

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.418 OF 2023

DISTRICT : PUNE

Smt. Minal Manish Jawadekar,)
Age 37 Years, Craft Instructor,)
(Basic Computer Application in Industrial Automation))
ITI, Old Kasegaon Road, Pandharpur, Dist. Solapur)
R/o S.R. No.3, Sai Krupa CHS, Inamdar School Road,)
Vadgaon Sheri, Pune 14-)..Applicant

Versus

1. The Joint Director,)
Vocational Education and Training,)
Pune Region, Ghole Road, Pune-5)
2. The Director, Vocational Education & Training,)
3, Mahanagar Palika Marg, P.B. No.10036, Fort,)
Mumbai-1)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for the Respondents

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

RESERVED ON : 17th April, 2025

PRONOUNCED ON: 5th May, 2025

J U D G M E N T

1. The applicant has filed the above OA and sought the following reliefs:

(a) By a suitable order/direction, this Hon'ble Tribunal may be pleased to set aside the impugned order dated 16.12.2022 passed by the respondent no.1 under which he declined to permanently absorb the applicant in the post of Superintendent (Technical) from the post of Craft Instructor (Basic Computer Application in Industrial Automation) on the ground that applicant is not surplus cadre employee and the GR dated 10.9.2001 is not applicable and accordingly the applicant be granted all the consequential service benefits as if the impugned order had not been passed.

(b) By a suitable order/direction, this Hon'ble Tribunal may be pleased to hold and declare that in the light of the GR dated 3.6.2011 regarding the transfer outside cadre on request coupled with the orders dated 3.7.2008 and 11.2.2010 passed by the Deputy Director, Vocational Education and Training, Regional Office at Pune and passed by the Director of Vocational Education and Training, Mumbai allowing such permanent absorption of the Craft Instructor to the post of Superintendent (Technical), the respondents are obliged to invoke the doctrine of 'Similarly Situated Persons' qua the applicant and thus to grant her such permanent absorption in the post of Superintendent (Technical) from the post of the Craft Instructor (Basic Computer Application in Industrial Automation) with all consequential service benefits."

2. Ld. Advocate for the applicant submits that the applicant is a teaching staff and wants absorption into non-teaching staff viz. from the

post of Craft Instructor to the post of Superintendent (Technical). Both the posts have same pay scale. The applicant came to be appointed as Craft Instructor in Basic Computer Application in Industrial Automation on 20.4.2011. On 21.8.2015 as the applicant was found to be excess staff after remodeling of the courses by the respondents, he came to be absorbed/shifted temporarily as Craft Instructor in Computer Operator and Programming Assistant (COPA) at ITI, Pandharpur, District Solapur. Prior to this order, vide her application dated 13.4.2015 the applicant requested for continuation of her services in Pune especially on medical grounds.

3. On 12.4.2016 the applicant represented and requested for absorption to the post of Superintendent (Technical) which was available at Pune at that time.

4. Since the request for retention in Pune was not considered the applicant filed OA No.39/2021 in this Tribunal for the above stated absorption. However, she was absent from duty for long time and DE was initiated in which punishment of withholding two increments with cumulative effect was imposed by order dated 23.11.2021. This OA No.39/2021 came to be disposed off by order dated 10.11.2022 at the request of the applicant to allow her to make fresh representation which was granted. The respondents therein were directed to decide the representation within a period of two months in accordance with rules. Accordingly, applicant made fresh representation on 7.12.2022 requesting for her continuation in Pune on the post of Superintendent (Technical).

5. However, on 16.2.2023, respondent no.2 published the advertisement No.2/22 for several posts including the post of Superintendent (Technical). The post on which the applicant was seeking to be posted was also included in this advertisement for recruitment.

After this advertisement appeared, the applicant immediately made a representation dated 16.2.2023. In this representation she pointed out that some Craft Instructors have been given the benefits of absorption in the same post of Superintendent (Technical). In support of this claim, the applicant has annexed Exhibit K and L as per which she states that 4 similarly placed persons in teaching job are posted in the non-teaching job of Superintendent (Technical).

6. In the said representation she also submitted that she has the necessary educational eligibility which is required for the post of Superintendent (Technical) as per the advertisement. Ld. Advocate for the applicant has also relied on GAD GR dated 3.6.2011, heading and clause 3 of which read as under:

“विनंतीवरुन/संवर्गबाहय बदली याबाबतचे धोरण निश्चित करण्याबाबत.”

३. याअनुषंगाने शासन सेवेतील गट ब (अराजपत्रित) व गट क मधील कर्मचा-यांची विनंतीवरुन / संवर्गबाहय बदली करण्यासाठी अटी व शर्ती खालीलप्रमाणे विहित करण्यात येत आहेत.:-

१) विनंतीवरुन, संवर्गबाहय बदली केवळ त्याच पदावर अथवा समकक्ष पदावर करता येईल. अपवादात्मक परिस्थितीत कनिष्ठ (वेतनश्रेणी) वेतनबँड व ग्रेड पे मधील पदावर बदली करता येईल. मात्र, ज्या पदांकरीता विशिष्ट तांत्रिक वा अन्य अर्हता विहित केली असेल व स्वतंत्र निवडप्रक्रीया अवलंबण्यात येत असेल अशा संवर्गबाहय पदावर बदली अनुज्ञेय होणार नाही.

२) संबंधित कर्मचार्याची नियुक्ती नियमित असावी व त्याला / तिला स्थायित्व प्रमाणपत्र देण्यात आले असावे.

३) संबंधित कर्मचार्याची किमान ५ वर्षे सेवा पूर्ण झाली असावी. अपवादात्मक परिस्थितीत हा कालावधी २ वर्षे इतका शिथिल करता येईल म्हणजेच किमान ३ वर्षे सेवा पूर्ण झाली असल्यास अपवादात्मक परिस्थितीत विनंती विचारात घेता येईल.

४) विनंतीवरून, संवर्गबाह्य बदली जिल्हास्तरावर बदलीपात्र पदधारकांच्या बाबतीत केवळ अन्य जिल्ह्यातील संबंधित विभागप्रमुखांच्या अधिपत्याखालील कार्यालयात अथवा अन्य विभागप्रमुखांच्या अधिपत्याखालील कार्यालयात करता येईल आणि महसूली विभागस्तरावर बदलीपात्र पदधारकांच्या बाबतीत अन्य महसूली विभागातील संबंधित विभागप्रमुखांच्या अधिपत्याखालील कार्यालयात अथवा अन्य विभागप्रमुखांच्या अधिपत्याखालील कार्यालयात करता येईल.

५) प्रशासनाचे हित, सार्वजनिक सेवेचे हित विचारात घेऊन बदली करता येईल. संबंधित कर्मचारी ज्या कार्यालयात कार्यरत असेल त्या कार्यालयाच्या विभागप्रमुखांनी तसेच ज्या कार्यालयात बदलीबाबत विनंती केली आहे त्या विभागप्रमुखांनी बदलीसंदर्भात ना-हरकत प्रमाणपत्र देणे आवश्यक राहील.”

7. Ld. Advocate for the applicant cannot state for sure whether the applicant had applied for the post of Superintendent (Technical) which was advertised on 16.2.2023. Para 3 of the impugned communication dated 16.12.2022 mentions that Superintendent (Technical) is a Non-

Teaching/ Administrative post whereas the applicant has been appointed as Craft Instructor, which is a Teaching post. Therefore, the absorption as Superintendent (Technical) is ruled out. Out of the 4 cases mentioned as illustration by the applicant at Exhibit K and L, 3 are in the Teaching category who have been absorbed as Superintendent (Technical) in Regional Office, Pune.

8. Ld. Advocate for the applicant further submits that though the GR of 3.6.2011 has been superseded by GR dated 5.5.2019 since the whole issue has developed prior to 2019 the GR dated 3.6.2011 should be applicable.

9. Ld. Advocate for the applicant contends that shifting from Teaching to Non-Teaching post should be admissible though not vice-versa. In this case since the respondents have not granted her request, arbitrariness as well as violation of Article 16 of the Constitution on their part is visible.

10. Ld. Advocate for the applicant submits that GR dated 15.5.2019 refers to permanent absorption of an employee, on request, from one Controlling Officer to another Controlling Officer within the cadre. Ld. Advocate for the applicant states that in the present case, the Controlling Officer does not change. Since the GR was not applicable to the present applicant, it was not quoted for reference in the impugned order. Now as an afterthought this GR is sought to be relied upon. Ld. Advocate for the applicant submits copy of communication dated 21.4.2023 from the applicant to the Joint Director, Vocational Education & Training, Pune wherein she has requested for keeping one post of Superintendent (Technical) vacant until this OA is decided.

11. Ld. Advocate for the applicant further submits that both Mr. Divshikar and Mr. Naik who were absorbed as Superintendent (Technical)

in the Regional Office, Pune were placed in the pay scale below that of Superintendent (Technical) still they came to be absorbed in the post of Superintendent (Technical). Since they have been absorbed in the post drawing more pay than what they were drawing earlier, Ld. Advocate for the applicant states that essentially this amounts to promotion. The whole process appears to be arbitrary.

12. Ld. PO states that that the Government orders regarding absorption/transfer of surplus employees as mentioned in the office order dated 21.8.2015 are awaited from the Government.

13. Ld. PO refers to clause 8(3) of GR dated 15.5.2019 annexed to the affidavit in reply dated 3.6.2023 filed by Aryabhushan S. Chavan, Assistant Apprenticeship Advisor (Tech.) in the office of Joint Director, Vocational Education & Training, Regional Office, Pune at Exhibit R-2 page 94 of the OA, which reads as under:

“८. कायमस्वरूपी समावेशनासाठी अटी व शर्ती :-

(३) या धोरणानुसार कर्मचाऱ्याची त्याच्या विनंतीनुसार एका नियुक्ती प्राधिकार्याकडून दुसऱ्या नियुक्ती प्राधिकार्याच्या कार्यालयात कायमस्वरूपी समावेशन करताना, संबंधित कर्मचाऱ्याची सदर संवर्गात ज्या मार्गाने (उदा. पदोन्नती / नामनिर्देशन) नियुक्ती झाली आहे त्या कोटयात पद उपलब्ध असणे आवश्यक आहे. सरळसेवेने नियुक्त झालेल्या कर्मचाऱ्याची पदोन्नतीच्या रिक्त पदावर, तसेच पदोन्नतीने नियुक्त झालेल्या कर्मचाऱ्याची सरळसेवेच्या रिक्त पदावर, कायमस्वरूपी समावेशन अनुज्ञेय राहणार नाही. उदाहरणार्थ:-

१) एखादा कर्मचारी "लिपिक-टंकलेखक" पदावर पदोन्नतीने कार्यरत असेल आणि त्याने दुसऱ्या जिल्ह्यातील "लिपिक-टंकलेखक" पदावर कायमस्वरूपी समावेशनाची विनंती केली असेल तर संबंधित जिल्ह्यातील "लिपिक-टंकलेखक" संवर्गातील पदोन्नती कोट्यातील रिक्त पदावरच कायमस्वरूपी समावेशन अनुज्ञेय राहिल.

२) एखादा कर्मचारी "कर सहायक" या पदावर सरळसेवेने कार्यरत असेल आणि त्याने दुसऱ्या जिल्ह्यातील "कर सहायक" पदावर कायमस्वरूपी समावेशनाची विनंती केली असेल तर संबंधित जिल्ह्यातील "कर सहायक" संवर्गातील सरळसेवा कोट्यातील रिक्त पदावरच कायमस्वरूपी समावेशन अनुज्ञेय राहिल."

14. Ld. PO also relied on GR dated 15.5.2019 especially on the portion quoted below:

“३. कायमस्वरूपी समावेशन कोणत्या कारणास्तव अनुज्ञेय राहिल:-

सोबत जोडलेल्या "परिशिष्ट-एक" मध्ये नमूद कारणास्तव कायमस्वरूपी समावेशन अनुज्ञेय राहिल."

15. The relevant clause 3 in Appendix-I is reproduced below:

अ.क्र.	कायमस्वरूपी समावेशन करण्यासाठीचे कारण	विनंती अर्जासोबत नियुक्ती प्राधिकाऱ्यांना पुराव्यादाखल सादर करावयाची आवश्यक कागदपत्रे
३.	शासकीय कर्मचारी किंवा यथास्थिती पती वा	संबंधीत गंभीर आजाराबाबतचे

<p>पत्नी वा त्यांची मुले वा त्यांच्यावर अवलंबून असलेले शासकीय कर्मचारी यांचे आई किंवा वडील किंवा महिला कर्मचाऱ्यांचे सासरे किंवा सासू यांचे पुढील गंभीर आजार</p> <p>i) कर्करोग</p> <p>ii) पक्षाघात</p> <p>iii) मूत्रपिंड रोपण शस्त्रक्रिया किंवा डायलेसिस</p> <p>iv) ब्रेन ट्युमर किंवा मेंदूवरील शस्त्रक्रिया</p> <p>v) निश्चेतनावस्था (कोमा)</p> <p>vi) मनोविकृतीने ग्रस्त</p> <p>vii) हृदय शस्त्रक्रियांची प्रकरणे</p>	<p>जिल्हा शल्यचिकीत्सक/वैद्यकीय मंडळ यांचे वैद्यकीय प्रमाणपत्र आणि आंतररुग्ण आणि / किंवा बाह्यरुग्ण म्हणून औषधोपचाराची कागदपत्रे, तसेच, शासकीय कर्मचारी यांचे आई किंवा वडील किंवा महिला कर्मचाऱ्यांचे सासरे किंवा सासू हे त्यांच्यावर अवलंबून असलेल्या बाबतच्या पुराव्यासाठी कर्मचाऱ्याच्या रेशनकार्डच्या पहिल्या व शेवटच्या पृष्ठाची (साक्षात्कीत) प्रत.</p>
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16. Ld. PO contended that the GR dated 3.6.2011 relied upon by the applicant has been superseded by this GR dated 15.5.2019.

17. Ld. PO further relied on letter to the applicant from one Y.P. Pargaonkar, Joint Director, Vocational Education & Training, Regional Office, Pune dated 29.3.2023. She submitted that as informed in this letter the post on which the applicant has desired to be absorbed is not same. The relevant portion of this letter is quoted below:

“१. श्रीमती जावडेकर हया याच विभागात दुसऱ्या संवर्गात समायोजनाकरीता विनंती करीत आहेत. उपरोक्त शासन निर्णयातील तरतूदीनुसार श्रीमती जावडेकर यांचे मागणीनुसार नियुक्ती प्राधिकाऱ्याची आस्थापनात बदल नाही व

मागणी केलेला संवर्ग/पदनाम समान नाही. तसेच. मागणी केलेल्या पदाचे कर्तव्य व जबाबदाऱ्या समान नाहीत, सबब समावेशन करण्याचा प्रश्नच उदभवत नाही.

२. तसेच संवर्गात अतिरिक्त होत नसल्यामुळे शिक्षक संवर्गातून अशिक्षकीय पदावर समायोजन करण्याचा प्रश्नच उदभवत नाही.

३. आपली नेमणूक ही शिक्षकीय पदावर करण्यात आली आहे व अधीक्षक (तांत्रिक) हे पद अशिक्षकीय / प्रशासकीय दृष्ट्या कामकाज पहाण्याचे आहे. त्यामुळे अधीक्षक (तांत्रिक) पदावर श्रीमती जावडेकर यांचे समायोजन करता येणार नाही.”

The letter further informs the applicant that the said GR of 3.6.2011 has been superseded.

18. Ld. PO submits that immediately after publication of the advertisement dated 16.2.2023, the applicant has approached this Tribunal. However, neither has the applicant asked for stay on the basis of recruitment vide advertisement dated 16.2.2023 nor this Tribunal has granted any stay. She also stated that the recruitment vide this advertisement was later on cancelled.

19. I have heard both the sides and perused the papers. From the para 15 of the respondent's of the reply at page 84 of the OA, 3 points emerge for my consideration. (Exh.K & L at page 75-76 of OA).

(i) The post of Mr. Divshikar and Mr. Naik became surplus on account of staffing pattern as indicated in the office order dated 3.7.2008 (Exhibit K).

(ii) Both were in teaching post respectively as Lecturer (Painting) and Lecturer (Weaving) since there was no vacancy in Lecturer (Painting) and Lecturer (Weaving) cadres for them to be accommodated, they were accommodated as Superintendent (Technical) in Regional Office, Pune. This indicates that persons in teaching cadre were indeed shifted to non-technical cadre.

(iii) This measure was adopted by decision makers as a last option as submitted by Ld. PO. However, this indicates that an exception was made to the rule.

20. When queried from the applicant, who was present in the Court, it was informed that since there was no vacancy in the cadre of Craft Instructor (Basic Computer Application in Industrial Automation), she was forced to apply for out of cadre transfer.

21. It is clear that the present case will be covered by the GR dated 3.6.2011 only as the applicant has been making repeated applications from the year 2015 at which time this GR was very much in force.

22. The applicant has submitted her medical papers; which indicate that the illness initially connected with her kidney related surgery was followed by Micro Prolactinoma (type of cancer) and that she was continued to be under the treatment of doctors based in Pune, to her superiors from time to time in writing. The respondents have not considered her request for transfer to Pune under these medical grounds as well.

23. Meanwhile another case of an 'exception' of one Shri S.S. Godse working as Instructor (Electrical Technical) at ITI, Solapur had occurred.

Ld. Advocate for the applicant produced copy of office order dated 20.12.2024 wherein Shri S.S. Godse was absorbed as Craft Instructor, ITI, Mangalveda. However, since the Ld. Advocate for the applicant mentioned this before me during the ongoing hearing of this OA and objected strongly to such absorption, the respondents withdrew this order. It is therefore, puzzling as to why respondents cannot accommodate the request of the applicant and absorb her in a non-teaching post at Pune since precedents are already there and the respondents do not appear to be averse to making 'exception'.

24. It is also clear from cursory reading of the GR dated 15.5.2019 that it is applicable to the request transfer and absorption of a government employee from the establishment of one controlling officer to that of another.

25. It is clear from the submissions of Ld. PO herself that though the respondents had indicated in clear terms in their office order dated 21.8.2015 that the orders regarding permanent absorption of the surplus employees will be issued in due course, same have still not been issued though almost ten years have passed. This leaves employees declared surplus in distress, for no fault of theirs. It has to be noted that these employees came to be declared surplus due to remodeling of various courses etc. and revised staffing pattern undertaken by the respondents.

26. The impugned communication dated 16.12.2022 addressed to the applicant by the Deputy Director, Vocational Education & Training, Regional Office, Pune at point no.2 therein mentions as follows:

“२. आपण अतिरिक्त होत नसल्यामुळे शिक्षक संवर्गातून अशिक्षकीय पदावर समायोजन करण्याचा प्रश्नच उदभवत नाही.”

27. On the other hand the office order dated 21.8.2015 issued by respondent no.1 mentions as follows:

“उपरोक्त संदर्भित क्रमांक १ च्या शासन निर्णयाव्वये, सेंटर ऑफ एक्सलन्स (सीओई) या योजनेअंतर्गत सुरु असलेले संलग्नताप्राप्त बेसिक मॉड्युल्सच्या तुकड्यांचे शैक्षणिक वर्ष सन २०१४-१५ पासून शिल्प कारागीर प्रशिक्षण योजनेंतर्गत (सीटीएस) संबंधित व्यवसाय अभ्यासक्रमात रुपांतरण करण्यास शासनाने मान्यता दिलेली आहे.

त्यानुसार, या विभागातील ज्या संस्थांमध्ये सीओई योजनेंतर्गत मॉड्युल्सचे सन २०१४-१५ पासूनच्या सत्रामध्ये सीटीएस योजनेंतर्गत संबंधित व्यवसाय अभ्यासक्रम सुरु झालेले असल्याने, प्रशासकीयदृष्ट्या संबंधित मॉड्युल्सकरीता कार्यरत असलेल्या कर्मचा-यांचे त्यांचे शैक्षणिक अर्हतेनुसार त्याच संस्थेत अथवा अन्य संस्थेत नव्याने सुरु झालेल्या। अभ्यासक्रमाकरीता समायोजन करणे प्रशासकीयदृष्ट्या आवश्यक व गरजेचे आहे. तथापि, शासनाकडून । संचालनालयाकडून सदर अतिरिक्त कर्मचा-यांच्या समायोजनाबाबत आवश्यक ते आदेश अद्यापपर्यंत प्राप्त झालेले नाहीत. त्यामुळे त्यांच्या समायोजनाची कार्यवाही अद्यापी प्रलंबित आहे.

तथापि, सीओई योजनेंतर्गत अतिरिक्त ठरलेल्या कर्मचा-यांच्या सेवा त्यांच्या शैक्षणिक अर्हतेनुसार, विभागातील त्याच अथवा अन्य संस्थेत संबंधित व्यवसायाची रिक्त पदे उपलब्ध आहेत, त्या समकक्ष पदांच्या व्यवसायांच्या तुकड्यांकरीता प्रशिक्षणाथर्यांच्या प्रशिक्षणाच्या दृष्टीकोनातून उपयोगात आणणे प्रशासकीयदृष्ट्या आवश्यक व गरजेचे आहे. त्यानुसार, संबंधित कर्मचा-यांचे समायोजनाची अंतिम कार्यवाही होईपर्यंत,

सद्यस्थितीत त्यांचे अत्यंत तात्पुरत्या स्वरूपात सेवा अन्य संस्थेत वर्ग करून आवश्यक त्या व्यवसायाकरीता उपयोगात आणणेबाबतची कार्यवाही करणे क्रमप्राप्त आहे.

त्यानुषंगाने तसेच संचालनालयाच्या संदर्भित क्रमांक २ व ३ च्या पत्र / परिपत्रकानुसार, या विभागात सीओई योजना बंद झाल्याने तसेच काही व्यवसायांकरीता संलग्नता प्राप्त नसल्याने, संबंधित औद्योगिक प्रशिक्षण संस्थांमध्ये सद्यस्थितीत अतिरिक्त ठरलेल्या कर्मचा-यांच्या तपशिल यासोबत प्रपत्रामध्ये देण्यात असून, संबंधित कर्मचा-यांच्या नांवासमोर नमूद केलेल्या अन्य औ.प्र. संस्थेतील संबंधित व्यवसायाच्या तुकडीचा अत्यंत तात्पुरत्या स्वरूपात, पुढील आदेश मिळेपर्यंत कार्यभार सोपविण्यात येत असून, त्यांनी संबंधित संस्थाप्रमुखांचे आदेशानुसार संबंधित व्यवसायाच्या तुकडीतील प्रवेशित प्रशिक्षणार्थ्यांना प्रशिक्षण देण्याचे व तदनुषंगिक इतर महत्वाची कामे करावयाची आहेत. याबाबत, भविष्यात कोणत्याही स्वरूपाची तक्रार या कार्यालयास प्राप्त होणार नाही याची संबंधित कर्मचा-यानी व संस्थांप्रमुखांनी आवश्यक ती नोंद घ्यावी.”

28. In the impugned communication the post sought by the applicant is refused on the ground that her post has not been declared as surplus. On the other hand in the other communication her services have been placed at the disposal of another unit because her post has been shown surplus.

29. In the light of the above discussions, I am inclined to grant relief to the applicant. Hence, I pass the following order.

ORDER

A) The Original Application is partly allowed.

B) The impugned order dated 16.12.2022 passed by Respondent No.1 is quashed and set aside. The Respondents are directed to grant the applicant all the consequential service benefits, if any.

C) As the Applicant is suffering from Cancer and is under treatment of doctors in Pune, the Respondents shall absorb her as Superintendent (Technical) in Zonal Office, Pune, within a period of one month from the date of this order.

D) No order as to costs.

Sd/-
(A.M. Kulkarni)
Member (A)
5.5.2025

Dictation taken by: S.G. Jawalkar.

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