

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 600 OF 2024

DIST. : JALGAON

Shri Shyam s/o Shivajirao Lohi,)
 Age. 49 years, Occu. Service (as)
 Regional Transport Officer),)
 R/o Flat No. 303, Angeera Woods,)
 Near Mehrun Lake, Lake City, Jalgaon.) .. **Applicant**

V E R S U S

1. **The State of Maharashtra**)
 Through its Additional Chief Secretary,))
 Home (Transport) Department,)
 Mantralaya, Mumbai-32.)
2. **The Transport Commissioner,**)
 Maharashtra State,)
 5th Floor, Telecom Bhavan,)
 Fountain, MTNL Bldg. No. 2,)
 Mahatma Gandhi Road, Fort,)
 Mumbai - 01.)
3. **Smt. Archana Gaikwad,**)
 Regional Transport Officer,)
 Pune, Near Sangam Bridge,)
 Sangamwadi, Pune – 01.) .. **Respondents.**

APPEARANCE :- Shri Avinash S. Deshmukh, Advocate for
 the applicant.

: Shri V.R. Bhumkar, learned Presenting
 Officer for the respondent authorities.

: Shri Ajay S. Deshpande, learned counsel
 for respondent no. 03.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)

DATE : 30th July, 2024

ORDER

[Per :- Justice P.R. Bora, V.C.]

1. Heard Shri Avinash S. Deshmukh, learned counsel for the applicant, Shri V.R. Bhumkar, learned Presenting Officer for respondent authorities and Shri Ajay S. Deshpande, learned counsel for respondent no. 03.

2. Aggrieved by the Government Resolution dated 13.06.2024 issued by respondent no. 01, thereby effecting modification in the order of posting on promotion given to him from Pune to Chandrapur, the applicant has preferred the present Original Application seeking quashment of the said G.R. and the consequential reliefs flowing therefrom.

3. Applicant entered in the Government services as Assistant Regional Transport Officer on 26.08.2002. On 04.04.2013, the applicant was promoted as Deputy R.T.O. On 16.03.2024, respondent no. 01 issued a G.R. promoting 23 officers in the cadre of Deputy R.T.Os. to the post of R.T.O. and further giving them posting on promotion. Applicant is one of such officers and his name was at sr. no. 10 therein and he was

shown to have been posted at Pune. Name of respondent no. 03 was at sr. no. 19 in the said list and she was shown to be posted at Chandrapur. The aforesaid order was not given the immediate effect. On 06.06.2024, 21 officers in the said list of 23 officers were served with the orders of promotions with their postings. Such a course was not adopted in respect of only 02 officers i.e. the present applicant and respondent no. 03. On 13.06.2024, the Government issued another order, thereby causing modifications in G.R. dated 16.03.2024. Vide the order dated 13.06.2024 the applicant was posted as Regional Transport Officer at Chandrapur and vide another order passed on the even date, respondent no. 03 was given posting at Pune.

4. It is the contention of the applicant that G.R. dated 13.06.2024 was not uploaded on the website of the Government, nor the copy of it was served on the applicant. As stated by the applicant, he was required to collect the said information by filing application under Right to Information Act. Applicant has alleged that initial posting given to him at Pune has been subsequently changed with the only object to accommodate respondent no. 03 at Pune. It is the further contention of the applicant that the posting order dated 16.03.2024 has been modified in utter violation of the

prescribed norms and without approval of the Civil Services Board.

5. In the rejoinder affidavit filed by the applicant he has seriously disputed the fact of sending letter by respondent no. 03 to respondent no. 01 on 28.02.2024. Applicant has also raised his reservations about the fact that the respondent no. 03 was consistently making request for giving her posting either at Pune or at Pimpri-Chinchwad. On all above grounds the applicant has prayed for setting aside the order dated 13.06.2024, whereby the order dated 16.03.2024 has been modified. Consequently the applicant has prayed for his posting at Pune as per the G.R. dated 16.03.2024.

6. Respondent nos. 01 and 02 have filed their joint affidavit in reply to oppose the contentions raised in the Original Application, as well as, prayers made therein. It is the contention of these respondents that having regard to the representation dated 28.02.2024 received from the respondent no. 03 requesting for posting on promotion either at Pune or at Pimpri-Chinchwad on the ground of ill-health of her husband and her aged mother, the posting order dated 16.03.2024 was modified and vide order dated 13.06.2024 she was given posting at Pune. It is further contended that the respondent no. 03 has

already resumed the charge of her new posting on 14.06.2024 and has been working at the said post since then. It is further stated that due to code of conduct declared by the Election Commission of India, no effect was given to the G.R. dated 16.03.2024, and it is only after the expiry of code of conduct the consequential orders of promotion and postings have been promulgated by respondent no. 02 on 06.06.2024. It is the further contention of these respondents that the Government possesses the power and authority to decide the postings of the incumbent on his promotion. It is further contended that on his promotion the applicant cannot insist for a particular place of posting. On all the aforesaid grounds the Original Application is sought to be dismissed by these respondents.

7. Respondent no. 03 has filed her affidavit in reply to oppose the contentions raised in the Original Application. Respondent no. 03 has denied the contention of the applicant that he is senior to respondent no. 03. It is the further contention of respondent no. 03 that her husband, who is a Gold Medalist Electronics Engineer, has become victim of depression, anxiety and fears with psychotic features for last about 10 years and his ailment has been aggravated from last 02 years. Respondent no. 03 has also referred to ailment of her

mother aged about 78 years stating that she has undergone angioplasty. It is her further contention that she has been making representations for her posting either at Pune or at Pimpri-Chinchwad. It is her further contention that her long pending representations were ultimately considered by the respondent authorities and accordingly she has been posted at Pune. It is her further contention that she has already resumed the charge of her post at Pune. It has also been contended that the provisions of Transfer Act, 2005 cannot be made applicable in the matters of posting on promotion. It is her further contention that the posting on promotion is the matter within exclusive domain of the Government.

8. To the affidavits in reply filed on behalf of respondent nos. 1, 2 and 03, the applicant has filed the rejoinder affidavit. To the rejoinder affidavit, sur-rejoinder affidavit has been filed by the respondent nos. 01 and 02 disputing the contentions raised in the rejoinder affidavit filed by the applicant.

9. Shri Avinash S. Deshmukh, learned counsel appearing for the applicant vehemently argued that from the material on record it is quite evident that the change was effected in the G.R. dated 16.03.2024 with the only object to

accommodate respondent no. 03 in place of the applicant. Learned counsel submitted that the entire conduct of the respondent authorities is unjust and unfair and apparently appears to be discriminatory, irrational and arbitrary. Learned counsel further argued that the respondent authorities have not given any satisfactory explanation about non-consideration of the representation dated 28.02.2024 submitted by respondent no. 03 at the time of issuance of G.R. dated 16.03.2024. According to the learned counsel, the circumstances on record lead to an inference that no such representation was ever submitted by respondent no. 03 and only with the object of providing justification to the impugned order that the said document has been procured later on. Learned counsel further argued that if the contention of respondent no. 03 that she has been consistently making the representations from year 2020 onwards but they were not considered is to be accepted, it leads to the only inference that the said requests were not considered by the respondent authorities or they were not worth considering. Learned counsel further argued that though the competent authority possesses the power and authority to give postings on promotion as per its requirement, such power and authority cannot be exercised by the State arbitrarily. Learned counsel further argued that joining of respondent no. 03 at

Pune may not be an impediment in setting aside the impugned order. Learned counsel relied upon the following judgments in support of his submissions:-

(1) Smita Shrivastava Vs. The State of Madhya Pradesh & Ors, Civil Appeal No(s) _____ of 2024 (arising out of SLP(C) No(S). 23966-23968 of 2022,

(2) Manoj Kumar Vs. Union of India & Ors., Civil Appeal No. 2679/2024 (arising out of SLP(C) No. 5278/2019

10. Shri V.R. Bhumkar, learned Presenting Officer while arguing on behalf of respondent Nos. 1 & 2 i.e. the State authorities harped upon the powers of the State in giving posting to its officers on promotion. Learned P.O. argued that the Government officer who has been promoted is not vested with any right to be posted at the place or post of his choice but it is the prerogative of the State to give such posting by objectively considering the circumstances prevailing at the relevant time. Learned P.O. further submitted that respondent No. 3 had made a representation on 28.02.2024 and considering the reasons which are assigned by respondent No. 3 in the said representation, she has been given posting at Pune on humanitarian grounds. Learned P.O. argued that at the time of issuance of G.R. dated 16.03.2024 though the representation

of respondent No. 3 may have remained unattended, when it was noticed by the competent authority, immediately cognizance of it was taken by the said authority and accordingly the order pertaining to posting of applicant and respondent No. 3 was modified. Learned P.O. further submitted that the applicant has nowhere disclosed or has not made out any such case as to what prejudice has been caused to him. Learned P.O. further argued that respondent No. 3 has already joined as Regional Transport Officer at Pune pursuant to the order dated 13.06.2024. Learned P.O. in the circumstances prayed for dismissal of the O.A.

11. Shri Ajay Deshpande, learned counsel appearing for respondent No. 3 concurring the submissions made on behalf of the State authorities further added that the reasons for which the respondent No. 3 had made a representation on 28.02.2024 seeking her posting at Pune or at Pimpri Chinchwad have not been denied or disputed by the applicant and in such circumstances, if the request of respondent No. 3 has been considered by respondent Nos. 1 & 2, in no circumstance respondent Nos. 1 & 2 can be said to have exercised their power arbitrarily as alleged by the applicant. Learned counsel further argued that when it apparently appears that respondent Nos. 1

& 2 within their authority have given posting to respondent No. 3 at Pune and when the said act of respondent Nos. 1 & 2 cannot be said to be an arbitrary exercise of power by them, the application filed by the applicant must fail.

12. We have duly considered the submissions made by the learned counsel appearing for the parties and the learned Presenting Officer appearing for the respondent State. We have also perused the documents placed on record. It is not in dispute that on 16.3.2024 respondents issued the G.R., thereby awarding promotions to 23 Deputy R.T.Os. in Group-A to the post of R.T.O. Group-A on the basis of their seniority and in the same G.R. allotted them the postings. In the said list name of the present applicant is appearing at sr. no. 10 and he is shown to have posted at Pune, whereas name of respondent no. 03 is at sr. no. 19 and she is shown to be posted at Chandrapur. Admittedly the said G.R. was not uploaded on the website of the Government and no immediate effect was given to it. There is further no dispute that immediately thereafter the code of conduct was declared by the Election Commission of India and hence no further progress took place in pursuance of the said G.R.

13. Further, it is undisputed that on 06.06.2024 most of the officers promoted vide the aforesaid G.R. dated 16.03.2024 were relieved from their erstwhile post to join their new posting. The orders were not, however, issued insofar as applicant and respondent no. 03 are concerned. Subsequently on 13.06.2024 another G.R. came to be issued, thereby causing modification in the earlier G.R. issued on 16.03.2024. As per the modified G.R. the applicant was given posting at Chandrapur, whereas respondent no. 03 was posted at Pune. As has come on record, respondent no. 03 took the charge as R.T.O. at Pune w.e.f. 14.06.2024.

14. The question, which falls for our consideration is whether the modification in the G.R. dated 16.03.2024 caused by the respondents vide G.R. dated 13.06.2024 can be said to an arbitrary exercise of power by the State.

15. It cannot be disputed that to give posting to its officers on their promotions is the prerogative of the State. As such, the onus is on the applicant to substantiate his objection that the G.R. dated 13.06.2024 is unreasonable, unjust and illegal and therefore is arbitrary exercise of power. Applicant has alleged that the plea raised by respondent nos. 01 and 02 to the effect that the posting order was modified in view of the

representation dated 28.02.2024 submitted by respondent no. 03 is a camouflage and not the real reason or else it would have been reflected in the order dated 13.06.2024.

16. We deem it appropriate to reproduce herein below Government Resolution dated 13.06.2024, which reads thus:-

प्रादेशिक परिवहन अधिकारी
पदावर पदोन्नती देणेबाबत.

महाराष्ट्र शासन
गृह विभाग
शासन निर्णय क्रमांक: एमव्हीडी ०९२३/प्र.क्र.३१९/परि-४
मादाम कामा मार्ग, हुलात्मा राजगुरु चौक
मंत्रालय, मुंबई-४०० ०३२
दिनांक : १३ जून, २०२४

वाचा :-

१) गृह विभाग शासन निर्णय समक्रमांक दिनांक १६ मार्च, २०२४.

शासन निर्णय-

उपनिर्दिष्ट क्र. १ येथील शासन निर्णयान्वये गृह (परिवहन) विभागांतर्गत मोटार वाहन विभागातील उप प्रादेशिक परिवहन अधिकारी, गट-अ संवर्गातील अधिकाऱ्यांना प्रादेशिक परिवहन अधिकारी, गट-अ या पदावर सेवाज्येष्ठतेने तारपुरती पदोन्नतीने पदस्थापना देण्यात आली आहे. सदर शासन निर्णयात खालीलप्रमाणे अंशतः बदल करून प्रादेशिक परिवहन अधिकारी, गट-अ या पदावर पदस्थापना देण्यात येत आहे.

अ.क्र.	अधिकार्याचे नाव	शासन निर्णय दि.१६ मार्च, २०२४ अन्वये देण्यात आलेली पदस्थापना	सुधारीत पदस्थापना
१०	श्री. श्याम लोही	प्रा.प.का. पुणे	प्रा.प.का. चंद्रपूर
१९	श्रीम. अर्चना गायकवाड	प्रा.प.का. चंद्रपूर	प्रा.प.क. पुणे

२. उपनिर्दिष्ट क्र. १ येथील शासन निर्णयात नमूद केलेल्या अटी व शर्ती या प्रकरणी लागू राहतील.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुरार व नावाने.

(भरत रा. लोधी)

अवर सचिव, गृह विभाग, महाराष्ट्र शासन

प्रत,

१. मा. राज्यपाल यांचे सचिव, राजभवन, मुंबई.

२. मा. मुख्यमंत्री यांचे अपर मुख्य सचिव, मंत्रालय, मुंबई.

३. मा. अपर मुख्य सचिव (परिवहन), मंत्रालय, मुंबई यांचे वरिष्ठ स्वीय सहाय्यक.

17. Perusal of the aforesaid G.R./order would show that the respondents have not provided any reason, which

necessitated the change in G.R. dated 16.03.2024 insofar as it relates to promotion and posting of the applicant and respondent no. 03. The order dated 13.06.2024 which was served upon the applicant also does not contain any reason why the postings given to them i.e. applicant and respondent no. 03 have been modified. In both the aforesaid documents even there is no reference of the representation dated 28.02.2024 allegedly made by respondent no. 03. The said fact has come on record through the affidavit in reply filed by respondent nos. 01 and 02, as well as, by respondent no. 03. It is also the contention of respondent nos. 01 and 02, as well as, respondent no. 03 in their respective affidavits that respondent no. 03 had been making representations for her transfer/posting at Pune or Pimpri Chinchwad since the year 2020. In his rejoinder affidavit the applicant has raised serious doubts about submission of representation dated 28.02.2024 by respondent no. 03 before issuance of G.R. dated 16.03.2024. Applicant has contended in the said rejoinder affidavit that the representation dated 28.02.2024 was either not submitted by respondent no. 03 before issuance of order/G.R. dated 16.03.2024 and if the same was actually submitted, the request therein was not acceded to by the State Government inasmuch as the Government was pleased to post her on promotion at

Chandrapur. In paragraph no. 04 of the rejoinder affidavit the applicant has taken the following averments:-

“4) That, without prejudice to all my above submissions, I say that, all the Respondents need to be put to strict proof in respect of their respective contentions that the Resp. No. 3 had been requesting for transfer at or nearby Pune since 2019 or 2020, because none of the Respondents has bothered to place before this Hon'ble Tribunal copies of the representation/s, if any, made by Resp. No. 3 in 2019 or 2020.

That, further assuming for a moment & accepting that the Resp. No. 3 had in reality been requesting for a posting at or nearby Pune since long, however the very fact that said request was not accepted by the Resp. No. 1 all through these years since 2019-20 and even at the time of issuance of the order/ G.R. dated 16/03/2024 that it goes without saying that the Resp. No. 1 did not actually want the Resp. No. 3 to be posted at Pune. Further however, the fact that the Resp. No. 1 issued the impugned orders on 13/06/2024 shows that there was, for all reasons to believe, extra departmental and/or political pressure exerted upon the Resp. No. 1 at the behest of and in favour of the Resp. No. 3. That is to say, the impugned orders dated 13/06/2024 were not the result of any administrative exigency or reason, but were issued only for the purpose of accommodating Resp. No. 3 at Pune. Pertinently, it has categorically been accepted by Resp. Nos. 1 and 2 in paragraph no. 7 of their Reply Affidavit that the order/ G.R, dated 16/03/2024 was modified (only) to accommodate Resp. No. 3 in Pune.”

18. Respondent nos. 01 and 02 were under an obligation to dislodge the objections raised by the applicant as aforesaid by placing on record the copies of earlier representations allegedly preferred by respondent no. 03. Neither respondent no. 01 and 02 nor respondent no. 03 have placed on record the said earlier representations. An adverse inference, therefore,

has to be drawn that no such representations were submitted by respondent no. 03.

19. Learned Presenting Officer and the learned counsel appearing for respondent No. 3 both have argued about the scope of judicial review and the limitations to be observed by the Tribunal in causing the interference in the administrative decisions. According to the respondents, it is within the exclusive domain of the State authorities to give posting to its employee after his promotion. In this context, it has been argued that there is no scope in the present matter for the Tribunal to cause indulgence. The argument as has been made as such cannot be wholly accepted. Though there cannot be a dispute about proposition that the scope of judicial review of administrative action is very limited, if administrative decision is noticed to be suffering from procedural impropriety the power of judicial review can certainly be exercised. As has been observed by Hon'ble Supreme Court in the case of **Jayrajbhai Jayantibhai Patel vs Anilbhai Jayantibhai Patel And Ors, 2006 (8) SCC 200** "While appreciating inherent limitation in exercise of the power of judicial review, the judicial quest has been to find and maintain a right and delicate balance between the

administrative discretion and need to remedy alleged unfairness in exercise of such discretion.”

20. The Hon’ble Supreme Court in the case of **Asha Sharma vs Chadigarh Administration & Ors., 2011 (10) SCC 86** has held as under:-

“9. Arbitrariness in State action can be demonstrated by existence of different circumstances. Whenever both the decision making process and the decision taken are based on irrelevant facts, while ignoring relevant considerations, such an action can normally be termed as ‘arbitrary’. Where the process of decision making is followed but proper reasoning is not recorded for arriving at a conclusion, the action may still fall in the category of arbitrariness. Of course, sufficiency or otherwise of the reasoning may not be a valid ground for consideration within the scope of judicial review. Rationality, reasonableness, objectivity and application of mind are some of the pre-requisites of proper decision making. The concept of transparency in the decision making process of the State has also become an essential part of our Administrative law.

14. Action by the State, whether administrative or executive, has to be fair and in consonance with the statutory provisions and rules. Even if no rules are in force to govern executive action still such action, especially if it could potentially affect the rights of the parties, should be just, fair and transparent. Arbitrariness in State action, even where the rules vest discretion in an authority, has to be impermissible. The exercise of discretion, in line with principles of fairness and good governance, is an implied obligation upon the authorities, when vested with the powers to pass orders of determinative nature. The standard of fairness is also dependent upon certainty in State action, that is, the class of persons, subject to regulation by the Allotment Rules, must be able to reasonably anticipate the order for the action that the State is likely to take in a given situation. Arbitrariness and discrimination have inbuilt elements of uncertainty as the decisions of the State would then differ from person to person and from situation to situation, even if the determinative factors of the situations in question were identical. This uncertainty must be avoided.”

21. From the above decisions it emerges that if no reasoning is recorded in support of its decision by the administrative authority, such decision can be interfered. In the instant matter what is prominently revealed is the fact that the respondents have not recorded the reasons in support of the decision taken by them to cause modification in the order of posting issued on 16.03.2024 to the extent of applicant & respondent No. 3. Though respondent Nos. 1 & 2 were entitled to exercise their discretion, such exercise must have been well considered and supported by the reasons. As elaborately discussed by us hereinbefore the order/G.R. dated 13.06.2024, which we have reproduced hereinabove, does not contain any reason, which has necessitated the need of causing modification in the postings given to applicant and respondent No. 3 in the earlier G.R. dated 16.03.2024. No doubt, in the affidavit in reply the respondents have come out with the stand that respondent No. 3 had submitted a representation on 28.02.2024 and had submitted such representations even prior to that since from the year 2020 requesting for her posting at Pune or Pimpri Chinchwad on the ground of ailment of her husband, ailment of her mother and educational career of her son studying in 12th standard. However, when challenge was raised in the O.A. to the order dated 13.06.2024 causing change

in the posting of the applicant without assigning any reason in the said order, there cannot be a post facto explanation to the said objection in the form of affidavit in reply.

22. For the sake of argument even if it is accepted that the representation submitted by respondent No. 3 necessitated the modification in the order of posting, the further question arises what is the explanation from the side of respondents to clarify why the alleged representation allegedly submitted on 28.02.2024, as well as, the representations allegedly submitted by respondent No. 3 since from the year 2020 were not considered at the time of and before issuance of G.R. dated 16.03.2024. Respondent Nos. 01 and 02 have through not provided any reason in that regard.

23. The very fact of submission of the representation by respondent No. 3 on 28.02.2024 i.e. to say prior to issuance of Government Resolution dated 16.03.2024 is in shadow of doubt. The burden was on the respondents to clear the said doubts. In the order of posting issued vide Government Resolution dated 16.03.2024 when respondent No. 3 is shown to have posted at Chandrapur, two inferences emerge; one that the respondents did not find the said representation worth

considering and other that till the said date no representation was submitted by respondent No. 3. Respondent Nos. 1 & 2 only could have clarified the said circumstance. The respondents were under an obligation to clarify and state the reasons why the representation of respondent No. 3 if it was pending with them was not considered while issuance of the Government Resolution dated 16.03.2024. Respondents have not discharged the said burden.

24. The Government Resolution dated 31.01.2014 has been referred by respondent Nos. 1 & 2 in their affidavit in reply stating that Civil Services Board has been established by the Government for recommendation of place of posting. Clause 3.4 of the said G.R. provides that the proposal for the postings to be given to the officers on their promotion is to be placed before the Civil Services Board for their approval. In view of the provision as aforesaid it was incumbent on part of respondent Nos. 1 & 2 to place the representation dated 28.02.2024 if it was pending with them as well as representations allegedly received prior to that before the Civil Services Board along with the proposal for determining the posting to be given to respondent No. 3. Respondent Nos. 1 & 2 have not explained whether the said representations were placed before the Civil Services Board or

not. The respondents have also not come out with any firm stand that the representation dated 28.02.2024 and the previous representations of respondent No. 3 were not placed before the Civil Services Board. In paragraph No. 11 of the affidavit in reply when respondent Nos. 1 & 2 have assertively submitted that though the Civil Services Board recommends the place of posting, after the said recommendation of the Civil Services Board, Competent Authority has to ultimately decide the posting of an incumbent, it was the obligation cast on the respondents to clarify at which place the Civil Services Board has recommended the posting of the applicant, as well as, respondent No. 3. In absence of any such disclosure from respondent Nos. 1 & 2 it has to be inferred that the Civil Services Board had recommended the posting for the applicant and respondent No. 3 as reflected in the Government Resolution issued on 16.03.2024.

25. Moreover, even if the authority of the respondents in taking final decision in regard to the postings to be given to the applicant and respondent No. 3 is accepted, while exercising such authority the respondents were not exempted from following the established procedure. Respondents have not produced on record a note-sheet, so as to know the reasons

given therein in support of the intended modification in the postings of applicant and respondent No. 3, as well as, the remarks endorsed on the said proposal by the concerned administrative officers in hierarchy and ultimately the final approval granted to the said proposal by the competent authority. These documents have also been asked by the applicant under RTI from the respondents. Copy of said application is placed on record by the applicant. In fact, the respondents at their own must have produced the said documents on record. Non-production of these documents is one more circumstance against the respondents.

26. From the facts as aforesaid, which have come on record it is evident that the respondents have neither followed the due process for decision making nor have recorded the reasons for not considering the representation allegedly made by respondent No. 3 on 28.02.2024 while issuance of G.R. dated 16.03.2024. In the case of **Asha Sharma Vs. Chadigarh Administration & Ors.** (cited supra) the Hon'ble Supreme Court has held that, "where the process of decision making is followed but proper reasons are not recorded for arriving at a conclusion, the action may still fall in the category of arbitrariness." In the instant matter the respondents have neither followed the due

process for decision making nor have recorded the reasons much less the proper reasons for not considering the alleged representation before issuing the G.R. dated 16.03.2024. In the circumstances, the alleged action of respondent Nos. 1 & 2 would definitely fall in the category of an arbitrary action.

27. After having considered the entire facts and circumstances involved in the present matter, it is revealed that there is complete lack of transparency in the decision making process adopted by the respondents, which has rendered the decision impugned in the present matter as arbitrary. According to us, respondent Nos. 1 & 2 have misused the power vested in them. When the impugned decision suffers from procedural impropriety and when the respondents have failed in offering any reasonable explanation as to why the alleged representation was not considered when the posting order dated 16.03.2024 was issued, according to us, it is a fit case for causing indulgence in the impugned decision. Though it was sought to contend by respondents that since respondent No. 3 has already taken over the charge of post at Pune suggesting thereby that no relief is liable to be granted in favour of the applicant, it is difficult to agree with the submission so made. Hon'ble Supreme Court in the case of **Manoj Kumar Vs. Union of**

India & Ors. (cited supra) has held that, “when a citizen alleges arbitrariness in executive action, the said issue need to be examined and while respecting flexibility in executive functioning, the courts must not let arbitrary action pass through”. We have, therefore, no hesitation in setting aside the order impugned in the present Original Application. In the result the following order is passed: -

ORDER

- (i) The Government Resolution dated 13.06.2024 issued by respondent no. 01, effecting modification in the posting on promotion given to the applicant and respondent no. 03 and the consequential orders issued by respondent no. 02 on 13.06.2024 are quashed and set aside.
- (ii) Respondent nos. 01 and 02 shall implement G.R. dated 16.03.2024 and accordingly permit the applicant to join on the post of Regional Transport Officer at Pune within a week from the date of this order.
- (iii) The Original Application stands allowed in the aforesaid terms, however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

28. Learned counsel appearing for respondent no. 03 at this juncture has prayed for staying the effect and operation of

the present order for next 02 weeks. Learned counsel submitted that respondent no. 03 has already resumed the charge as Regional Transport Officer at Pune and is discharging duties on the said post. Learned counsel, on instructions, submits that the respondent no. 03 is intending to challenge the present order before the Hon'ble High Court and to facilitate her to approach the Hon'ble High Court minimum 02 weeks' time is required.

29. Learned counsel appearing for the applicant has opposed for granting any such stay stating that in the present matter there is no stay operating during pendency of the Original Application.

30. It is not disputed that respondent no. 03 has taken over the charge as Regional Transport Officer at Pune and is discharging duties on the said post. Having considered the fact as aforesaid and having regard to the further submissions made by the learned counsel appearing for respondent no. 03 that the respondent no. 03 is intending to challenge the present order before the Hon'ble High Court, we are inclined to stay the effect and operation of the present order for next 02 weeks. Hence, the following order:-

ORDER

The effect and operation of the present order is stayed for next 02 weeks.

MEMBER (A)**VICE CHAIRMAN****Place : Aurangabad****Date : 30th July, 2024**

ARJ O.A. NO. 600 OF 2024 POSTING ON PROMOTION