

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.449/2019

DISTRICT: DHULE

Arvind s/o Namdevrao Rodewadkar,
Age : 54 years, Occu. : Service,
(as Inspector of Legal Metrology),
C/o: O/o Assistant Controller,
Legal Metrology, Old Collector Office Area,
Dhule, Dist. Dhule.

...APPLICANT

V E R S U S

1) The State of Maharashtra,
Through its Principal Secretary,
Food, Civil Supplies & Consumer
Protection Department, M.S.,
Mantralaya, Mumbai – 400 032.

2) The Controller of Legal Metrology,
Maharashtra State, 7th Floor,
Fountain Telecom Building No.1,
Hutatma Smarak Chowk, M.G.Road,
Azad Maidan, Fort, Mumbai-01.

3. The Deputy Controller of Legal Metrology,
Nashik Division, Nashik Road,
Nashik – 422 101.

4. The Assistant Controller of Legal Metrology,
Old Collector Office Area,
Dhule, Dist. Dhule.

...RESPONDENTS

APPEARANCE :Shri A.S.Deshmukh, Advocate for the
Applicant.

:Shri M.S.Mahajan, Chief Presenting
Officer for the respondents.

CORAM : B. P. Patil, Acting Chairman

Reserved on : 03-09-2019

Pronounced on : 09-09-2019

J U D G M E N T

1. By filing the present O.A. the applicant has prayed to modify the order dated 29-05-2019 issued by the respondent no.1 transferring him from Taloda, Dist. Dhule to Nashik and to post him at one of the 10 choices of posting given by him.

2. Applicant belongs to ST category. He entered in the service of Government of Maharashtra on 12-06-1997 on the post of Inspector of L.M. In the month of June, 2016, he was posted as Inspector of L.M. at Taloda, Dist. Dhule which is very remove (अतिदुर्गम) and difficult area (अवघड क्षेत्र). He worked at Taloda since June, 2016 and completed his tenure of 3 years. He was due for transfer at the time of general transfers of 2019 as per 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). On 22-01-2019, respondent no.2 issued communication and called choices for posting from the Inspector of L.M. who became due for transfer in

view of G.R. dated 09-04-2018. The applicant was due for transfer. Therefore, he had submitted exhaustive representation to the respondent no.1 giving 10 choices of posting in view of his domestic difficulties, particularly, his son's ailment on the basis of G.R. dated 06-08-2002 and produced the relevant documents in that regard including G.R. dated 06-08-2002 and circular dated 11-07-2000.

3. It is his further contention that thereafter the respondent no.2 issued one more communication dated 16-04-2019 on the same line of communication dated 22-01-2019 and called for choices of posting and attached the list of Inspectors of L.M. who are due for transfer. After receiving the said communication, the applicant has again submitted another choice of his posting in the requisite proforma. It is his contention that in view of the G.R. dated 09-04-2018 as well as the policy of the Government it was incumbent on the respondents to consider the request of the applicant and to give him posting at the place of his choice but the respondent no.1 issued the impugned order on 29-04-2019 and transferred the applicant from Taloda, Dist. Dhule to Nashik Regional Office without considering his choices of posting. It is his contention that the

impugned order has been issued in contravention of the guidelines given in G.R. dated 09-04-2018 and G.R. dated 07-08-2002 and circular dated 11-07-2000. Therefore, he approached this Tribunal by filing the present O.A. and prayed to modify the order dated 29-05-2019 and to post him at the place of any one of the 10 choices given to him.

4. Respondent nos.1 to 4 have resisted the contentions of the applicant by filing their affidavit in reply. It is their contention that the competent authority is empowered to take decision about the transfer on the basis of recommendations of the Civil Services Board by following the method of counseling in view of G.R. dated 09-04-2018. It is their contention that the department had prepared transfer proposal as per the G.R. dated 09-04-2018 and kept it before the Civil Services Board for its recommendations about the general transfers of Inspector, Legal Metrology but it has brought to the notice of the Civil Services Board that the applicant is accused of the offences punishable under Prevention of Corruption Act, 1988 and the judicial proceeding is pending against the applicant in the District & Sessions Court at Nanded. In view of the provisions of G.R. issued by the G.A.D, a person against

whom a criminal case or departmental enquiry is pending should not be appointed and posted on the executive post till the decision of the said case. Therefore, the Civil Services Board has recommended that the applicant should be transferred on the post of Inspector of Legal Metrology in the office of the Deputy Controller of Legal Metrology, Nashik Division, which is a non-executive post. The competent authority has accepted the recommendations of the Civil Services Board and accordingly the applicant has been transferred on the post of Inspector, Legal Metrology, Nashik vide order dated 29-05-2019. It is their contention that there is no illegality in the impugned order and there is no violation of the provisions of the G.Rs. and the provisions of the Transfer Act. Therefore, they have supported the impugned order and prayed to reject the O.A.

5. Applicant has filed his affidavit in rejoinder and resisted the contentions of the respondents raised in the affidavit in reply. It is his contention that the criminal case is pending against him in the Court at Nanded since the year 2008. Thereafter, he was placed under suspension. After his reinstatement in service, in the year 2010 he had been posted on the executive post at Jalna during the

period from 2011 to 2014 and at Taloda Division in Dhule District during the period from 2016 to 2019. It is his contention that there is no such distinction regarding executive post and non-executive post. It is his contention that the respondents had not followed the provisions of the G.R. dated 06-08-2002 and the circular dated 11-07-2000. Therefore, he has prayed to quash the impugned order by allowing the present O.A.

6. I have heard Shri A.S.Deshmukh Advocate for the Applicant and Shri M.S.Mahajan Chief Presenting Officer for the respondents. I have perused the documents placed on record by the parties.

7. Admittedly, the applicant entered the Government service on the post of Inspector L.M. on 12-06-1997. In June, 2019 he has completed tenure as provided under the Transfer Act and he was due for transfer. Admittedly, the respondent no.1 called options from the concerned Inspectors of L.M. who are due for transfer regarding choices of posting for the general transfers of the year 2019. Admittedly, the applicant had submitted his representation on 05-02-2019 with the respondents giving 10 choices of posting on the ground of his family difficulties. He has also

filed another option form regarding choice posting in response to the communication dated 16-04-2019 received from the respondent no.1. Admittedly, the applicant served at Taloda, Dist. Dhule which is very remote and difficult area. The applicant has made representation to the respondents and requested him to transfer at the place of his choice on the basis of G.R. dated 06-08-2002 and circular dated 11-07-2000. Admittedly, the applicant has been transferred by the impugned order from Taloda to the Divisional Office Nashik.

8. Learned Advocate for the applicant has submitted that the applicant served for 3 years in the very remote and difficult area i.e. naxalite affected area. Therefore, he ought to have been transferred at the place of his choice given by him in view of the circular dated 11-07-2000 and the G.R. dated 06-08-2002. He has submitted that the applicant opted for posting at Mumbai, Navi Mumbai, Pune or Thane districts on transfer on the basis of abovesaid circular and G.Rs. but the respondents had not considered the provisions of the said G.Rs. and transferred him at Nashik. He has submitted that the impugned order of transfer is in contravention of the provisions of the Circular dated 11-07-

2000 and G.R. dated 06-08-2002. Therefore, he has prayed to modify the impugned order transferring him to Nashik and to direct the respondents to transfer him in the post of his choice by allowing the O.A.

9. Learned Advocate for the applicant has submitted that the criminal case against the applicant is pending for the offences punishable under the Prevention of Corruption Act, 1988. Therefore, he has been suspended during the period from 2008-2010. He was reinstated in service in the year 2010. Thereafter, he has been posted on executive post in Jalna District and in Dhule District till 2019. He has submitted that there is no legal impediment in posting him on the post which he desires as per the abovesaid Circular and G.R. Therefore, he has prayed to allow the O.A.

10. Learned C.P.O. has submitted that the applicant was due for transfer. Therefore, the department prepared proposal for his transfer and placed before the Civil Services Board. The Civil Services Board considered the said proposal and found that the criminal case for the offences punishable under the Prevention of Corruption Act is pending against the applicant. Therefore, it has decided

to transfer the applicant on non-executive post in view of the provisions of the G.R. dated 14-10-2011, and therefore, it recommended to transfer the applicant on the post of Inspector L.M. in the office of Deputy Controller of Legal Metrology, Nashik Division which is a non-executive post. He has submitted that the options exercised by the applicant are in respect of the places/posts which are executive posts. Therefore, he had not been transferred on the said post in view of the Circular dated 11-07-2000 and G.R. dated 06-08-2002. He has submitted that the respondents made transfer of the applicant in view of the provisions of the Transfer Act and the G.R. dated 14-10-2011. He has submitted that the applicant has been posted on executive post previously due to mistake but the said mistake has been corrected at the time of transfer of the applicant in the year 2019. Therefore, he has submitted that there is no illegality in the impugned transfer order. He has submitted that the applicant has been posted on non-executive post and such non-executive posts are not available elsewhere in the Districts in which the applicant desired transfer. Therefore, there is no need to modify the said order. Therefore, he has prayed to reject the O.A.

11. On perusal of record, it reveals that in the year 2008, the applicant was arrested for the offences punishable u/s. 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act. Therefore, the special case has been filed against him before the Special Court at Nanded. Thereafter, respondents suspended the applicant. His suspension has been revoked in the year 2010 and thereafter he has been reinstated and posted in Jalna District. From Jalna he has been transferred to Taloda in the year 2016. Admittedly, in the year 2011 i.e. on 14-10-2011, the Government issued the G.R. as regards suspended employees and revocation of the suspension. In the said G.R. it has been mentioned that on revocation of the suspension of the concerned employee, he should not be posted on executive post till the decision of the trial pending against the employee. The applicant was posted in Jalna district in the year 2010 when the G.R. was not in force but at the time of his subsequent transfer to Taloda from Jalna, the competent authority had not considered the said G.R. Therefore, he came to be transferred on the executive post.

12. The applicant served at Taloda, Dist Dhule during the year 2016 to 2019. Admittedly, Taloda Dist. Dhule is very

remote and difficult area. The applicant sought benefits of the Circular dated 11-07-2000 and G.R. dated 06-08-2002 and sought his transfer at the place of his choice. As the applicant was due for transfer at the time of general transfers, the proposal regarding his transfer has been placed before the Civil Services Board. The Civil Services Board considered the entire facts. It has noticed that a criminal case is pending against the applicant, and therefore, it recommended transfer of the applicant on non-executive post available at Nashik district in view of the G.R. dated 14-10-2011. Accordingly, the impugned order has been issued.

13. On perusal of the circular dated 11-07-2000 and the G.R. dated 06-08-2002, it reveals that the Government has issued the guidelines to the competent authority while making transfers of the Government servants who served in very remote and difficult area and in naxalite affected area and to consider their request to post at the place of their choice. Guidelines given in the said G.R. are to be considered while making transfers of the employees serving in remote and difficult area and naxalite affected area but at the same time, the competent authority has to consider

the G.R. dated 14-10-2011 which provides that the special care to be taken while transferring the employees who are involved in criminal case. In the instant case, the competent authority has considered the above said G.Rs. The G.R. dated 14-10-2011 specifically provides that the employees against whom a criminal case is pending shall not be posted on the executive post and the competent authority has to take care that the said employee should be posted on non-executive post till the decision of the criminal case. The Civil Services Board as well as the competent authority has taken care of the said provisions and decided to transfer the applicant on non-executive post which is available in the office of Deputy Controller of Legal Metrology, Nashik.

14. It has been submitted by the learned C.P.O. during the course of hearing that no vacant post in the non-executive cadre is available in the Mumbai, Navi Mumbai, Pune or Thane districts at the time of general transfer of the applicant. Therefore, it was not possible to transfer the applicant in those districts. Therefore, there is no violation of the provisions of the Transfer Act, Circular dated 11-07-2000 or G.R. dated 16-08-2002. In view of

this, I do not find any substance in the submissions advanced by the learned Advocate for the applicant. Provisions made in the abovesaid Circular and G.Rs. are in the nature of guidelines. Administrative convenience has also to be considered while making transfers and the respondent no.1 has rightly considered the said aspect while effecting transfer of the applicant. There is no illegality in the impugned order of transfer. Therefore, no modification in the said order is required as prayed for.

15. There is no illegality in the impugned order as well as the procedure followed by the respondents while transferring the applicant. Therefore, no question of interfering in the impugned order arises. There is no merit in the O.A. Hence, the O.A. deserves to be dismissed.

16. 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 : 09-09-2019.