

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

**ORIGINAL APPLICATION NOS. 990, 991, 992 & 993 ALL OF
2023**

1. ORIGINAL APPLICATION NO. 990 OF 2023

DISTRICT : NANDURBAR

Rakesh s/o Motilal Shirsath,)
Age : 41 years, Occu. : Service (as Inspector)
Of Motor Vehicle in O/o Dy. RTO, Nandurbar))
R/o C/o Mahesh Ananda Datir, Plot No. 20,)
Anand Niwas, Rupam Nagar, Near M.L. Town,))
Nalwa Road, Nandrubar.)

.... **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through it Principal Secretary,)
Home (Transport) Department,)
Mantralaya, Mumbai-32.)

2. The Transport Commissioner,)
5th Floor, Telecom Bhavan, Fountain,)
Mahanagar Telecom Nigam Ltd., Bldg.)
No. 2, Mahatma Gandhi Road, Fort,)
Mumbai-01.)

3. The Deputy Regional Transport Officer,)
Nandurbar, Near Collector Office,)
Devmogra, Nandurbar.)

... **RESPONDENTS**

W I T H

2. ORIGINAL APPLICATION NO. 991 OF 2023

DISTRICT : NANDURBAR

Atul s/o Ramesh Chavan,)
Age : 44 years, Occu. : Service (as Inspector)
of Motor Vehicle))
R/o C/o Mahesh Ananda Datir, Plot No. 20,)
Anand Niwas, Rupam Nagar, Near M.L. Town,))
Nalwa Road, Nandrubar.)

). **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through it Principal Secretary,)
Home (Transport) Department,)
Mantralaya, Mumbai-32.)
2. **The Transport Commissioner,**)
5th Floor, Telecom Bhavan, Fountain,)
Mahanagar Telecom Nigam Ltd., Bldg.)
No. 2, Mahatma Gandhi Road, Fort,)
Mumbai-01.)
3. **The Deputy Regional Transport Officer,)**
Nandurbar, Near Collector Office,)
Devmogra, Nandurbar.)

... RESPONDENTS

W I T H**3. ORIGINAL APPLICATION NO. 992 OF 2023****DISTRICT : NANDURBAR**

Ashish s/o Ashish Gogawale,)
Age : 37 years, Occu. : Service (as Inspector)
of Motor Vehicle))
R/o Plot No. 13, Shankarhari Nagar, Dudhale)
Road, Konkarnhill, Nandurbar.)

.... **APPLICANT****V E R S U S**

1. **The State of Maharashtra,**)
Through it Principal Secretary,)
Home (Transport) Department,)
Mantralaya, Mumbai-32.)
2. **The Transport Commissioner,**)
5th Floor, Telecom Bhavan, Fountain,)
Mahanagar Telecom Nigam Ltd., Bldg.)
No. 2, Mahatma Gandhi Road, Fort,)
Mumbai-01.)
3. **The Deputy Regional Transport Officer,)**
Nandurbar, Near Collector Office,)
Devmogra, Nandurbar.)

... RESPONDENTS

W I T H**4. ORIGINAL APPLICATION NO. 993 OF 2023****DISTRICT : NANDURBAR**

Hareshwar s/o Arun Potdar,)
 Age : 37 years, Occu. : Service (as Inspector)
 of Motor Vehicle))
 R/o C/o Pratik Thakkar, Near J.K. Petrol)
 Pump, Krishna Nagar, Nandrubar.)

.... **APPLICANT****V E R S U S**

1. **The State of Maharashtra,**)
 Through it Principal Secretary,)
 Home (Transport) Department,)
 Mantralaya, Mumbai-32.)
2. **The Transport Commissioner,**)
 5th Floor, Telecom Bhavan, Fountain,)
 Mahanagar Telecom Nigam Ltd., Bldg.)
 No. 2, Mahatma Gandhi Road, Fort,)
 Mumbai-01.)
3. **The Deputy Regional Transport Officer,)**
 Nandurbar, Near Collector Office,)
 Devmogra, Nandurbar.)

... **RESPONDENTS**

APPEARANCE : Shri Avinash Deshmukh, Counsel for
 Applicants in all these O.As.

: Shri D.M. Hange, Presenting Officer for
 respondent authorities in all these O.As..

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

DATE : **25.07.2024**

C O M M O N - O R D E R

1. Heard Shri Avinash Deshmukh, learned counsel appearing for the applicants in all these O.As. and Shri D.M. Hange, learned Presenting Officer appearing for respondent authorities in all these O.As.

2. All the applicants in above four Original Applications are presently working in the cadre of Inspectors of Motor Vehicle (IMV) at Nandurbar and had worked close to four years in the Tribal Area. Consequently, in terms of G.R. dated 06.08.2002, which has issued in continuation of Government Circular dated 11.07.2000, they are entitled for transfer at the place of their choice and in case, if their choice cannot be considered, under the directions of superior officer, they may be posted at some other place, irrespective of their choice by reserving their options already exercised. All the applications in the aforesaid four Original Applications have been transferred at the place for which they have not exercised option. Hence, all these Original Applications are taken up together for discussions and decided by this common order.

3. By filing the present Original Applications, the applicants are seeking quashing and setting aside orders dated

03.11.2023 (Annexure A-11) in all these O.As. with further directions to respondent No. 1 to give posting on transfer to the applicants at any one of three places of choice / preference given by them.

4. Brief facts as stated by the applicants giving rise to the present Original Applications are as follows :-

O.A. No. 990/2023

(i) The applicant had entered service of the Government of Maharashtra about 11 years ago i.e. on 21.01.2013 on the post of Assistant Inspector of Motor Vehicle (AIMV) in the Transport Wing of Home Department and thereafter he was promoted to the cadre of Inspectors of Moto Vehicle (IMV) in the year 2019 and since then he is working in the said cadre. In the year 2019, the applicant was posted in the office of respondent No. 3 (viz. Deputy Regional Transport Officer) at Nandurbar. Since then, the applicant is working under the control of the said authority. As such, till 31.05.2023, the applicant had completed tenure close to four years in the office of respondent No. 3 and as such had become due for transfer out of the said office.

(ii) The applicant further contends that Nandurbar is declared to be a 'Tribal Area' by the State Government.

(iii) According to the applicant, in terms of G.R. dated 06.08.2002, which has been issued in continuation of Government Circular dated 11.07.2000, choice posting is given to the Government officers and employees, who have worked in the Tribal Areas. The said G.R. and Circular were specifically issued by the State Government for the benefit of such of its officers and employees, who worked in the Tribal Areas for a period exceeding two years in case of Group-A and Group-B officers and three years in case of Group-C and Group-D employees respectively. The respondent No. 1 has been pleased to issue an order dated 03.11.2023, thereby transferring the applicant from Nandurbar to Nagpur (East) in the Regional Transport Office instead of transferring the applicant as per the options exercised by him at Nashik or Dhule or Vashi. Hence, the present Original Application.

O.A. No. 991/2023

(i) The applicant had entered service of the Government of Maharashtra about 11 years ago i.e. on 23.01.2013 on the post of Assistant Inspector of Motor Vehicle (AIMV) in the Transport Wing of Home Department and thereafter he

was promoted to the cadre of Inspectors of Moto Vehicle (IMV) in the year 2019 and since then he is working in the said cadre. In the year 2019, the applicant was posted in the office of respondent No. 3 (viz. Deputy Regional Transport Officer) at Nandurbar. Since then, the applicant is working under the control of the said authority. As such, till 31.05.2023, the applicant had completed tenure close to four years in the office of respondent No. 3 and as such had become due for transfer out of the said office.

(ii) The applicant further contends that Nandurbar is declared to be a 'Tribal Area' by the State Government.

(iii) According to the applicant, in terms of G.R. dated 06.08.2002, which has been issued in continuation of Government Circular dated 11.07.2000, choice posting is given to the Government officers and employees, who have worked in the Tribal Areas. The said G.R. and Circular were specifically issued by the State Government for the benefits of such of its officers and employees, who worked in the Tribal Areas for a period exceeding two years in case of Group-A and Group-B officers and three years in case of Group-C and Group-D employees respectively. The

respondent No. 1 has been pleased to issue an order dated 03.11.2023 thereby transferring the applicant from Nandurbar to Akola in the Regional Transport Office instead of transferring the applicant as per the options exercised by him at Nashik or Malegaon or Vashi. Hence, the present Original Application.

O.A. No. 992/2023

(i) The applicant had entered service of the Government of Maharashtra more than 09 years ago i.e. on 28.07.2014 on the post of Assistant Inspector of Motor Vehicle (AIMV) in the Transport Wing of Home Department and thereafter he was promoted to the cadre of Inspectors of Moto Vehicle (IMV) in the year 2019 and since then he is working in the said cadre. In the year 2019, the applicant was posted in the office of respondent No. 3 (viz. Deputy Regional Transport Officer) at Nandurbar. Since then, the applicant is working under the control of the said authority. As such, till 31.05.2023, the applicant had completed tenure close to four years in the office of respondent No. 3 and as such had become due for transfer out of the said office.

(ii) The applicant further contends that Nandurbar is declared to be a 'Tribal Area' by the State Government.

(iii) According to the applicant, in terms of G.R. dated 06.08.2002, which has been issued in continuation of Government Circular dated 11.07.2000, choice posting is given to the Government officers and employees, who have worked in the Tribal Areas. The said G.R. and Circular were specifically issued by the State Government for the benefits of such of its officers and employees, who worked in the Tribal Areas for a period exceeding two years in case of Group-A and Group-B officers and three years in case of Group-C and Group-D employees respectively. The respondent No. 1 has been pleased to issue an order dated 03.11.2023 thereby transferring the applicant from Nandurbar to Akola in the Regional Transport Office instead of transferring the applicant as per the options exercised by him at Pimpri-Chinchwad or Nagpur (Rural) or Shrirampur. Hence, the present Original Application.

O.A. No. 993/2023

(i) The applicant had entered service of the Government of Maharashtra more than 09 years ago i.e. on 21.10.2014

on the post of Assistant Inspector of Motor Vehicle (AIMV) in the Transport Wing of Home Department and thereafter he was promoted to the cadre of Inspectors of Moto Vehicle (IMV) in the year 2019 and since then he is working in the said cadre. In the year 2019, the applicant was posted in the office of respondent No. 3 (viz. Deputy Regional Transport Officer) at Nandurbar. Since then, the applicant is working under the control of the said authority. As such, till 31.05.2023, the applicant had completed tenure close to four years in the office of respondent No. 3 and as such had become due for transfer out of the said office.

(ii) The applicant further contends that Nandurbar is declared to be a 'Tribal Area' by the State Government.

(iii) According to the applicant, in terms of G.R. dated 06.08.2002, which has been issued in continuation of Government Circular dated 11.07.2000, choice posting is given to the Government officers and employees, who have worked in the Tribal Areas. The said G.R. and Circular were specifically issued by the State Government for the benefits of such of its officers and employees, who worked in the Tribal Areas for a period exceeding two years in case

of Group-A and Group-B officers and three years in case of Group-C and Group-D employees respectively. The respondent No. 1 has been pleased to issue an order dated 03.11.2023 thereby transferring the applicant from Nandurbar to Nagpur (East) in the Regional Transport Office instead of transferring the applicant as per the options exercised by him at Nagpur (Rural) or Pimpri-Chinchwad or Pune. Hence, the present Original Application.

5. Learned counsel for the applicants submits that the impugned order dated 03.11.2023 issued by respondent No. 1 and consequential failure of the State Government to give posting to the applicants on transfer at any one of three places of choice / preference given by them are against the basic principles of equity and good conscience, illegal, arbitrary, highhanded, irrational and illogical and as a result of non-application of mind. Learned counsel submits that the applicants have been working in the Tribal Area of Nandurbar for a period close to four years. They have deserving to be given posting on transfer at a place of their choice / preference in the light of the policy decision of the State Government dated 06.08.2002.

6. Learned counsel for the applicants submits that in the light of order dated 26.09.2023 passed by this Tribunal, the respondents should update the "IMV Eligibility List-2023" published on 23.09.2023 by entering the remark against the names of applicants evidencing that they were working in the Tribal Area. It was incumbent and obligatory on the part of respondents in general and respondent No. 1 in particular to have necessarily and mandatorily given posting on transfer to the applicants at any one of three places of choice / preference given by them. But the respondents have failed to do so. The order dated 26.09.2023 passed by this Tribunal has not been adhered to by them.

7. Learned counsel for the applicants submits that while effecting General Transfers of the year 2023, the respondent No. 1 has given posting on transfer to some of the IMV, who have worked in the Tribal / Naxal area as per their choice / preference, while failing to do so in the cases of the applicants. In view of the aforesaid circumstances and grounds, the present Original Applications deserve to be allowed in terms of the prayers made therein.

8. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 3 in all these

Original Applications submits that pursuance to the G.R. dated 09.03.1990 issued by the Tribal Development Department, the entire district of Nandurbar is not declared as Tribal area. However, as per the said G.R. some Talukas such as (i) Taloda, (ii) Akrani, (iii) Dhadgaon, (iv) Akkalkuwa, (v) Navapur & (vi) Nandurbar have been declared as Tribal Talukas. According to the applicants, they have been posted in Nandubar, which is declared as Tribal Area and as such staking a claim of transfer in the district of their respective choice. Learned P.O. submits that the claim of transfer in the district of their choice for the reason of having been worked in the Tribal Area is not valid and tenable. Learned P.O. submits that the purpose and object behind the G.R. dated 06.08.2002 is to implement the Action Plan and various welfare schemes introduced and launched under “Special Component Plan (विशेष घटक योजना)” for overall development to lift up, raise, elevate and with object to improve the condition down-trodden people of Tribal area, socially, culturally and morally. Learned P.O. submits that the responsibility of implementation and execution of various schemes have not been placed upon the Transport Officers posted on the establishment of Deputy Regional Transport Office, Nandurbar including the present applicants by any other respective department, such as office of

Collector, etc. Learned P.O. submits that the applicants have been appointed as Assistant Inspectors of Motor Vehicle under Section 213 of Motor Vehicle Act for the purpose of carrying out the provisions of Motor Vehicle Act. Learned P.O. submits that the applicants have been entrusted with main task of enforcing the provisions of Motor Vehicle Act and Rules framed there under and must discharge their duties without any fear or favour and should impose appropriate penalty on those who have violated the provisions of the Motor Vehicle Act, 1988. The applicants have not been entrusted any responsibility to implement various schemes and Action Plan being implemented and executed for the people of Tribal area.

9. Learned Presenting Officer further submits that the officers working in the cadre of A & B should render excellent work in terms of G.R. dated 06.08.2002 for the purpose of posting of their choice place / district out of Tribal area. Learned P.O. submits that in the instant cases, as per the official record, the applicants have not rendered any excellent work in the Tribal area with respect to implementation and execution of various schemes nor any excellent and laudable work done by them was brought on official record. Learned P.O. submits that it is obligatory on the part of the applicants to inform the competent

authority within three months in advance before completion of normal tenure and give copy to the respective District Collector and Divisional Commissioner of the jurisdiction. Thus the applicants have not complied with the specific requirement of the G.R. dated 06.08.2002.

10. Learned Presenting Officer submits that the applicants have not been transferred and posted at Nandurbar under Special Component Plan as enumerated vide Clause Nos. 6, 7, 8 & 9 of para No. 1 of the G.R. dated 06.08.2002. Learned P.O. submits that as per the specific condition No. 9, the officers who have been appointed under Special Component Plan in the Tribal / naxal area shall remain present whole spell of period at Headquarter and shall not leave the place of service except prior permission of superior officers. Learned P.O. submits that in the instant cases, the applicants being an Inspector of Moto Vehicle, obliged to carry out checking throughout entire Nandurbar district for enforcing the provisions of Motor Vehicle Act, 1988 and the Rules framed thereunder. The applicants are not fulfilling the specific conditions as enumerated in G.R. dated 06.08.2002.

11. Learned Presenting Officer submits that on 14.08.2023, the respondent No. 2 has published the list of 166

Inspectors of Mote Vehicle, who were entitled and found fit for transfer upon having completed their normal tenure as prescribed under the Transfer Act, 2005. The names the present applicants appeared at Sr. Nos. 102, 105, 122 & 140 respectively. On 23.08.2023, the request applications of the applicants in respect of transfer of choice place and posting have been received and acknowledged by the respondents.

12. Learned Presenting Officer submits that so far as compliance of the directions issued in the order dated 26.09.2023 by this Tribunal in O.A. St. No. 1920/2023 is concerned, the respondents have made necessary remarks stating that the applicants had worked in the Tribal area before issuing orders of transfers and the list of eligible Inspectors for transfers with all details have also been placed for consideration in the meeting of Civil Services Board held on 20.10.2023. Learned P.O. submits that the applicants have not been discriminated in any manner.

13. Learned Presenting Officer submits that is has not been denied by the respondents that the applicants have submitted the choice of postings within the prescribed time limit and the necessary entry has also been made in the proposal of

transfer stating therein that the applicants had worked in Tribal area. However, the Civil Services Board has unanimously taken a decision that the officers although they are working in the Tribal / Naxal area, but they are not eligible for transfer out of Tribal area at the choice place given by them in view of G.R. dated 06.08.2002. Learned P.O. submits that the transfer orders issued on 03.11.2023 by respondent No. 1 is fully justified. Learned P.O. submits that there is no substance in the present Original Applications and the same are liable to dismissed.

14. Learned counsel for the applicants in reply to the submissions made by learned Presenting Officer submits that bare reading of not only the G.R. dated 06.08.2002, but also the earlier Govt. Circular dated 11.07.2000 clearly and undoubtedly show that no eligible condition much-less any specific condition/s is/are enumerated therein for getting benefit of choice posting upon completion of normal tenure in the Naxal/Tribal area, but for the fact that the concerned officer/employee should have satisfactorily completed his tenure of posting in the Tribal area as prescribed in Clause (12) of Paragraph No. 1 of G.R. dated 06.08.2002. But on the contrary the said Government Circular dated 11.07.2000 and the G.R. dated 06.08.2002 shows & establishes that at the most the only

condition, which can be said to have been incorporated therein is that the concerned officer/ employee seeking choice posting must have completed requisite number of years "good service" in the Tribal area and that being the position, when it is not the case of the respondents that the applicants have not rendered "good service" during their tenure of posting at Nandurbar.

15. Learned counsel for the applicants submits that so far as submission of learned counsel Presenting Officer with regard to the "Special Component Plan" is concerned, the same is most irrelevant and unconcerned with the aspect of grant of choice posting to an officer like the applicants, who have completed their normal tenure of working in the Tribal area. Learned counsel submits that neither the Govt. Circular dated 11.07.2000 nor the G.R. dated 06.08.2002, mandate that working only in the "Special Component Plan" in the Tribal area is a condition precedent for getting a choice posting for an officer like the applicants. Thus the said submissions are absolutely unsustainable and untenable. Learned counsel has also pointed out that recently the State Government in its General Administration Department issued Circular dated 23.02.2024, wherein the policy of giving choice posting to the officers / employees, who worked in the Tribal and Naxal affected areas,

simply refers to officers and employees, who worked in the Tribal and Naxal affected areas and nothing more than that.

16. Learned counsel for the applicants submits that it is necessary to reiterate that all the applicants, who have received Tribal Allowance as per the salary certificate issued by respondent No. 3 in regard to their salary for the month of February, 2024.

17. Learned counsel for the applicants submits that so far as another ground that the applicants have not submitted their choice posting within three months in advance before completion of normal tenure is concerned, the respondent authorities in para Nos. 3, 12, 13 and 14 in their affidavit in reply have admitted that the applicants have completed their normal tenure for transfer and hence had given their three districts for choice posting in view of G.R. dated 06.08.2002. There is no specific denial in the affidavit in reply. Furthermore the respondent No. 1 in its Transport Department had apparently taken a decision to effect transfers of officers from the cadre of IMVs through "Online Computerized System" for which even an SOP was issued on 19.07.2023 followed by publication of a list on 14.08.2023 of 166 IMVs, who were entitled and found fit for

transfer having completed their respective normal tenure as per the Transfer Act, 2005, which was followed by communication dated 22.09.2023 issued by respondent No. 2 to all those 166 IMVs directing them to submit their choice place in preferential order online till 28.09.2023. Thus it goes without saying that even according to the respondent Nos. 1 to 3 the first available opportunity for IMVs like the applicants to submit the choice places in preferential order arose only after issuance of said communication dated 22.09.2023.

18. Learned counsel for the applicants submits that in the identical facts of the case, the Vice Chairman of this Tribunal at Nagpur Bench in O.A. No. 483/2023 (K.S. Kalsi Vs. State of Maharashtra and Ors.) by order dated 27.06.2023 has partly allowed the said O.A. and directed the respondents to give choice posting to the applicant therein as per the G.R. dated 06.08.2002 within a period of one month from the date of receipt of the order. Learned counsel submits that it is pertinent to note here that in the said O.A. No. 483/2023, though the applicant therein was working at Chandrapur in the Dy. Regional Transport Office, the respondents have not at all raised ground that the applicant since not working under the "Special Component Plan" in the Tribal area, not entitled for the benefit of choice posting in terms

of G.R. dated 06.08.2002. Learned counsel submits that the said order passed by this Tribunal at Nagpur Bench was confirmed by the Hon'ble High Court of Bombay, Bench at Nagpur by order dated 27.06.2024 in W.P. No. 3071/2024 (The State of Maharashtra and Ors. Vs. Kalbirsingh s/o Sarbulsingh Kalsi).

19. Learned Presenting Officer lastly submits that in terms of para No. 9 of the G.R. dated 06.08.2002, the officers who have been appointed under "Special Component Plan" in the Tribal / Naxal area shall remain present for whole spell of period at Headquarter and shall not leave place of service except the prior permission of superior officers. In the instant cases, all the applicants are discharging the duties and responsibilities as Inspectors of Motor Vehicles and under an obligation to carry out vehicle checking throughout entire Nandurbar district for the purpose of enforcing the provisions of Motor Vehicle Act, 1988 and Rules framed thereunder, which is the specific condition of G.R. dated 06.08.2002, is not fulfilled by the applicants.

20. Learned Presenting Officer by referring order dated 02.11.2023 passed by the Principal Seat of this Tribunal at Mumbai in O.A. No. 818/2023 (Dr. D.A. Shengal Vs. The State of Maharashtra and Ors.) submits that the Agriculture, Animal

Husbandry, Dairy Development and Fisheries Department has submitted letter dated 02.11.2023 addressed to learned C.P.O. in which the opinion has been given that in terms of enforcement of Transfer Act, 2005 w.e.f. 01.07.2006, the earlier all G.Rs. including Govt. Circular dated 11.07.2000 and G.R. dated 06.08.2002 have been substantially affected and as such the benefits of giving choice posting as per the willingness of the applicants ceased to take effect. Learned P.O. submits that plain reading of the G.R. dated 23.02.2024 makes it clear that the employer is empowered to effect transfer and posting as per the convenience of the administration. Learned P.O. submits that the benefits extended to the Government employees working in the Tribal / Naxal areas for choice postings has been rescinded w.e.f. 07.06.2006 and as such, the question of choice posting to the applicants for merely working in the Tribal area does not arise in pursuance of Govt. Circular dated 07.06.2006.

21. Admittedly, all the applicants are working as Inspectors of Moto Vehicle (IMV) in the office of Deputy Regional Transport Officer, Nandurbar. They have completed their normal tenure for transfer from Nandurbar District. The Transport Department had apparently taken a decision to effect transfers of the officers from the cadre of IMVs through "Online

Computerized System” for which even an SOP was issued on 19.07.2023 followed by publication of a list on 14.08.2023 of 166 IMVs, who were entitled and found fit for transfer having completed their respective normal tenure as per the Transfer Act, 2005, which was further followed by communication dated 22.09.2023 issued by respondent No. 2 to all those 166 IMVs directing them to submit their choice place in preferential order online till 28.09.2023. In terms of the Circular issued by the Transport Department dated 19.07.2023, the provisions of Transfer Act, 2005 and G.R. dated 06.08.2002 will be applicable for the transfer of officers / employees of the Motor Transport Department worked in the Tribal area for completing tenure in terms of the provisions of Section 3(1) of the Transfer Act, 2005. There is no denial that the applicants had worked close to four years in Tribal area and in terms of the aforesaid G.R. dated 06.08.2002, so also, Circular issued by the Commissioner, Transport Department dated 19.07.2023 exercise their options for choice postings as directed.

22. The respondents have specifically asserted that the applicants were not transferred and posted at Nandurbar under Special Component Plan as enumerated vide Clause Nos. 6, 7, 8 & 9 of para No. 1 of the G.R. dated 06.08.2002. The applicants

have no responsibility to implement various scheme and action Plan being implemented and executed for the people of Tribal area. The “Special Component Plan (विशेष घटक योजना)” is introduced and launched for overall development to lift up, raise, elevate and with object to improve the condition of down-trodden people of Tribal area, socially, culturally and morally. So far as nature of the work assigned to the applicants being an Inspector of Motor Vehicles has no nexus with the implementation of the said “Special Component Plan” and as such they are not entitled for the benefits of G.R. dated 06.08.2002.

23. The aforesaid assertion made by the respondent authorities and submissions made by learned Presenting Officer on their behalf is not acceptable and I find no substance in it for the following reasons :-

- (i) On careful reading of not only Government Circular dated 11.07.2000, but also G.R. dated 06.08.2002 and recently issued Government Circular dated 23.02.2024, it appears that the State Government has not issued any directives excluding the Motor Vehicle Department from its application. In the aforesaid Circulars/G.R. it nowhere specifically stated that the concession of choice posting for such officers / employees, who worked in Naxal / Tribal

area was not applicable to the officers/employees of the Motor Vehicle department.

(ii) On bear reading of the Circular dated 11.07.2000, G.R. dated 06.08.2002 and recently issued Government Circular dated 23.02.2024, I do not find that the officers/employees not connected directly or indirectly to the “Special Component Plan” have been excluded from granting them the benefits of the said G.R. dated 06.08.2002 particularly about the choice posting and other benefits as detailed in the said G.R.

(iii) It appears that certain conditions are enumerated vide clause Nos. 6, 7, 8, 9 of Para No. 1 of G.R. dated 06.08.2002 that if such officer/ employee is connected with the Tribal Special Component Plan, certain rigorous / strict conditions are imposed. However, there is further no reference in the said G.R. that if such officer / employee is not connected with the Special Component Plan, is not entitled for the benefits of the said G.R. dated 06.08.2002. On the other hand, all the benefits have been extended to such an officer / employee basically for the reason that they have completed their tenure in terms of the provisions

of Section 3(1) of the Transfer Act, 2005 in Tribal / Naxal area.

(iv) It is pertinent to note here that in O.A. No. 483/2023 (K.S. Kalsi Vs. State of Maharashtra and Ors.) on clearly identical facts the respondent authorities of the Transport Department have not raised this specific defense of exclusion of the Transport Department since not connected with Special Component Plan in terms of Clause Nos. 6 to 9 of para No. 1 of the G.R. dated 06.08.2002.

(v) It appears that the respondent authorities have interpreted the said G.R. dated 06.08.2002 in the present matters on their own without making any reference to General Administration Department for clarification. On the other hand the Transport Department had apparently taken a decision to effect transfers of officers from the cadre of IMVs through "Online Computerized System" for which even an SOP was issued on 19.07.2023 followed by publication of a list on 14.08.2023 of 166 IMVs, who were entitled and found fit for transfer having completed their respective normal tenure as per the Transfer Act, 2005, which was followed by communication dated 22.09.2023

issued by respondent No. 2 to all those 166 IMVs directing them to submit their choice place in preferential order online till 28.09.2023. It further appears that the Commission of Transport Department has issued Circular dated 19.07.2023 in this regard making it clear that the provisions of Transfer Act, 2005, so also G.R. dated 06.08.2002 would be squarely applicable for transfer of officers / employees of the Motor Transport Department having completed their normal tenure in Naxal /Tribal area.

24. In view of above, I find no substance in the submissions made by learned Presenting Officer so also in the assertion of the respondent authorities that the officers / employees of Transport Department working in the Tribal / Naxal area not connected with the Special Component Plan and thus not entitled for the benefits of G.R. dated 06.08.2002 and consequently, they cannot exercise options for choice transfer after having been completed normal tenure in the Naxal / Tribal area.

25. It is stand taken by the respondent authorities and learned Presenting Officer submits that by referring the order

dated 02.11.2023, passed by the Principal Seat of this Tribunal at Mumbai in O.A. No. 818/2023 in a case of Dr. D.A. Shengal Vs. The State of Maharashtra and Ors. According to the learned Presenting Officer, by giving choice posting as per the willingness seized to be effective and efficaciously reliance of G.R. dated 06.08.2002 has been lost pursuant to the order dated 02.11.2023 passed by the Principal Seat of this Tribunal at Mumbai in O.A. No. 818/2023 and Govt. Circular dated 23.02.2024 issued by the General Administration Department in this regard. According to the learned Presenting Officer in terms of G.R. dated 06.08.2002, by which the benefits extending to the Government employees working in the Tribal / Naxal areas for choice postings has been rescinded w.e.f. 07.06.2006 and as such, the question of choice posting to the applicants for merely working in the Tribal area does not arise in pursuance of Govt. Circular dated 07.06.2006.

26. I have carefully gone through the observations made by the Principal Seat of this Tribunal at Mumbai in the order dated 02.11.2023 in O.A. No. 818/2023 (Dr. D.A. Shengal Vs. The State of Maharashtra and Ors.). In the aforesaid order dated 02.11.2023, the reference has been given to the letter dated 02.11.2023 addressed to the learned C.P.O. by the Agriculture,

Animal Husbandry, Dairy Development and Fisheries Department that is with regard to the opinion given to them by the GAD with reference to the directions given in the said order O.A. No. 818/2023 on 28.08.2023, 14.09.2023, 05.10.2023 and 19.10.2023 respectively. It is referred in the said order that the GAD while giving its advice to the Agriculture, Animal Husbandry, Dairy Development and Fisheries Department referred G.R. dated 07.06.2006 and stated that the G.R. dated 06.08.2002 stood rescinded w.e.f. 01.07.2006 following implementation of Transfer Act, 2005. In view of the same, the Principal Seat of this Tribunal at Mumbai in para Nos. 3 to 6 has made the following observations :-

“3. The G.A.D. while giving its advice to the ‘Agriculture, Animal Husbandry, Dairy Development & Fisheries Department’ has done it without diligently examining the status of compliance of G.A.D. Circular dated 11.07.2000 and G.A.D. GR dated 06.08.2002 after issue of GAD Circular dated 07.06.2006 and whether or not these have been implemented by all Administrative Departments from 01.07.2006 after coming into effect of the ‘Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005’. Not only the ‘Agriculture, Animal Husbandry, Dairy Development & Fisheries Department’ but several other ‘Administrative Departments’ since issue of G.A.D. Circular dated 07.06.2006 and even in the recent past have issued several Transfer Orders by giving preferential consideration to options given by Government Servants who have worked in Tribal and Remote Areas after invoking provisions by G.A.D. Circular dated 11.07.2000 & G.A.D. GR dated 06.08.2002.

4. The advice of G.A.D. as per directions given on 28.08.2023, 14.09.2023, 05.10.2023 & 19.10.2023 in this OA No.818 of 2023 was sought by ‘Agriculture, Animal Husbandry, Dairy Development & Fisheries Department’. The advice accordingly

given by G.A.D. to the 'Agriculture, Animal Husbandry, Dairy Development & Fisheries Department' is based on contents of G.A.D. Circular dated 07.06.2006 and by extrapolation states that even GAD Circular dated 11.07.2000 & G.A.D. GR dated 06.08.2002 stood rescinded with effect from 01.07.2006 following implementation of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'. Therefore, it becomes imperative to mention that G.A.D. Circular dated 07.06.2006 does not mention whether it was issued under any specific provisions of the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'. Nor does it mention about the G.A.D. Circular dated 11.07.2000 & G.A.D. GR dated 06.08.2002 in array of several other G.A.D. GRs & G.A.D. Circulars which are enlisted under the caption of referred documents which stood rescinded with effect from 01.07.2006. Therefore, the advice of G.A.D. given to 'Agriculture, Animal Husbandry, Dairy Development & Fisheries Department' is required to be reviewed as it is *prima facie* 'Intra-Contradictory'.

5. The 'Principal Secretary, Agriculture, Animal Husbandry, Dairy Development & Fisheries Department' is directed to resubmit the file to 'Additional Chief Secretary (Services), G.A.D.' along with the copy of this order for reconsideration of the advice given to them; as it is quite evident that G.A.D. Circular dated 11.07.2000 & G.A.D. GR dated 06.08.2002 do not appear to have been rescinded by G.A.D. Circular of 07.06.2006.

6. The GAD Circular dated 11.07.2000 & GAD GR dated 06.08.2002 were issued primarily to encourage Government Servants to work in 'Tribal and Remote Areas' and if these stood rescinded with effect from 01.07.2006 as it is sought to be conveyed by way of advice if G.A.D. to the 'Agriculture, Animal Husbandry, Dairy Development & Fisheries Department', then it assumes importance enough to be looked into forthwith by 'Chief Secretary, Government of Maharashtra', so that appropriate stand of the State Government is brought on record in this OA No.818 of 2023. Further if the G.A.D. Circular dated 11.07.2000 & G.A.D. GR dated 06.08.2002 indeed stood rescinded with effect from 01.07.2006 on issue of G.A.D. Circular dated 07.06.2006, then whether it had been explicitly communicated to all 'Administrative Departments' as many of them still continue to implement these guidelines so as to encourage Government Servants to serve in 'Tribal and Remote Areas'. In fact, as there are several other 'Service Benefits' such as 'One Step Promotion', Special Allowances, etc. which are also being provided to 'Government Servants' working in 'Tribal and Remote Areas'; so whether all dimensions of this important issue including its long term impact

on delivery of Citizen Services' and efficacy of 'Public Administration' were duly considered by G.A.D before advice was given to the 'Agriculture, Animal Husbandry, Dairy Development & Fisheries Department' may also be looked into by the 'Chief Secretary, Government of Maharashtra'."

In terms of the said observations in para No. 7, the Principal Seat of this Tribunal at Mumbai has directed the Principal Secretary, Agriculture, Animal Husbandry, Dairy Development & Fisheries Department to resubmit the file to 'Additional Chief Secretary (Services), G.A.D. in terms of the observations recorded on 02.11.2023.

27. In the context of the aforesaid observations, the assertion of the respondent authorities in sur-rejoinder affidavit reply so also submissions made in this regard by learned Presenting Officer by giving reference to the Circular dated 07.06.2006 that the choice posting has been rescinded w.e.f. 01.07.2006 long back is without any substance and non-application of mind.

28. Learned Presenting Officer has also vehemently submitted that on perusal of the confidential record of the applicants, it reveals that the applicants have not been done any excellent work in terms of G.R. dated 06.08.2002 and on this ground the present Original Applications are devoid of merits. In

my considered opinion, this aspect is most irrelevant and unconcerned for grant of choice posting to the officer/ employee, who has completed his normal tenure of posting in the Naxal /Tribal area. I find substance in the submission made on behalf of the applicants that neither Government Circular dated 11.07.2000 nor G.R. dated 06.08.2002 mandate that only by doing excellent work the officers/employees while completing their normal tenure in Naxal/ Tribal area can exercise the option of choice posting and not otherwise.

29. In view of above discussions, all these Original Applications deserve to be allowed in terms of the prayers made therein. Hence, the following order :-

ORDER

- (i) O.A. Nos. 990/2023 (Rakesh Motilal Shirsath Vs. State of Maharashtra and Ors.), 991/2023 (Atul Ramesh Chavan Vs. State of Maharashtra and Ors.), 992/2023 (Ashish Ashok Gogawale Vs. State of Maharashtra and Ors.) and 993/2023 (Hareshwar Arun Potdar Vs. State of Maharashtra and Ors.), are hereby allowed.
- (ii) The orders of transfer of the applicants in all these Original Applications dated 03.011.2023 (Annexure A-11 in all these O.As.) are hereby quashed and set aside.

- (iii) The respondent No. 1 is directed to give posting on transfer to the applicants at any one of three places of choice / preference given by them within a period of one month from the date of receipt of this order.
- (iv) In the circumstances, there shall be no order as to costs.
- (v) The Original Applications are accordingly disposed of.

PLACE : Aurangabad.

(Justice V.K. Jadhav)

DATE : 25.07.2024

Member (J)

KPB S.B. O.A. No. 990 & 3 Ors. all of 2023 VKJ Transfer