Nandurbar and he worked there till 19-05-2018. Admittedly, the wife of the applicant is serving as Junior Telegraph Officer in BSNL at Mumbai. Admittedly, the applicant rendered services for about 7 years in the naxalite and tribal area i.e. in difficult area at Dhule and Nandurbar Districts. There is no dispute about the fact that the applicant made several representations with the respondents for making his transfer either at Mumbai or at Thane on the basis of G.R. dated 11-07-2000 and 06-08-2002.

9. Admittedly, the applicant had filed one O.A.No.591/2015 in this Tribunal and prayed to direct the respondents to consider his case for general transfers of the

year 2016. That O.A. came to be disposed of with direction to the respondents to consider representation of the applicant. Admittedly, the applicant is suffering from paralysis and he has undergone surgery of Brain T.B. Admittedly, the applicant has submitted representation dated 14-05-2018 for getting posting of his choice at the time of general transfer of the year 2018. Admittedly, the applicant has made several representations and requested respondents to give him posting of his choice on the basis of G.R. dated 06-08-2002 as he rendered service for more than 6 years in the tribal and naxalite area. Admittedly, the applicant has been transferred from Nandurbar to Jalna by the impugned order dated 18-05-2018. There is no dispute about the fact that by the impugned order of transfer some of the employees in the cadre of Office Superintendent working at Mumbai or Thane have been transferred at the same place from one office to another office. Admittedly, the applicant has been relieved from Nandurbar and he joined his new posting at Jalna on 28-05-2018.

10. Learned Advocate for the applicant has submitted that the applicant had served in Dhule and Nandurbar

Districts since 30-12-2011. He rendered services in naxalite and tribal area for more than 6 years, and therefore, he is entitled to get benefit of G.R. dated 06-08-2002. He has submitted that as per the G.R., the Government servant who rendered service in the difficult area i.e. naxalite and tribal area has to be transferred at the place of his choice. He has submitted that on the basis of said G.R., the applicant had made several representations with the respondents for transferring and posting him either at Mumbai or at Thane as his wife is serving in BSNL Office at Mumbai. He has submitted that the applicant is suffering from paralysis and had undergone brain surgery as he suffered from brain T.B. On that ground also he sought transfer at the place of his choice.

11. It has been further submitted on behalf of the applicant that the respondents have not considered the provisions/guidelines in G.R. dated 06-08-2002 with proper perspective while making general transfers of the year 2018. He has submitted that some Office Superintendents working at Mumbai and Thane were due for transfer but they had not been transferred from Mumbai or Thane and they have been accommodated there only but the applicant

had been transferred to Jalna without considering his request for transfer at Mumbai or Thane on the basis of the said G.R. He has submitted that as per the said G.R. cases of the employees who were due for transfer and who worked in naxalite and tribal area had to be considered at first and thereafter transfers of other Government servants have to be made. But the said procedure has not been followed by the respondents while making transfer of the applicant, and therefore, he has been transferred to Jalna without considering his request for transfer at Mumbai or at Thane. He has submitted that since the respondents have not followed the guidelines given in G.R. dated 06-08-2002, the impugned order of transfer transferring the applicant from Nandurbar to Jalna requires to be quashed and set aside. He has also prayed to direct the respondents to consider case of the applicant as per the guidelines given in G.R. dated 06-08-2002 and to direct the respondents to give him choice posting either at Mumbai or Thane by allowing the O.A.

12. Learned P.O. has submitted that respondents had followed the guidelines given in G.R. dated 06-08-2002. She has submitted that cases of the officers serving as

Office Superintendent and who are seniors to the applicant have been considered first as per the guidelines given in G.R. dated 09-04-2018 and after accommodating them no post as claimed by the applicant was not available either at Mumbai or at Thane, and therefore, the applicant has been transferred to Jalna. Learned P.O. has submitted that there was no violation of the guidelines given in the G.Rs. while making transfer of the applicant. Therefore, the learned P.O. has justified the transfer of the applicant.

13. Learned P.O. has further submitted that at present there is no vacancy in the cadre of office Superintendent either at Mumbai or at Thane or at Commissioner Office at Mumbai, and therefore, it is not possible to transfer the applicant as per his request either at Mumbai or at Thane. She has submitted that respondents will consider the case of the applicant if he makes fresh representation as and when vacancy arises either at Mumbai or at Thane and the decision will be taken on merit. She has submitted that there is no illegality in the impugned order, and therefore, she has prayed to reject the O.A.

14. Considering the rival pleadings of the parties, it is crystal clear that the claim of the applicant is based on the

policy decision taken by the Government on 06-08-2002 in respect of the employees serving in naxalite or tribal area. The Government had taken decision in that regard in order to give relief to the employees who rendered service in difficult areas. By the said G.R., the Government has decided to give choice posting to the Government servants who served in naxalite and tribal area and for that purpose some guidelines have been issued. As per the said G.R., the concerned Government servant has to file application giving names of three districts to the competent authority for claiming choice posting. It was also decided by the Government that the concerned competent authority has to consider cases of the Government servants and given them posting as per their choice. In case if it is not possible to transfer and post the Government employee working in the difficult area at the place of his choice then the choice given by him should be considered in the next 3 years. It was made imperative on the part of the competent authority to effect the transfer of such Government servant at the place of his choice.

15. The Government has issued the G.R. dated 09-04-2018 providing guidelines to be followed at the time

of making general transfers of the year 2018. As per the guidelines, the Government has to consider the cases of the employees who were working in the difficult area first and thereafter consider the cases of other employees.

16. On perusal of the minutes of the meeting of the Civil Services Board dated 18-05-2018 filed at paper book page 37, it reveals that the Civil Services Board had not considered the procedure provided under G.R. dated 09-04-2018 while making transfers of the applicant and others. They have not considered the cases of the employees who worked in the naxalite and difficult areas first, and therefore, they have not considered the case of the applicant on priority basis. In fact, the Civil Services Board ought to have considered the case of the applicant first and options given by him. Civil Services Board ought to have given choice posting, if available, to the applicant first and then ought to have considered cases of other employees. Without following the said procedure, Civil Services Board accommodated the other employees who were serving at Mumbai and Thane. After accommodating them the Civil Services Board considered the case of the applicant and

transferred him to Jalna as no post of choice of the applicant was available either at Mumbai or Thane.

17. Respondents made transfer of the applicant without following the guidelines/provisions of G.Rs. dated 06-08-2002 and 09-04-2018. Respondents have arbitrarily and with mala fide intention considered the cases of other employees who have not worked in difficult area and filled the posts which were vacant and available at Mumbai and Thane at the time of General Transfers of 2018, and thereafter, considered the case and transferred the applicant at Jalna on the ground that no post of his choice was available. This fact shows arbitrariness on the part of the respondents in not considering request of the applicant to transfer him either at Mumbai or Thane. The act of the respondents not considering the genuine request of the applicant is in violation of the guidelines in the G.Rs. dated 06-08-2002 and 09-04-2018. Therefore, the impugned order of transfer dated 18-05-2018 transferring the applicant from Nandurbar to Jalna requires to be quashed and set aside. Not only this but it is necessary to issue the direction to the respondents to consider the case of the applicant afresh and to give him choice posting as per the

provisions of G.R. dated 06-08-2002. Therefore, O.A. deserves to be allowed.

18. In view of the discussion in the foregoing paragraphs, O.A. is allowed. Impugned order dated 18-05-2018 transferring the applicant from Nandurbar to Jalna is hereby quashed and set aside. Respondents are directed to transfer the applicant at the place of his choice either at Mumbai or at Thane as per the guidelines in G.R. dated 06-08-2002 immediately. There shall be no order as to costs.

(B. P. PATIL)
MEMBER (J)

Place : Aurangabad
Date : 07-01-2019.