

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 535 OF 2023
(Subject – Transfer)**

DISTRICT : AHMEDNAGAR

Anil s/o Ravindra Dhumal,)
Age : 33 years, Occu. : Service as Peon,)
R/o : Musalwadi, Tq. Rahuri, Dist. Ahmednagar.)

.... **APPLICANT**

V E R S U S

1. State of Maharashtra,)
Through its Principal Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai- 400 032.)

2. The Collector,)
Ahmednagar.)

3. The Tahsildar,)
Tahsil Office, Rahuri, Tq. Rahuri,)
Dist. Ahmednagar.)

... **RESPONDENTS**

APPEARANCE : Shri Y.R. Shinde, Counsel for Applicant.

: Shri I.S. Thorat, Presenting Officer for
respondent authorities.

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

RESERVED ON : **05.01.2024**

DATE : **23.01.2024**

O R D E R

1. Heard Shri Y.R. Shinde, learned counsel appearing for the applicant and Shri I.S. Thorat, learned Presenting Officer appearing for respondent authorities.

2. By this Original Application, the applicant is challenging the order dated 30.06.2023 passed by respondent No. 2, thereby transferring the applicant from Tahsil Office, Rahuri to Tahsil Office, Shevgaon.

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

(i) The applicant is disabled person. The applicant has joined the services with the respondent department as Kotwal and he is doing work sincerely from his appointment. In view of the same, the respondent No. 2 granted him promotion from Kotwal to Peon Group-D vide order dated 14.12.2021 (Annexure A-2).

(ii) It is the case of the applicant that in view of G.R. dated 15.12.2004, the employee of the Government, who is disabled; his transfer shall be made near his residential place. The applicant has Locomotor Disability to the extent of 40%.

(iii) It is the case of the applicant that the applicant came to be transferred by order dated 30.06.2023 from Rahuri to Shevgaon on the basis of his request. However, the respondent authority has not followed the guidelines issued

in the G.R. dated 09.04.2018 (Annexure A-4) to transfer the employees of Group-D.

(iv) During pendency of the present Original Application on 04.07.2023, the respondent has issued the relieving order ex-party. The applicant never requested for his transfer from Rahuri to Shevgaon. Consequently, the respondent authorities have placed on record modified order dated 30.06.2023 by mentioning that the earlier transfer order was not on request basis, but on administrative exigencies. In view of same, the applicant has amended the present Original Application by inserting prayer clause B-1 thereby seeking to quash and set aside the modified transfer order dated 30.06.2023, as well as, relieving order dated 04.07.2023 issued by the respondent authorities. Hence, the present Original Application.

4. Learned counsel for the applicant submits that the applicant is disabled locomotor to the extent of 40% and in view of the G.R. dated 09.04.2018 particularly Appendix-I and Appendix-II, the post of Peon is non-transferable. Learned counsel submits that it is a matter of record that the applicant is permanent disabled person and in view of the G.R. dated

15.12.2004, his transfer has to be made necessarily near place of his residence and further that he may be transferred as per his convenience. Learned counsel submits that the applicant's wife is pregnant and in view of the same, his stay at his residence of village Rahuri is essential to take care of his wife. Learned counsel submits that the present Original Application deserves to be allowed.

5. On the basis of affidavit in reply filed on behalf of respondents, the learned Presenting Officer submits that as far as Government Circular dated 15.12.2004 issued by the General Administration Department, Mantralaya, Mumbai is concerned, the same is in respect of effecting transfers of disabled employees in the Government services near to their residential places. However, it has been mentioned in the said Circular that the transfer of the disabled employees in the Government Services, if possible, be effected as per administrative convenience and availability of the posts in the offices near such residences of the disabled employees. Learned P.O. submits that the said directions are directory and not mandatory in nature and the respondent authorities have rightly taken into consideration all such G.Rs./ Circulars/ directions issued by the State Government while effecting transfer of the applicant.

6. Learned Presenting Officer submits that the applicant was working on the post of Kotwal since 01.07.2009 at Tahsil Office, Rahuri and thereafter since 14.12.2021, the applicant came to be promoted as Peon and working at Tahsil office Rahuri on the said post. Thus, the applicant has completed 14 years' service since 01.07.2009 at Rahuri Tahsil Office.

7. Learned Presenting Officer submits that so far as the G.R. dated 09.04.2018 is concerned, the same is in respect of policy regarding transfer of Government servants through counseling. The respondents have rightly followed the directions given in the G.R. dated 09.04.2018 while issuing the transfer order of the applicant.

8. Learned Presenting Officer submits that vide order dated 30.06.2023, the applicant has been transferred to Shevgaon Tahsil Office and in terms of modified order, dated 30.06.2023 on administrative exigencies. Learned P.O. submits that in the first order of transfer inadvertently it has been mentioned as request transfer, but in fact the applicant was transferred on administrative exigencies and accordingly, the modified order came to be issued. Learned P.O. submits that in view of the said transfer order, the respondent No. 3 i.e.

Tahsildar Rahuri has relieved the applicant on 04.07.2023 after 12.00 hrs. and the applicant has now joined his duties on the transferred post at Shevgaon Tahsil Office on 11.07.2023 and started discharging his duties as Peon. There is no substance in the present Original Application and the same is liable to be dismissed.

9. Learned counsel for the applicant in reply to the certain grounds raised by the respondent authorities in the affidavit in reply and oral submissions of the learned P.O., submits that the applicant is not working at Rahuri itself, but he was working as Kotwal at village level and thereafter promoted in the year 2021 as Peon and posted at Rauri. It is thus incorrect to say that for all these 14 years of working as Kotwal, the applicant was posted at Rahuri itself.

10. In the order dated 21.12.2023 passed by this Tribunal, it is observed that in terms of the oral directions given by this Tribunal, learned Presenting Officer has received instructions in writing from respondent No. 2 and on perusal of the same, it appears that there are 03 posts vacant at Tahsil Office, Shevgaon and 04 posts vacant at Tahsil Office, Rahuri.

11. It is an admitted position that the applicant is disabled locomotor to the extent of 40%. His disability is permanent in nature. In terms of G.R. sated 15.12.2004, such disabled employee required to be transferred/retained near his place of residence. In the said order dated 21.12.2023, this Tribunal has directed the learned Presenting Officer to take instructions from the respondent No. 2 as to whether the applicant can be accommodated at Tahsil Office, Rahuri considering his permanent disability so also his place of residence in view of the G.R. dated 15.12.2004. However, learned P.O. on instructions from the concerned department submits that the directions given in the G.Rs. dated 15.12.2004 and 09.04.2018 are not mandatory and are directory in nature and as such, not binding on the respondent authorities.

12. It needs to be mentioned here that by order dated 30.06.2023 (Annexure A-4) the applicant came to be transferred from Tahsil Office Rahuri to Tahsil Office Shevgaon on his request. The said order is subsequently modified showing the basis of transfer of the applicant as administrative exigencies.

13. In terms of G.R. dated 15.12.2004, the disabled employee should be transferred near place of his residence and

considering the administrative convenience. In terms of the oral directions given by this Tribunal, learned Presenting Officer received instructions in writing from respondent No. 2 and submits that at the time of transfer there are 03 posts vacant at Tahsil Office, Shevgaon and 04 posts vacant at Tahsil Office, Rahuri. The applicant only after his promotion has worked at Rahuri and before that he is working as Kotwal at village level within Rahuri Circle, but not at Rahuri. Only after 2021 after promotion, the applicant was posted at Rahuri.

14. It is necessary to mentioned here that though this Tribunal has directed learned Presenting Officer to take instructions from the respondent No. 2 as to whether the applicant can be accommodated at Tahsil Office, Rahuri considering his permanent disability so also his place of residence in view of the G.R. dated 15.12.2004, the respondent authorities have responded in a very rude manner and informed that those directions given in the G.R. dated 15.12.2004 are directory in nature and not mandatory.

15. Though at present the applicant came to be relieved and joined at his place of transfer during pendency of the present Original Application, however considering the permanent

disability to the extent of 40% and further in view of pregnancy of the wife of the applicant, I am inclined to allow the present Original Application. Hence, the following order :-

ORDER

- (i) The Original Application No. 535/2023 is hereby allowed.
- (ii) Modified transfer order dated 30.06.2023 bearing outward No. Maha/Astha/Karya.5A.2/461/2023, as well as, relieving order dated 04.07.2023 issued by the respondent authorities are hereby quashed and set aside.
- (iii) The respondents are directed to retransfer the applicant at Tahsil Office, Rahuri within a period of four weeks from the date of this order.
- (iv) In the circumstances, there shall be no order as to costs.
- (v) The Original Application accordingly disposed of.

PLACE : Aurangabad.

DATE : 23.01.2024

(Justice V.K. Jadhav)

Member (J)