

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.426/2018

DISTRICT: AURANGABAD

Bharat s/o. Dongar Gadhari,
Age : 54 years, Occu. : Service
Lecturer, Teachers' Training
Department, Government College
of Art & Design, Aurangabad,
R/o. N-11, 91/2, Sudarshan Nagar,
Hudco, Aurangabad.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through the Principal Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai – 400 032.
- 2) The Director of Art,
Maharashtra State, Mumbai.
- 3) The Dean,
Government College of Art and Design,
Aurangabad.

...RESPONDENTS

APPEARANCE :Shri Shamsundar B. Patil, Advocate for
the Applicant.

:Shri V.R.Bhumkar, Presenting Officer for
the respondents.

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

DATE : 8th January, 2019

J U D G M E N T
[Delivered on 8th day of January, 2019]

1. By filing the present O.A., the applicant has challenged the order dated 31-05-2018 issued by the respondents by which he has been transferred from Aurangabad to Nagpur and prayed to quash and set aside the said order.

2. The applicant was selected by the Maharashtra Public Service Commission ("MPSC" for short) for the post of Lecturer in the Government College of Art and Design. Thereafter, he has been appointed as Lecturer in Government Art College, Aurangabad on 29-08-1996. On 09-09-1996 he was transferred to Government College of Art, Nagpur. He worked there till 22-04-1997. Thereafter, he has been transferred to Government Art College, Aurangabad on 23-04-1997. He worked at Aurangabad till 30-06-2003. Again he was transferred to Government Art College, Mumbai and he worked there till 19-09-2003. On 19-09-2003, he was transferred to Aurangabad and since then he is working as Lecturer Group-A in Government College of Art and Design Aurangabad.

3. It is contention of the applicant that there is permanent post of Dean in the Government College of Art and Design, Aurangabad. The post of Dean is vacant from the year 2015. Initially, one Shri V.K.Laad, Lecturer was kept in charge of the post of Dean. By order dated 20-05-2016, the additional charge of the post of Dean was kept with the applicant and since then applicant is discharging duties as Dean in addition to his own duty as Lecturer.

4. The applicant is serving at Aurangabad since 13 years. He was due for transfer. Therefore, in the year 2017, he submitted the option of places of his choice for transfer and requested for transfer at Mumbai. But his request was not considered in the year 2017 and he has not been transferred. Again in the year 2018, he submitted his options as regards places of choice for general transfer and requested to transfer him at Mumbai.

5. The Government by G.R. dated 09-04-2018 issued guidelines for making transfers of the Government employees but the respondents had issued the impugned transfer order dated 31-05-2018 in violation of the guidelines given in G.R. dated 09-04-2018 as well as the

provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ("Transfer Act" for short) and transferred the applicant from Aurangabad to Nagpur. It is his contention that only 4 Lecturers including the applicant have been transferred by the impugned order.

6. It is further contention of the applicant that his mother is aged about 86 years and she is sick. He is the only person in the family to take care of her. He has been transferred to Nagpur, which is 500 km away from Aurangabad and therefore, it would not be possible for him to take care of his ill and old aged mother from Nagpur. It is his further contention that there are 3 sanctioned posts of Lecturer Group-A in Teachers' Training Department of Government College of Art and Design, Aurangabad. The applicant is the only person working as Lecturer Group-A in the said department. Because of his transfer of the applicant, there will be no Lecturer working in Teachers' Training Department. It is his contention that since the impugned transfer order is inconvenient to him, he has made representation with the Government on 18-07-2018 and prayed to retain him at Aurangabad but the

respondents had not decided the said representation and therefore, he had filed the present O.A. and challenged the impugned order.

7. It is further contention of the applicant that the competent authority has not published the seniority list of the employees due for transfer as provided in the Transfer Act. The impugned order has been issued by the respondents in violation of the provisions of Transfer Act, and therefore, it is illegal. Therefore, he has prayed to allow the O.A. by quashing and setting aside the impugned order.

8. Respondent nos.1 to 3 have resisted the O.A. by filing their affidavit in reply. They have denied that the impugned order has been issued in violation of the provisions of the Transfer Act. It is their contention that the impugned order of transfer has been issued by the competent authority by following the due procedure laid down in the Transfer Act. It is their contention that the applicant is working as Lecturer Group-A, and therefore, the provisions of G.R. dated 09-04-2018 are not applicable in this case. It is their contention that the applicant was due for transfer. Hence, the competent authority transferred him from Aurangabad to Nagpur on account of administrative exigency. It is their

contention that the applicant was serving at Aurangabad since more than 14 years and he was due for transfer and therefore, his transfer has been effected. It is their contention that at present the contractual Lecturers are working in Teachers' Training Department at Government College of Art and Design at Aurangabad and advertisement has been issued for filling vacant posts in the department, and therefore, no loss will be caused to the students. It is their contention that the charge of the post of Dean has been withdrawn from the applicant and it has been kept with one Shri Wadje by order dated 21-06-2018. It is their further contention that the Civil Services Board recommended the transfer of the applicant and thereafter the competent authority has issued the transfer order and there is no illegality in it. Therefore, they have supported the impugned order of transfer. It is their contention that the applicant's representation dated 18-06-2018 has been rejected by the department and the decision was communicated to the applicant by order dated 18-07-2018. It is their contention that there is no illegality in the impugned order and therefore they have prayed to reject the O.A.

9. The applicant has filed affidavit in rejoinder and contended that some of the Lecturers who were appointed through MPSC in the year 1996 are working at Mumbai since their appointment and they have not been transferred since then. The applicant has been transferred twice during his service tenure. It is his contention that if the Lecturers working at Mumbai could have been transferred from Mumbai then the applicant could have been accommodated there but the respondents had not transferred the Lecturers working at Mumbai and they have transferred the applicant from Aurangabad to Nagpur and thereby made discrimination. It is his further contention that the respondents had not prepared the list of the Lecturers due for transfer as provided u/s. 4(2) of the Transfer Act, and therefore, the impugned transfer order is in violation of the provisions of Transfer Act. He has reiterated the contentions raised by him in the O.A. and prayed to allow the O.A.

10. I have heard Shri Shamsundar B. Patil, Advocate for the Applicant and Shri V.R.Bhumkar, Presenting Officer for the respondents. Perused the documents placed on record by the parties.

11. Admittedly, the applicant was selected by the MPSC as Lecturer Group-A in Government College of Art and Design and accordingly he has been appointed in Government Art College, Aurangabad on 29-08-1996. On 09-09-1996, he was transferred to Government College of Art, Nagpur. He worked there till 22-04-1997. On 23-04-1997, he was transferred to Government Art College, Aurangabad and he worked there till 30-06-2003. The applicant has been transferred thereafter to Government Art College, Mumbai in the year 2003 and he worked there till 19-09-2003. Thereafter, he was again transferred to Aurangabad on 19-09-2003 and since then he is working at Aurangabad. It means the applicant is working at Aurangabad since 23-04-1997 (excluding the short period during 30-06-2003 to 19-09-2003 when he was transferred to Mumbai). Admittedly, the applicant completed more than 14 years since his second tenure at Aurangabad at the time of passing impugned transfer order. Admittedly, options regarding the places of choice of employees before transfer were called by the competent authority before general transfer of 2018 and the applicant has also submitted his option regarding place of choice and requested to transfer him at Mumbai. He had given only

one post of his choice for transfer. Admittedly, the applicant has been transferred to Nagpur by the impugned order.

12. Learned Advocate for the applicant has submitted that the competent authority has not prepared the list of the employees due for transfer as provided u/s.4(2) of the Transfer Act. Therefore, there was violation of the provisions of the Transfer Act. He has submitted that the Lecturers who have been appointed in the year 1996 along with the applicant had been posted at Mumbai and they are still working there since the year 1996. They have not been transferred since the year 1996 and the competent authority has not considered his case for transfer at Mumbai. He has submitted that had the respondents transferred the Lecturers working at Mumbai since the year 1996, definitely the applicant could have been posted at Mumbai on their vacant post. He has further submitted that the respondents made discrimination while passing transfer order of the applicant and therefore his transfer order is illegal. He has submitted that the respondents have not considered the principles laid down by the Maharashtra Administrative Tribunal Mumbai in **O.A.No.376/2017 with**

377/2017 in case of **Murlidhar Changdeo Patil & Ors. V/s. State of Maharashtra & Ors.** decided on 04-10-2007.

13. Learned Advocate for the applicant has further submitted that the applicant's mother is 86 years old. She is sick and the applicant is the only fit person to take care of her. Therefore, he made request to the respondents after passing the impugned order dated 18-07-2018 and requested to retain him at Aurangabad. He has submitted that the respondents ought to have retained him at Aurangabad till next general transfers of the year 2019 considering the family problems of the applicant but the respondents had rejected his representation without any just ground. He has further submitted that the Maharashtra Administrative Tribunal, Nagpur had granted relief to the similarly situated employees on humanitarian ground and retained those petitioners till the general transfers of the year 2019. In support of his statement, he has placed reliance on the judgment of the Maharashtra Administrative Tribunal, Nagpur in **O.A.No.423/2018** in case of **Rajendra Vitthalrao Giri V/s. State of Maharashtra & Ors.** decided on 30-11-2018. He has

submitted that considering the said facts it is just to allow the O.A. and quash the impugned order.

14. Learned P.O. has submitted that there was no illegality in the impugned order. He has submitted that the applicant was due for transfer. He was serving at Aurangabad since more than 14 years. As he was due for transfer, he had submitted option regarding places of his choice and prayed to transfer him at Mumbai. He has submitted that the case of the applicant has been considered by the Civil Services Board in the meeting dated 14-05-2018 and on the basis of recommendation of the Civil Services Board, the competent authority made his transfer on administrative exigency. He has submitted that there are vacancies in the College at Nagpur and therefore, on account of administrative exigency, transfer of the applicant has been made. He has further submitted that the applicant was overdue and therefore his transfer was made in view of the provisions of Transfer Act by the Competent Authority.

15. He has further submitted that no post of Lecturer was vacant at Mumbai, and therefore, the applicant had not been posted at Mumbai though he opted for transfer at

Mumbai. He has submitted that the applicant has not prayed for his retention at Aurangabad while submitting his options. Therefore, his transfer has been made at Nagpur as per the administrative exigency. He has submitted that there is no illegality in the impugned and the impugned order has been passed by following the provisions of the Transfer Act. Therefore, he has prayed to dismiss the O.A.

16. On perusal of the record, it reveals that the applicant was serving as Group-A Officer. He was serving at Aurangabad as Lecturer since 19-09-2003. In fact, he is serving at Aurangabad since 23-04-1997 with a short break during the period of 2 and half months from 30-06-2003 to 19-09-2003 when he was transferred to Mumbai. He has completed his normal tenure of posting at Aurangabad as he has served at Aurangabad for more than 14 years since his last transfer. He was due for transfer at the time of general transfers of 2018. Therefore, he had submitted his option regarding places of his choice for transfer with the competent authority before general transfers and requested to transfer him at Mumbai. Proposal regarding transfer of the applicant has been placed before the Civil Services Board in the meeting dated 14-05-2018. The Civil Services

Board considered request of the applicant and thereafter decided to transfer the applicant at Nagpur on account of administrative exigency. It is evident from this that the Civil Services Board and the competent authority had followed the provisions of the Transfer Act while effecting transfer of the applicant. Since the applicant was overdue, he has been transferred at Nagpur on account of administrative exigency as there were vacancies in Nagpur. Therefore, I do not find illegality in the transfer of the applicant.

17. Only grievance of the applicant is that the impugned order has been issued by the respondents with *mala fide* intention to favour the Lecturers serving at Mumbai and thereby they made discrimination. It is evident from the record that the applicant has not raised this grievance in the O.A. He has also not made the concerned employees as party to the O.A., and therefore, in their absence the said issue cannot be dealt with. Therefore, I do not feel it necessary to entertain and adjudicate the said issue.

18. The applicant has also claimed that he should be retained till the next general transfer on account of ill health of the mother of the applicant but his representation

in that regard has been rejected by the respondents by recording sound reasons. Therefore, there is no substance in the submissions advanced on behalf of the applicant in that regard. The applicant has never claimed his retention at Aurangabad on account of ill health of the mother when he submitted his option regarding place of choice before general transfer of 2018. Therefore, this contention of the applicant in that regard is not acceptable.

19. I have gone through the decisions cited by the applicant and I have no dispute about the settled legal principles laid down in the said judgments but the facts in the present case are totally different than the facts in the cases cited by him. Therefore, those judgments/citations are not much useful to the applicant.

20. On going through the judgment of the Maharashtra Administrative Tribunal, Nagpur in O.A.No.423/2018 & Ors., it reveals that the Tribunal had dismissed the O.As. on merit. However, liberty to those applicants had been given to join their new posting till 01-06-2019 considering their genuine difficulties and peculiar facts in the case. Considering the facts in the present matter, in my opinion, it is not just to give such directions retaining the applicant

at Aurangabad till the next season of general transfer of the year 2019. Therefore, on that count also, I do not find any substance in the submissions advanced by the learned Advocate for the applicant.

21. So far as the submissions of the learned Advocate for the applicant regarding not following guidelines given in G.R. dated 09-04-2018 are concerned, it is material to note here that the said G.R. itself provides that it was not applicable to the employees of Group-A. The applicant is a Group-A employee and therefore, he cannot rely on the said G.R. Therefore, the guidelines therein are not useful to the applicant. Therefore, I do not find any substance in the submissions advanced by the learned Advocate for the applicant in that regard.

22. Considering the abovesaid discussion, in my view there is no illegality in the impugned transfer order. The applicant has been transferred since he had completed his normal tenure and he was overdue for transfer. The applicant cannot claim that he should be posted at a particular post and it is the outlook of the competent authority to place the employee at a particular place

considering the need of the administration and on account of administrative exigency.

23. It is evident from the record that considering the administrative exigency, respondents have transferred and posted the applicant at Nagpur. Hence, in my view, there is no illegality in the impugned order as it has been issued in accordance with the provisions of the Transfer Act. Therefore, no interference in it is called for. There is no merit in the O.A. Consequently, it deserves to be dismissed.

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

(B. P. PATIL)
MEMBER (J)

Place : Aurangabad
Date : 08-01-2019.