

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.876 OF 2024

DISTRICT : Posting
Subject : Satara

Shri Sandip Wananrao Khadse)
Age: 39 yrs, Occ: Deputy Regional)
Transport Officer in the office of Regional)
Transport Officer, Satara.)
R/o. ---do----)...**APPLICANT**

VERSUS

- 1] The State of Maharashtra, through)
Principal Secretary, Home Department)
(Transport), having office at Mantralaya,)
Mumbai 400 032.)
- 2) The Transport Commissioner, (M.S.),)
Mumbai, having office at 5th floor,)
Telecom Bhavan, Fountain, MTNL)
Building No.2, M. G. Road, Fort,)
Mumbai -1.)..**RESPONDENTS**

Shri A. V. Bandiwadekar, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman

Reserved on : 03.04.2025

Pronounced on : 15.04.2025

J U D G M E N T

1. Heard Shri A. V. Bandiwadekar, learned Advocate for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

2. Case of the Applicant is as follows. When the Applicant became due for promotion to Class-I post of 'Deputy RTO' his promotion was deferred because of pendency of Departmental Enquiry initiated against him under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 by chargesheet dated 04.12.2020. The Enquiry Officer submitted 'Nil' report which Respondent No.1 accepted. In O.A. No.191/2021 filed by him, this Tribunal directed the Respondents, by judgment dated 29.11.2021 to consider his case for promotion if he was otherwise eligible. Respondent No.1, by communication dated 19.01.2023 provided details of Division-wise vacancies and advised the Applicant to seek posting on any one of these vacancies restricted to only one Division. The Applicant opted for Pune Division. In O.A. No.254/2022 filed by him this Tribunal, by judgment dated 12.12.2023, directed the Respondents to promote the Applicant within four weeks as per recommendation of DPC dated 16.09.2022. Further, direction was issued to the Respondents to consider grant of deemed date of promotion to him. These directions were not, however, acted upon promptly. By order dated 16.03.2024 Respondent No.1 promoted 11 junior colleagues of the Applicant and issued them posting orders on existing vacancies including a vacancy in the office of RTO, Pune. In Pune Division

vacancies at Pimpri-Chinchwad and Solapur were there. None of these was offered to the Applicant. After filing of Contempt Application, Respondent No.1 issued order dated 29.04.2024 posting the Applicant as 'Deputy RTO, Satara' where he joined under protest on 14.06.2024. By representation dated 03.05.2024 the Applicant sought modification of posting order. By representation dated 26.06.2024 the Applicant ventilated his grievance that he should have been posted on any one of the posts which were vacant as per communication dated 23.01.2023. These vacant posts were at Pune, Baramati, Solapur and Sangali. To this extent, as per clause 'ee (1)(1.1)' of G.R. dated 01.08.2019 which reads as follows, there was no discretion left with the Respondents

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“ पदोन्नतीचे प्रस्ताव सादर करण्याच्या अनुषंगाने महत्वाच्या बाबींची व्याख्या -

निवडसूची वर्ष :- निवडसूची वर्ष म्हणजे पदोन्नतीसाठी पात्र अधिकारी/कर्मचारी यांची निवडसूची तयार करण्यासाठी, पदोन्नतीच्या पदावरील एकूण रिक्त पदांची गणना करण्यासाठी एक ठराविक कालावधी निश्चित करणे.

त्यानुसार सदर कालावधी हा दि.०१ सप्टेंबर ते ३१ ऑगस्ट असा निश्चित करण्यात आला असून या कालावधीस "निवडसूची वर्ष" असे संबोधण्यात येते.”

Hence, this Original Application for following reliefs –

“ (a) By a suitable order/direction, this Hon'ble Tribunal may be pleased to set aside the impugned order dated 29.04.2024 passed by the Respondent No.1 [EXHIBIT-A] to the extent to which the same has issued the posting order to the Petitioner office of Regional Transport Officer, Satara and

accordingly the Petitioner be granted all the consequential service benefits, as if the impugned order had not been passed.

b] By a suitable order/ direction, order this Hon'ble Tribunal may be pleased to hold and declare that on the basis of select list of the year 2022-2023, that the Petitioner was entitled for being posted as Deputy Regional Transport Officer in the then existing vacancies in Pune Division as per the letter dated 19.1.2023 issued by the Respondent No. 1 thereby seeking option from him of the place of posting as per Rule 7 of the Divisional Cadre Allotment Rules, 2021.

c] That in the light of the above, the Respondents be directed to issue modified posting order of the Petitioner as Deputy Regional Transport Officer in the then existing vacancy in the office of Regional Transport Officer, Pune, Baramati, Solapur or Sangli, within a period of 8 days from the date of order of the Hon'ble Tribunal and thus to grant to the Petitioner all the consequential service benefits.”

3. Stand of the Respondents is as follows. By order dated 29.04.2024, the Applicant was posted at Satara in Pune Division. As per status dated 31.12.2022, the number of posts of Deputy RTO's in the Revenue Division such as in Konkan-2 (5 posts), Konkan-1 (1 post), Pune (4 posts), Nashik (1 post), Amravati (1 post), Nagpur (2 posts) and Aurangabad (2 posts) are vacant. As per notification dated 14.07.2021, issued by the GAD, the Applicant had to choose the posting in only one Revenue Division and communicate accordingly. In response to the letter dated 19.01.2023, the applicant opted for

Pune Revenue Division for choice posting on promotion of Deputy RTO. Even though, posts of Deputy RTO in Pune, Baramati, Solapur & Satara were lying vacant or even if vacancies are there, the petitioner does not have any vested right to claim for such posts, since it is under the absolute domain of the Government. When posting order of the Applicant was passed on 29.04.2024, post of 'Deputy RTO' at Satara had fallen vacant as the Applicant's predecessor was posted to Latur by promotion on the post of RTO. The Applicant has no vested right to claim posting only on a place of his choice.

4. The Applicant has relied on the judgment of Aurangabad Bench of this Tribunal dated 30.07.2024 in **O.A. No.600/2024 (Shri Shyam Shivajirao Lohi V/s State of Maharashtra & 2 Others)**. In this case, orders of promotion and posting of the Applicant and Respondent No.3 were modified by the impugned order. On facts, it was found that the said modification was arbitrary and opaque.

5. The Applicant has further relied on the judgment of this Bench of the Tribunal dated 01.12.2021 in O.A.No.368/2021. Relevant facts of the said case were as follows -

“(iv) In terms of Division Allotment Rules of 2017, options were called from the concerned Officers and admittedly, that time one post of Ratnagiri from Konkan-1 Division was vacant, as seen from letter of Government dated 17.01.2020 (Page No.18 of Paper Book).

(v) *The Applicant gave three options by his letter dated 21.12.2020 viz. Pune Division, Konkan-1 Division and Konkan-2 Division (Page No.19 of P.B.) (v)*

(vi) *The post of Ratnagiri was vacant, but it was not given to the Applicant.”*

Contrary to the option given for Ratnagiri by him, the Applicant was posted at Beed and Respondent No.2 was posted at Ratnagiri. Though, Respondent No.2 was senior to the Applicant, he was promoted as per recommendation of DPC made on 22.02.2021 whereas the Applicant was recommended by DPC on 20.11.2020. On 20.11.2020 post at Ratnagiri was vacant. In these facts, it was held :-

“Indeed, while giving posting to the Applicant, that time itself, the Government was under obligation to consider his option and to give him posting in Konkan-1 Division, which was admittedly vacant and it should not have been kept vacant, as if it was reserved for Mr. Medsikar, so as to give him posting in Konkan-1 Division in future. The posts were required to be filled in as per the then existing number of persons promoted and the vacancies as well as options given by the Officers in terms of Division Allotment Rules of 2017' in fair and transparent manner.”

6. Basic grievance of the Applicant is that as per communication dated 19.01.2023, keeping in view vacancies for the year 2022-2023 he had given options, he should have been accommodated on one of these vacancies instead of which he was posted on the post which fell vacant subsequently i.e. in the year 2023-2024.

7. The impugned order dated 29.04.2024 is stated to have been passed in compliance of the judgment of this Tribunal dated

12.12.2023 in O.A.No.254/2022. After judgment dated 12.12.2023 was passed, by order dated 16.03.2024, 11 colleagues of the Applicant, who are stated to be junior to him were promoted and posted as 'Deputy RTO'. Out of these 11 persons 3 were posted in Pune Division at Pimpri-Chinchwad, Solapur and Pune.

8. In Paras 6.20, 6.21 and 6.22, the Applicant pleaded as follows :-

"6.20 That from the facts stated above chronologically, it is clear that as per the communication dated 19.01.2023 issued by the Respondent No.1 to the Petitioner, it is made clear that there were total 4 clear vacancies of the post of RTOs as on 31.12.2022. That accordingly the Petitioner was called upon to submit his option restricted to only one Revenue Division as per the Rules of 2021.

6.21 That accordingly the Petitioner vide communication dated 23.01.2023 gave his option as Pune Revenue Division, so that he would be posted in one of the then existing vacancies of the post of RTO, Pune, Baramati, Solapur or Sangli. That however, malafide the Respondents did not take any further steps in the matter for almost one year and three months.

6.22 That this resulted in serious prejudice and injustice to the Petitioner in the matter of his entitlement to claim the posting as per his option in one of the vacancies as aforesaid. Thus the Respondents outrightly and malafide committed the blatant breach of the Rules of 2021, so also of their own Circular dated 19.01.2023."

As pleaded by the Applicant in his Rejoinder, aforequoted assertions in the Original Application have not been traversed by the Respondents.

9. The Respondents have relied on ***State of UP & Others V/s Gobardhan Lal, (2004) 11 SCC 402***. In this ruling, it is held :-

“8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

In the instant case, guideline ‘ee(1)(1.1.)’ of G.R. dated 01.08.2019 was breached. It is apparent that the matter of posting of the Applicant was deferred malafide. Posting order of the Applicant could have been issued either soon after judgment of this Tribunal dated 12.12.2023 or on 16.03.2024 when 11 others who were stated to be junior to him were promoted and posted. At this point of time, posts at Pimpri-Chinchwad, Solapur and Pune in Pune Division were vacant. The Applicant could have been accommodated on any one of

these posts. He was ultimately posted on a vacancy which was created not in the select list year 2022-2023 but in the select list year 2023-2024. It was submitted that in Pune Division still there are two vacancies at Baramati and Sangali.

10. In the facts and for the reasons discussed hereinabove, the Original Application is allowed in the following terms. The impugned order dated 29.04.2024 is quashed and set aside to the extent of posting the Applicant in the office of 'RTO, Satara'. The Applicant is held entitled to be posted as 'Deputy RTO' on any of the posts which were vacant as per letter dated 19.01.2023. The Respondents are directed to issue posting order of the Applicant as per this determination, within three weeks from today. No order as to costs.

Sd/-
(M. A. Lovekar)
Vice-Chairman

Place: Mumbai
Date: 15.04.2025
Dictation taken by: V. S. Mane
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