

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.389/2017

DISTRICT: - AURANGABAD

Surendra S/o. Dattopant Deshpande,
Age : 56 years, Occu. : Service as
Instructure (on promotion),
I.T.I. (Special Component Programme),
Aurangabad, R/o. Plot No.43,
Minal Apartment, Flat No.4,
Shreya Nagar, Osmanpura,
Aurangabad.

...APPLICANT

V E R S U S

1) The Joint Director of Technical Education,
Vocational Education & Training,
Regional Office, Bhadkal Gate,
Aurangabad.

2) The Principal,
Special Component Programme,
Industrial Training Institute,
Near Govt. Arts College,
Killleark, Aurangabad.

...RESPONDENTS

APPEARANCE :Shri S.D.Joshi learned Advocate for
the Applicant.

:Smt. Priya Bharaswadkar, learned
Presenting Officer for the respondents.

CORAM : Hon'ble Shri B.P.Patil, Member (J)

DATE : 1st September, 2017

J U D G M E N T
[Delivered on 1st day of September, 2017]

The applicant has challenged the impugned order dated 19-05-2017 issued by the respondent no.1 as well as communication dated 08-06-2017 transferring and posting him at Pathri rejecting his representation for posting him at Industrial Training Institute (I.T.I.), Aurangabad by filing the O.A.

2. The applicant has joined services as Craft Instructor in the Fitter Trade on 12-11-1984 and posted at Vaijapur. He worked in that capacity in Beed District during 1985 to 1994 and then at Parbhani from 1994 to 1997. In the year 1997 again the applicant was posted at Beed and he worked there up to 2005. Thereafter, he was posted at Patoda and he worked there during the year 2005 to 2012. On 2nd March, 2012 he was transferred to Aurangabad and accordingly, he joined the duties on 07-03-2012. He is going to retire on superannuation on 31-01-2019. After his

transfer to Aurangabad in the year 2010, he decided to settle at Aurangabad, and therefore, he purchased a flat at Aurangabad.

3. As per the seniority list prepared on 01-01-2013, the applicant was due for promotion to the post of Group Instructor. When he learned that his name was within the zone of consideration for promotion, he filed representation dated 11-05-2017 to the respondent no.1 and has requested to post him at Aurangabad considering his date of superannuation and the fact that his daughter studying in final year of B. Tech. Meeting of Departmental Promotion Committee (D.P.C.) was held on 09-05-2017. Thereafter, 3 different orders of promotion bearing outward no.2993, 2994 and 2998 were issued on 19th May, 2017. By the said order, Shri L.D.Dhage and Shri R.D.Kendre were promoted and placed at the same place where they were serving. By the order bearing Outward No.2994 dated 19-05-2017, the applicant has been promoted and posted at I.T.I. Pathri without considering his representation dated 11-05-2017. Some of the persons who were promoted by the said order have been posted at the same station and others were

posted at Aurangabad. The case of the applicant has not been considered for retaining him at Aurangabad. Therefore, he filed a representation dated 25-05-2017 to the Joint Director through Principal, Industrial Training Institute (I.T.I.), Aurangabad. His representation was not considered, and therefore, he filed O.A.No.302/2017 challenging the order of his posting on promotion. This Tribunal directed the respondents to decide the representation dated 25-05-2017 within one month by its order dated 30-05-2017. Respondent no.1, thereafter, rejected the representation of the applicant mechanically by giving inconceivable reasons that 4 employees have already been posted at Aurangabad and no post is available at Aurangabad. It has been further observed that the applicant was local resident of Aurangabad, and therefore, his request has not been considered. Respondent no.2 then relieved the applicant on 01-06-2017 in haste. It is contention of the applicant that the impugned order passed by the respondent no.1 dated 08-06-2017 rejecting his representation is illegal, unjust, improper and discriminatory. It is his contention that the said order is in violation of the Circular dated 28-04-2015 and G.R. dated 31-01-2014.

4. It is his contention that, other persons have been posted at Aurangabad as per their request but the request of the applicant has not been considered and he has not been retained at Aurangabad on promotional post though there were vacancies available at Aurangabad, and therefore, he prayed to allow the O.A. and to quash the impugned order dated 19-05-2017 as well as the communication dated 08-06-2017, by which his representation has been rejected by the respondent no.1 and sought direction to the respondent no.1 to consider his case for posting him on promotion at I.T.I., Aurangabad considering his initial date of retirement.

5. Respondents have resisted the contentions of the applicant by filing their affidavit in reply. They have denied the contention of the applicant contending that the O.A. is devoid of merit. It is their contention that after selection on promotional post of the employees, the respondents have considered the request of the employees and availability of the posts, and accordingly, issued the transfer orders. It is their contention that Shri Dhage and Kendre who have been promoted by the said order have been posted at the

same place as nobody made request and claimed posting at their place. It is their contention that the applicant has been posted at Pathri because in the year 2016-2017, as there was clear vacancy of one post. Three posts will be going to vacant at Aurangabad due to retirement of the employees. Respondents have considered request of all the employees. They considered request of the employees who were working outside Aurangabad and accordingly given them posting considering their requests and date of retirement.

6. According to the respondents, Mr. P.S.Wagh and Mr. K.D.Dawne are going to retire in the year 2018 and the applicant, S.B.Vijaysenani and N.B.Umre will be retiring in the year 2019. Except the applicant, all the above employees were working outside Aurangabad, and therefore, they requested to post them at Aurangabad considering their date of retirement. The applicant was working at Aurangabad since 6 years, and therefore, he has been sent out of Aurangabad and other employees have been posted at Aurangabad. It is their contention that the applicant has been relieved on 01-06-2017 and one

Shri K.K.Deshpande has joined the said post. It is their contention that there was no discrimination while issuing promotion orders and effecting transfer of the applicant. There was no violation of Circular or G.R. issued by the Government from time to time. It is their contention that Circular and G.R. cited by the applicant are not applicable to the transfer made on promotion and those are applicable to the regular transfers of Group-A to Group-C employees. It is their contention that there is no illegality in the impugned order, and therefore, they prayed to reject the O.A.

7. Heard Shri S.D.Joshi learned Advocate for the Applicant and Smt. Priya Bharaswadkar, learned Presenting Officer for the respondents. Perused the documents produced on record by the parties.

8. Learned Advocate for the applicant has submitted that the applicant is serving at Aurangabad since the year 2012. He has submitted that the applicant was due for promotion, and therefore, he has been promoted by the impugned order dated 19-05-2017 and he was posted at Pathri. He has submitted that the applicant is going to

retire on 31-01-2019 on superannuation. His daughter is studying in final year of B.Tech. He has submitted that the applicant has made representation to the respondents to retain him at Aurangabad on the promotional post but the respondent no.1 has not considering his request though posts are vacant and available at Aurangabad and he has been shunted to Pathri. He has argued that request of other employees who are going to retire in the year 2018 and 2019 have been considered by the respondents and they are given promotional posts at Aurangabad. He has argued that the respondent no.1 has acted *mala fidely* and not considered his representation dated 25-05-2017. He has submitted that posting given to the applicant at Pathri on promotional post is in contravention of the Circular dated 28-04-2015 and G.R. dated 31-01-2014. He has submitted that the employee who is going to retire within next 2 years cannot be transferred and his choice has to be considered while giving posting to him in view of the said circular and G.R but the respondents have not considered the said aspect and illegally transferred the applicant to Pathri when the applicant was at the verge of retirement. Therefore, he prayed to quash communication dated

08-06-2017 and the impugned order of transfer dated 19-05-2017 to the extent of the applicant and to direct the respondents to post the applicant on his promotional post at Aurangabad.

9. Learned P.O. has submitted that the applicant was in the zone of consideration for promotion, and accordingly, he was promoted in view of the decision taken by the DPC in the meeting held on 09-05-2017. She has submitted that respondent no.1 has considered request of the employees including the applicant. Four other employees namely Shri K.D.Dawane, P.S.Wagh, S.B.Vijaysenani and N.B.Umre are going to retire in the year 2018 and 2019 like the applicant. They requested to post them at Aurangabad since they are working outside Aurangabad. The applicant was working at Aurangabad since 6 years, therefore, respondent no.1 considered request of other employees and posted them on the promotional post at Aurangabad. After posting them no post was vacant for the applicant at Aurangabad, and therefore, he was posted at Pathri as he was working at Aurangabad since 6 years. He has submitted that there is no discrimination made by the

respondent no.1 while issuing impugned order. She has submitted that as there is no vacancy at Aurangabad, request of the applicant has not been considered by the respondents, and therefore, his representation has been rejected. She has submitted that there is no illegality in the orders passed by the respondents. There is no violation of any circular or G.R. She has further submitted that G.R. on which the applicant is relying is not applicable to the transfer made on promotion, and therefore, the said G.R. cannot be relied upon. On these grounds she prayed to dismiss the O.A.

10. On perusal of record, it reveals that the applicant is serving at Aurangabad since the year 2012. He was promoted in view of the decision taken in the meeting of the D.P.C. held on 09-05-2017. On the basis of said decision, he has been transferred by the impugned order dated 19-05-2017 to I.T.I., Pathri. He had been relieved accordingly on 01-06-2017. The applicant is claiming that respondent no.1 ought to have retained him on the promotional post at Aurangabad as respondents have considered requests of other employees who are retiring in

the year 2018 and 2019. As they worked outside Aurangabad for long period, they have been posted at Aurangabad. Since the applicant is working at Aurangabad from the year 2012, he has been transferred to Pathri. His request has not been considered by the respondent no.1 on that ground.

11. In view of the abovesaid facts, in my opinion, there is no illegality in the order under challenge. Respondent no.1 has considered request of all the employees including the applicant and made attempt to accommodate them as per their choices. Respondents could not accommodate the applicant as no promotional post was vacant for the applicant after accommodating other employees who have been transferred to Aurangabad. The respondents have transferred the applicant on the promotional post at Pathri, and therefore, it cannot be said that the transfer of the applicant on promotion was with *mala-fide* intention. Therefore, I do not find substance in the submissions advance by the learned Advocate for the applicant in that regard.

12. The applicant has relied on the circular dated

28-04-2015 and G.R. dated 31-01-2014. On perusal of the same, it reveals that those are in respect of regular transfers, and therefore, I find substance in the submissions advanced by the learned P.O. that the circular and G.R. are not attracted in this case. Therefore, the applicant cannot take benefit of the circular and G.R. for retaining him at Aurangabad.

13. The respondent no.1 has considered all the above discussed aspects and rejected the representation dated 25-05-2017 filed by the applicant. I do not find any fault in the impugned order passed by the respondent no.1 on 08-06-2017 rejecting representation of the applicant. There is no violation of any circular or G.R. while passing impugned transfer order dated 19-05-2017 and posting the applicant at Pathri. Therefore, no interference is called for in the impugned orders. There is no merit in the O.A. Consequently, the O.A. deserves to be dismissed. Accordingly, O.A. stands dismissed with no order as to costs.

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 01-09-2017.