

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1437 OF 2024

DISTRICT : THANE

Shri Ganesh Lalchand Tartare,)
Age 57 years, Professor, Sir J.J. School of Art,)
Dr. D.N. Road, Mumbai -1)
R/o 604, B-Wing, Rachana CHS, Kalyan Nagari,)
Sanglewadi, Kalyan (W), District Thane)..Applicant

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
Higher & Technical Education Department,)
Mantralaya, Mumbai 400032)
2. Dr. Santosh Kshirsagar,)
Age adult, occ. Lecturer,)
Sir J.J. Applied Art College, Dr. D.N. Road,)
Mumbai-1)..Respondents

Shri A.V. Bandiwadekar – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri Atulchandra M. Kulkarni, Member (A)

RESERVED ON : 3rd March, 2025

PRONOUNCED ON: 12th March, 2025

J U D G M E N T

1. By the above OA the applicant has sought following reliefs:

(a) By a suitable order/direction, this Hon'ble Tribunal may be pleased to set aside the impugned order dated 15.10.2024 passed by the Respondent No.1 [EXHIBIT-A) under which he entrusted to the Respondent No. 2 the additional charge of the post of Director, Directorate of Art [M.S.], Mumbai, ignoring the legitimate claim of the Petitioner thereto.

(b) By a suitable order / direction, this Hon'ble Tribunal may be pleased to hold and declare that in the light of the provisions of the Government Circular dated 5.9.2018 that the Petitioner was / is entitled for the additional charge of the post of Director, Art Directorate, [M.S.], Mumbai, in preference to the Respondent No. 2 and accordingly the Respondent No. 1 be directed to issue in favour of the Petitioner the order to that effect within a period of one week from the date of the order of the Hon'ble Tribunal with all consequential benefits.”

2. The Aurangabad Bench of this Tribunal is hearing one **OA No.1282/2024 filed by Ramesh Subhash Wadje** on the same issue. However, since I have heard the present OA completely, I am proceeding to pass the order.

3. Also, Respondent No.2 though served, remained absent. It is to be noted that affidavit in reply dated 18.12.2024 is filed by Nagesh Machindra Waghmode, working as Controller of Examination in the office of Director of Arts, MS, Mumbai, on behalf of Respondent No.1, who is working under Respondent No.2.

4. Ld. Advocate for the applicant contends that applicant is senior to respondent no.2 who has been asked to look after additional charge of the post of Director, Art Directorate, Mumbai. He states that respondent no.2 is just Lecturer whereas the applicant is full- fledged Professor. Based on the office note which is annexed to affidavit in reply dated 18.12.2024 filed by Nagesh Machindra Waghmode, Controller of Examination in the office of Director of Arts, Mumbai on behalf of respondent no.1, the Ld. Advocate for the applicant contends that the candidate was predetermined by the Hon'ble Minister and the office note was moved in that fashion. However, said office Note No.1 also mentions at para 4 page 76 of OA that the applicant is eligible in terms of Govt. Circular dated 5.9.2018 to be handed over the said additional charge and that if he is to be superseded, reasons for the same will have to be noted.

5. Relevant portion of para 4 of Office Note No.1 reads as under:

“०४. सागान्य प्रशारान विभागाचे उपरोक्त गार्गदर्शक तत्वांचा विचार करता, सर्वात सेवाज्येष्ठ, अनुभवी व कार्यक्षम अधिकारी यांच्याकडे अतिरिक्त कार्यभार सोपविणे आवश्यक आहे. काही बाबींमुळे सेवाज्येष्ठ अधिकारी/कर्मचारी यांना डावलून नंतरच्या व्यक्तीला अतिरिक्त कार्यभार द्यावयाचा असेल तर, सर्वात ज्येष्ठ व्यक्ती अतिरिक्त कार्यभारासाठी का अपात्र आहे त्याची लेखी कारणे अभिटिपणीमध्ये नमूद करणे आवश्यक आहे. त्यानुसार असे नमूद करण्यात येते की, श्री. संतोष क्षीरसागर हे अधिव्याख्याता या पदावर सर ज.जी. उपयोजित कला महाविद्यालय, मुंबई येथे कार्यरत असून, त्यांची वेतनश्रेणी एस-२० ५६१००-१७७५०० इतकी आहे. श्री. संतोष क्षीरसागर यांच्यापेक्षा खालील तक्त्यातील अधिकारी हे सेवाज्येष्ठ आहेत.

अ. क्र.	अधिकारी यांचे नाव	शैक्षणिक अर्हता	पदनाम / पदस्थापना	नियुक्तीचा दिनांक	सेवानिवृत्तीचा दिनांक
१	श्री. वि.डो. साबळे	G.D.Art, MFA, Ph.D.	अधिष्ठाता, शासकीय कला व अभिकल्प महाविद्यालय, नागपूर	अधिष्ठाता या पदावर दिनांक ०६.०६.२०११ पासून कार्यरत	३० जून, २०२७
२	श्री. रमेश सुभाष वडजे	G.D.Art, MFA	अधिष्ठाता, शासकीय कला व अभिकल्प महाविद्यालय, छत्रपती संभाजीनगर	अधिष्ठाता या पदावर दिनांक ०१.०१.२०१७ पासून कार्यरत	३० एप्रिल, २०२७
३	डॉ. तरतरे गणेश	G.D.Art, MFA, Ph.D.	प्राध्यापक, कला शिक्षक प्रशिक्षण विभाग, सर ज. जी. कला महाविद्यालय, मुंबई	प्राध्यापक या पदावर दिनांक १६.०५.२०१८ पासून कार्यरत	३० जून, २०२५

तथापि, श्री. वि.डॉ. साबळे, यांची दिनांक २६ सप्टेंबर, २०२४ च्या शासन आदेशान्वये अधिष्ठाता, शासकीय कला व अभिकल्प महाविद्यालय, नागपूर या पदावर बदली करण्यात आली आहे. श्री. रमेश सुभाष वडजे हे अधिष्ठाता, शासकीय कला व अभिकल्प महाविद्यालय, छत्रपती संभाजीनगर येथे कार्यरत आहेत. सदर दोन्ही अधिकारी यांना अनुक्रमे नागपूर व छत्रपती संभाजीनगर येथील अधिष्ठाता पदाचा कार्यभार सांभाळून संचालक, कला संचालनालय या पदाचा अतिरिक्त कार्यभार सांभाळावा लागेल. त्यासाठी त्यांना सतत अनुक्रमे नागपूर व छत्रपती संभाजीनगर येथून मुंबई येथे यावे लागेल. डॉ. संतोष क्षीरसागर यांच्यापेक्षा सेवाज्येष्ठ असलेले तथा प्राध्यापक, कला शिक्षक प्रशिक्षण विभाग, सर ज.जी. कला महाविद्यालय, मुंबई या पदावर कार्यरत असलेले श्री. गणेश तरतरे हे सामान्य प्रशासन विभागाच्या उपरोक्त नमूद मार्गदर्शक तत्वानुसार संचालक, कला संचालनालय या पदाचा अतिरिक्त कार्यभार देण्यासाठी पात्र ठरतील असे वाटते. श्री. तरतरे हे दिनांक ३० जून, २०२५ रोजी नियतवयोमानानुसार सेवानिवृत्त होत आहेत. श्री. तरतरे यांच्या कडे भारतरत्न लता दीनानाथ मंगेशकर आंतरराष्ट्रीय संगीत महाविद्यालय, मुंबई येथील प्राचार्य या पदाचा अतिरिक्त कार्यभार तात्पुरत्या स्वरूपात देण्यात आला आहे. अधिव्याख्याता या प्रवर्गामध्ये डॉ. संतोष

क्षीरसागर हे सेवाज्येष्ठ असून, सध्या त्यांच्याकडे विभाग प्रमुख सर ज.जी. उपयोजित कला महाविद्यालय, मुंबई येथील विभागप्रमुख या पदाचा अतिरिक्त कार्यभार तात्पुरत्या स्वरूपात देण्यात आला आहे. डॉ. संतोष क्षीरसागर हे दिनांक ३० एप्रिल, २०२५ रोजी नियतवयोमानानुसार सेवानिवृत्त होत आहेत. डॉ. संतोष क्षीरसागर यांच्याकडे संचालक यापदाचा अतिरिक्त कार्यभार देताना त्यांच्यापेक्षा सेवाज्येष्ठ असलेल्या तीन अधिकारी यांना डावलावे लागेल. श्री. वि.डॉ. साबळे व श्री. रमेश सुभाष वडजे हे अनुक्रमे नागपूर व छत्रपती संभाजीनगर येथे कार्यरत असल्याने, ते जरी सेवाज्येष्ठ असले तरी त्यांची पदस्थापना मुंबई येथे नसल्यामुळे त्यांच्याकडे संचालक, कला संचालनालय या पदाचा अतिरिक्त कार्यभार न देणे ही बाब समर्थनीय ठरू शकेल. तथापि, श्री. तरतरे हे मुंबई कार्यरत असून ते डॉ. संतोष क्षीरसागर यांच्यापेक्षा सेवाज्येष्ठ आहेत.”

6. Further in para 6 of the said office note it is also proposed that post facto sanction of the GAD should be taken for inclusion of respondent no.2 deviating the rules as directed by the Hon'ble Minister. Moreover, the view of the GAD will have to be sought on the feasibility of handing over the additional charge of Director to respondent no.2.

7. Apparently as reflected in the noting the view of the GAD is sought and GAD has opined that the applicant would be the right candidate to hold the additional charge of the post of Director.

8. The learned Advocate for the Applicant relies upon para 2 of the Note No.21 dated 17.10.2024 (page 87 of OA) which reads as under:

०२. संचालक, कला संचालनालय, महाराष्ट्र राज्य, मुंबई या पदाचा अतिरिक्त कार्यभार सोपविण्याबाबत तसेच, श्री. राजीव मिश्रा हे सांभाळत असलेल्या संचालक,

कला संचालनालय, या पदाच्या अतिरीक्त कार्यभाराच्या कालावधीस कार्यात्तर मंजूरी देण्याबाबतचा प्रस्ताव सादर केला असता, मा. मंत्री, उच्च व तंत्र शिक्षण यांनी खालील नमूद निदेश दिले.

डॉ. संतोष क्षीरसागर, अधिव्याख्याता यांची कार्यक्षमता, जे जे डिनोव्हा विद्यापीठ स्थापनेतील योगदान, कला श्रेत्रातील त्यांचे एकुणच स्थान तसेच आता पर्यंतची निशकलक शासकीय सेवा पहाता, (खास बाब म्हणुन) यापुर्वीच दिलेल्या स्पष्ट आदेशानुसार त्यांना संचालक, कला संचालनालय या पदाचा अतिरिक्त कार्यभार अत्यंत तात्पुरत्या स्वरुपात सोपविण्याचे आदेश तात्काळ आजच निर्गमित करावेत”

9. It is stated that as a special case the respondent no.2 was asked to look after the additional charge of Director as per the orders of the Hon'ble Minister, Higher & Technical Education, as reflected above.

10. Ld. Advocate for the applicant further contends that nowhere in whole noting from note no.1 to note no.21 between 11.10.2024 and 17.10.2024 there is mention about any reason not to nominate the applicant.

11. Ld. Advocate for the applicant submits that the applicant has excellent track record and ACR. So overlooking him is patent breach of the Govt. Circular of 5.9.2018. Ld. Advocate for the applicant concludes his submissions and prays that OA may be allowed and necessary reliefs may be granted in terms of prayer clause (a) and (b) of the OA.

12. Ld. PO submits that OA No.1282/2024 has been filed by Shri Ramesh Suhas Vadge at Aurangabad Bench of this Tribunal, who is senior to the applicant. Present OA No.1437/2024 is filed on 29.10.2024. OA at Aurangabad Bench has been filed earlier to the present OA. It may be

mentioned that Shri R.S. Vadge is serving as Dean, Govt. Arts College, Aurangabad since 2017. Further Shri V.D. Sable, who is inter-se senior most amongst the three, has served as Dean, Govt. Arts College, Nagpur since 2011 and is continued there. Ld. PO relies on GAD Circular dated 5.9.2018, para 2(1) of which reads as under:

“२. उपरोक्त परिस्थिती विचारात घेऊन, अतिरिक्त कार्यभार कोणास देण्यात यावा यासंदर्भात खालीलप्रमाणे मार्गदर्शक सूचना देण्यात येत आहेत :-

१) महाराष्ट्र नागरी सेवा (वेतन) नियम, १९८१ मधील नियम ५६ नुसार शासकीय कर्मचाऱ्यांकडे त्याच्या स्वतःच्या पदाव्यतिरिक्त दुसऱ्या पदाचा अतिरिक्त कार्यभार सोपविण्यात येतो. असा हा दुसऱ्या रिक्त असलेल्या पदाचा अतिरिक्त कार्यभार, एकाच प्रशासकीय विभागांतर्गत, प्रशासकीय सोय व निकड लक्षात घेवून शक्यतो त्याच कार्यालयातील, त्याच संवर्गातील सर्वात सेवाजेष्ठ, अनुभवी व कार्यक्षम अधिकारी/कर्मचाऱ्यांकडे सोपविण्यात यावा. जेथे असे अधिकारी/कर्मचारी उपलब्ध नसतील तेथे संबंधित पदाला लगत असलेल्या निम्न संवर्गातील सर्वात ज्येष्ठ अधिकारी/कर्मचाऱ्यांना अतिरिक्त कार्यभार देण्यात यावा. काही बाबींमुळे सर्वात ज्येष्ठ अधिकारी/कर्मचारी यांना डावलून नंतरच्या व्यक्तीला अतिरिक्त कार्यभार द्यावयाचा असेल तर सर्वात ज्येष्ठ व्यक्ती अतिरिक्त कार्यभारासाठी का अपात्र आहे त्याची लेखी कारणे अभिहितपणीत नमूद करावीत.

२) अतिरिक्त कार्यभार दिलेला अधिकारी/कर्मचारी, त्याच्या मूळ पदाच्या कर्तव्य व जबाबदारीसह, त्याच्यावर अतिरिक्त कार्यभार सोपवलेल्या पदाची कर्तव्ये व जबाबदाऱ्या पार पाडू शकेल याची संबंधितांनी खातरजमा करावी.

३) प्रशासकीय सोय व निकड लक्षात घेऊन, प्रशासकीय विभागाच्या अधिपत्याखालील कार्यालयातील रिक्त पदाचा अतिरिक्त कार्यभार देण्याकरिता, वरील (१) नुसार त्याच कार्यालयात अधिकारी/कर्मचारी उपलब्ध नसतील अशा वेळी, प्रशासकीय विभागाने त्यांच्या अधिपत्याखालील अन्य कार्यालयातील त्याच संवर्गातील सेवाजेष्ठ व अनुभवी अधिकारी/कर्मचाऱ्यांचा विचार करता येईल. तसेच, जेथे एका जिल्ह्यात एकच कार्यालय असेल अशावेळी लागून असलेल्या जिल्ह्याच्या कार्यालयातील अधिकारी/कर्मचाऱ्यांना अतिरिक्त कार्यभार देण्याबाबत विचार करता येईल. तथापि, असे करताना, अतिरिक्त कार्यभार दिलेला अधिकारी/कर्मचारी, त्याच्या मूळ पदाच्या कर्तव्य व जबाबदारीसह त्या पदाची कर्तव्ये व जबाबदाऱ्या पार पाडू शकेल याची संबंधितांनी खातरजमा करावी.

४) विभागीय चौकशी सुरु असलेल्या अधिकारी/कर्मचाऱ्यांस अतिरिक्त कार्यभार दिल्यामुळे त्याच्या स्वतःच्या विभागीय चौकशीवर प्रभाव पडण्याची वा विभागीय चौकशीमध्ये अडथळा आणण्याची शक्यता असल्यास, अशा अधिकारी/कर्मचाऱ्यांना अतिरिक्त कार्यभार देण्यात येऊ नये.

५) अतिरिक्त कार्यभार दिलेले रिक्त पद तातडीने भरण्याची कार्यवाही संबंधित प्रशासकीय विभागाने करावी,

६) महाराष्ट्र नागरी सेवा (वेतन) नियम, १९८१ मधील नियम ५६ नुसार अतिरिक्त वेतन/विशेष वेतन देण्यासंदर्भात वित्त विभागाने वेळोवेळी दिलेल्या शासन आदेशानुसार प्रशासकीय विभागांनी कार्यवाही करावी.”

13. Ld. PO relies on the judgment and order dated 17.11.2022 passed by this Tribunal in **OA No.764/2022 Sharad Subhash Sagare Vs. The**

State of Maharashtra & Ors. In that OA No.764/2022 the applicant had challenged the order dated 20.7.2022 whereby respondent no.1 had given additional charge of the post of Assistant Engineer (Quality Control), Sangli to respondent no.3. The respondent no.3 was working as Sub Divisional Engineer (Quality Control) at Kolhapur. The applicant was senior to respondent no.3 and ought to have been given the charge in terms of the above referred Govt. Circular dated 5.9.2018 but it was given to junior person. Ld. PO relies on para 9 of the said judgment, which is reproduced below:

“9. Indeed, the Applicant has no vested right much less legally enforceable to ask for Additional charge of another post since it is prerogative of the Head of the Department. In present case Head of the Department i.e. the Executive Engineer has recorded reasons for not giving additional charge to the Applicant which does not affect or alter any service condition of pay and allowances, status etc. of the Applicant.”

14. Ld. PO further submits that the process of selection of right candidate through MPSC is still on.

15. It is to be noted that the post of Director, Art Directorate is being handled as additional charge since 1.7.2004. As such the post has not fallen vacant recently.

16. I have heard both the sides and perused the papers. I have also gone through the judgment and order dated 7.5.2024 passed by this Tribunal in **OA No.1226/2023 Dr. Ajay Sahebrao Chandanwale Vs. The State of Maharashtra & Anr.**, and the judgment and order dated 11.7.2024 passed by the Hon'ble Bombay High Court in **W.P. No.7249/2024 Dr. Deelip Mhaisekar Vs. Dr. Ajay Sahebrao**

Chandanwale & Anr., both in connection with similar issue related to appointment of Director of Medical Education and Research between the original applicant Dr. Ajay Sahebrao Chandanwale and Dr. Deelip Mhaisekar-original respondent no.2.

17. It may be noted that the feeder cadre for the post of Director, Art Directorate is that of Professor and Deans to various faculties. The respondent no.2 in present OA is admittedly a Lecturer in Sir J.J. Applied Art College, Mumbai and not a Professor/Dean. As is known the post has not been substantially filled up since the year 2004. The office note brought on record by the Ld. PO also clearly states that the Hon'ble Minister, Higher & Technical Education has instructed to appoint respondent no.2 as Director, Art Directorate as a special case. It is also a settled position that guidelines mentioned in the GAD Circular dated 5.9.2018 do not confer any right, much less legally enforceable right, upon the applicant to challenge the impugned order dated 15.10.2024. The entire case is based on only one issue: what procedure or rules of handing over charge of any post to Government servant are to be followed. It is admitted that though there are no specific rules, certain procedure has been laid down by way of guidelines in circular dated 5.9.2018.

18. Though there is no bar in giving the junior, additional charge, than to the person who is senior, it cannot be done arbitrarily, randomly in Government service or in a pick and choose manner. Similarly, being senior one does not get the right to hold the additional charge of a particular post. However, handing over of additional charge to a person who is below in rank and also not from the feeder cadre is a kind of upliftment of his position in his regular cadre. On this point, the judgment of the Hon'ble High Court in Dr. Chandanwale (supra) is also distinguished. Therefore, guidelines in circular dated 5.9.2018 need to be followed in letter and spirit in the above background.

19. I have very carefully gone through the noting starting with Note No.1 dated 11.10.2024 and ending with Note No.22 dated 17.10.2024. Various important contents of these notings have been already quoted above.

20. Any additional charge should essentially serve as a stop-gap arrangement. However, in the case of Director, Art Directorate, the additional charge is continued from the year 2004. Respondent no.2 may be very competent to discharge the functions under the additional charge, though I am not in a position to pass any remarks on his capability or compatibility. However, it is clear that the persons in between who had no bad record were not considered and no reason for giving this additional charge to the current incumbent by superseding them are recorded. I am of the view that the entire process reveals arbitrariness on its face. I rely on the judgment of the Hon'ble Supreme Court of India in **East Coast Railway & Anr. Vs. Mahadev Appa Rao & Ors. (2010) 7 SCC 678** wherein it has been unequivocally emphasized on 'Application of Mind' and recording of reasons by 'Public Authority' so that there is no scope of arbitrariness in taking decisions. The Hon'ble Supreme Court of India had observed the following:-

"There is no precise statutory or other definition of the term "arbitrary". Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making an order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the persons making the order. This may be evident from the order itself or record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record

contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable.”

21. I am of the view that respondent no.1 has not been able to make regular appointment to the important post of Director, Art Directorate which is required to be done on priority basis for better public administration. Hence, I pass the following order:

ORDER

- (A) The Original Application is partly allowed.
- (B) The impugned order dated 15.10.2024 passed by Respondent No.1 giving additional charge of the post of Director, Art Directorate, Maharashtra State, Mumbai to Respondent No.2 is hereby quashed and set aside.
- (C) The additional charge of the post of Director, Art Directorate, Mumbai, if required to be given in the interregnum, should be strictly done by observing the procedure prescribed in GAD Circular dated 5.9.2018.
- (D) The Respondent No.1 is further directed to take definitive and expeditious steps to fill up the post of Director, Art Directorate, Mumbai on substantive basis for better public administration within a period of four weeks from today.
- (E) No order as to costs.

Sd/-
(A.M. Kulkarni)
Member (A)
12.3.2025

Dictation taken by: S.G. Jawalkar.