

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 392 OF 2023

(Subject:- Transfer)

DISTRICT:-LATUR

Vishnu S/o. Khandu Kore,)
Age: 31 years, Occu: Service as)
Revenue Assistant (in Tahsil Office, Renapur))
R/o: At. Post. Shirala, Tq. & Dist. Latur.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra**)
Through Secretary,)
Revenue and Forest Department,)
Mantralaya Mumbai-32.)
2. **The Divisional Commissioner,**)
Aurangabad Division, Aurangabad.)
3. **The Collector,**)
Collector Office, Latur,)
Tq. & Dist. Latur.) **RESPONDENTS**

APPEARANCE : Shri R.K. Ashtekar, learned counsel for
the applicant.
: Smt. R.S. Deshmukh, learned
Presenting Officer for the respondent
authorities.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

RESERVED ON : 04.07.2024.

PRONOUNCED ON : 23.07.2024.

ORDER

Heard Shri R.K. Ashtekar, learned counsel for the applicant and Smt. R.S. Deshmukh, learned Presenting Officer for the respondent authorities finally with consent at admission stage.

2. By filing this Original Application the applicant is seeking quashing and setting aside the transfer order dated 24.05.2023 issued by the respondent No.3 thereby transferring the applicant from Tahsil Office, Renapur to Tahsil Office, Deoni.

3. Brief facts giving rise to this Original Application are as follows:-

(i) The applicant is working as a Revenue Assistant in Tahsil Office, Renapur since 09.06.2017. The applicant came to be deputed at Tahsil Office, Deoni as per the order dated 07.09.2022 and since then he is working at Deoni.

(ii) The applicant further contends that the respondent No.3 sought the options from the employees who are due for transfer. The applicant had given the options on 24.03.2023

specifically stating therein that he be transferred at AUSA or Shirur Anantpal or Nilanga or Tahsil Office, Latur or Collector Office, Latur.

(iii) After the request applications received from the employees, the respondent No.3 has prepared the list of the employees as per their seniority. They have prepared two separate seniority lists one is in respect of administrative transfer and second is request transfer. In the list of request transfer the name of the applicant has been shown at Sr. No. 9 (Annexure 'A-2' collectively).

(iv) It is the further case of the applicant in pursuance to the said list, the respondent No.3 had called the applicant along with other employees for counseling (समुपदेशन). In the said process the applicant has conveyed that he be transferred as per the options exercised by him. The respondent No.3, however, has not considered the request of the applicant and transferred the applicant at Deoni on administrative ground as per order dated 24.05.2023. In the said order the applicant has been ex-parte relieved with the directions to join immediately at transferred place at Deoni. Hence, this Original Application.

4. Learned counsel for the applicant submits that as per Government Resolution dated 09.04.2018 certain guidelines have been framed for transferring the Class-III employees. In the instant case, however, the respondent No.3 has not followed the guidelines given in terms of G.R. dated 09.04.2018. Learned counsel for the applicant submits that the transfer order is contrary to the guidelines given in terms of G.R. dated 09.04.2018 and the same is liable to be quashed and set aside.

5. Learned counsel for the applicant submits that the respondent No.3 has not considered the request of the applicant even though his request application has been accepted and his name has been shown in the list of request transfer. The applicant came to be transferred on administrative grounds. On the other hand, as per G.R. dated 09.04.2018, the transfer should be effected as per the options given in the request application and as per the availability of the vacancies. Learned counsel for the applicant submits that as per the vacancies available as on 31.05.2023, the applicant could have been transferred at the place as per his options.

6. Learned counsel for the applicant submits that the applicant is handicapped person. The Competent Authority has issued disability certificate. As per aforesaid G.R., if the employee is handicapped then the transfer should be effected as per his choice. However, the respondent No.3 has not considered the said aspect and issued the transfer order, which is violative of the guidelines issued by the Government.

7. Learned counsel for the applicant submits that the applicant is resident of Shirala and his mother is suffering from various medical issues. The applicant is the only son to look after his mother. The father of the applicant is no more. Thus the applicant is only member in the family to look after his old age mother. The transferred place from his residence is more than 110 k.ms. However, the respondent No.3 has not considered the same. Learned counsel for the applicant submits that the Original Application deserves to be allowed.

8. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 3 submits that by order dated 24.05.2023 the applicant came to be transferred on administrative reason in Deoni Tahasil. There was insufficient manpower and there is vacant post at Deoni

Tahasil. The applicant was already working at Deoni on deputation and thus, the respondent No.3 has transferred him at the same place.

9. Learned P.O. submits that though the applicant has requested in his application for treatment of his old age mother, but he did not attach any medical certificate in support of his contention. Learned P.O. submits that there is no other option to respondents because there are vacant posts at Deoni Tahsil. It was therefore necessary to transfer the employee at Deoni and since the applicant was already working there on deputation, he was transferred. The copy of report of Tahasildar Deoni about the vacancy at Deoni Tahsil is placed on record marked as "R-2". Learned P.O. submits that the Original Application is liable to be dismissed.

10. It is not disputed that the applicant was due for transfer and he has also exercised the options in his application dated 24.03.2023. In the said application for exercising the options the applicant has also mentioned that he is handicap employee and that his old age mother is suffering from health issues. According to the applicant he is

only son and there is nobody in his family to look after his old age mother and his father died long back.

11. It also appears that the name of the applicant is mentioned at Sr. No. 9 in the request transfer category. However, it further appears that the transfer of the applicant was considered on administrative ground.

12. So far as the applicant's contention that he is disabled person, in order to substantiate the same, the applicant has placed on record the disability certificate which he has also submitted before the respondent No.3. On perusal of the same it appears that the applicant's percent of disability is 28% and it is temporary disability in relation to his right arm. The applicant is not an employee appointed in the handicapped category. In terms of definition clause No. 2 (r) of the Rights of Persons with Disabilities Act, 2016, the "Person with benchmark disability" means a person with not less than forty per cent of a specified disability. However, in terms of definition clause 2 (s) of the said Act, 2016, "person with disability" means a person with long terms physical, mental, intellectual or sensory impairment which, in

interaction with barriers, hinders his full and effective participation in society equally with others.

13. In terms of the aforesaid definitions, the applicant cannot said to be a person with disability. The applicant has also requested the respondent No.3 to consider his transfer at certain places in terms of his options due to health issues of his mother. However, as stated in the affidavit in reply filed on behalf of respondent Nos. 1 to 3 neither the applicant has submitted any medical papers to substantiate his contention before the respondent authorities nor annexed to this Original Application.

14. If the applicant is the only son, then he may stay at the place of transfer along with his mother, if there is nobody in his family to look after his old mother. It appears that the applicant has put-forth the said ground for the sake of transfer.

15. So far as the transfer of the applicant on administrative ground is concerned, the applicant was already working on deputation at Deoni Tahsil since 07.09.2022. It further appears from the minutes of meeting of Civil Services Board that the applicant came to be

transferred at Deoni Tahsil on administrative ground and not as per his request.

16. Learned P.O. has placed before us the report submitted by the Tahsildar dated 28.06.2024 to the District Collector, Latur. It appears that the said report has been submitted in response to the application submitted by the President, Revenue Employee Organization stating therein that there are four vacant posts of Niab Tahasildar at Tahsil Office, Deoni. One Niab Tahasildar has been deputed at Tahsil Office, Deoni from Tahsil Office, Shirur Anantpal. Even though the six sanctioned posts of Awwal Karkoon are filled up, however, two Awwal Karkoons of Supply Department have been sent on deputation to District Collector Office, Latur. Therefore, the employees who are working as a Awwal Karkoon (Revenue) at Tahsil Office, Deoni have been given the additional charge of Supply Department and also given the additional charge of In-charge Naib Tahsildar and another one has been given the additional charge of godown keeper. Thus it appears from the said report submitted by the Tahsil Office, Deoni that there are urgent need to appoint the employees on permanent basis

and not on deputation. In view of same, I find no fault in the impugned order of transfer of the applicant on administrative ground. The applicant was already working there on deputation. In view of same, the administrative exigencies are considered and the applicant came to be transferred on regular basis at Tahsil Office, Devni. However, it is well settled that an employee has no fundamental right or a vested right to claim a transfer or posting of their choice. Thus considering the entire aspect of the case, I do not think that the interference in the impugned order is necessary. Hence, the following order:-

ORDER

- (A) The Original Application is hereby dismissed.
- (B) In the circumstances there shall be no order as to costs.
- (C) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 23.07.2024

SAS O.A. 392/2023(S.B.) Transfer.