

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No.500 of 2015 (D.B.)**

Shri Suresh Mukaji Bhoyar,
aged about 38 years, Occ. Service, R/o Kotgal,
Post Pardi, Tahsil and District Gadchiroli.

Applicant.

Versus

- (1) Commissionerate, Animal Husbandry,
Maharashtra State, Aundh, Pune- 411007.
- (2) Regional Joint Director,
Animal Husbandry, Nagpur Division, Nagpur.
- (3) Divisional Commissioner,
Division, Nagpur. Nagpur
- (4) Additional Commissioner,
Tribal Development Department, Giripeth, Nagpur.
- (5) The State of Maharashtra through its Secretary,
Animal husbandry Department, Mantralaya Mumbai.

Respondents.

**S/Shri V.N. Patre, S.N. Gaikwad, Advocates for the applicant.
Shri A.M. Khadatkhar, learned P.O. for respondents.**

**Coram :-Hon'ble Shri Justice M.G. Giratkar,Vice Chairman and
Hon'ble Shri Nitin Gadre, Member (A).**

Date of Reserving for Judgment : 19th September, 2024.

Date of Pronouncement of Judgment : 25th September, 2024.

JUDGMENT

Per : Member (A).

(Delivered on this 25th day of September,2024)

Heard Shri S.N. Gaikwad, learned counsel for the applicant and Shri A.M. Khadatkar, learned P.O. for the respondents.

2. The Applicant was appointed by the Responder No. 2 on the post of peon at the Divisional Artificial Reten Centre, Sub-Centre, Bhuyar, in the Animal Husbandry Department, vide order dated 29/12/1995. The applicant has stated in his application dated 29/7/2015 that he had joined the said post as per this order and was confirmed in the service on 19/8/2002. Subsequently, by order dated 25/9/2006, the applicant was declared as a surplus employee in his department and was proposed to be shifted to the office of Project Officer, Integrated Tribal Development Department, Aheri, district Gadchiroli. He was relieved from his original department vide order dated 29/2/2008 and was absorbed in the Tribal Development Department as a Choukidar, at Aheri, vide order dated 10/3/2008.

3. The Applicant under Right to Information Act received information vide letter dated 31/10/2011 that, there were 33 posts of class IV available in his original department, i.e. Animal Husbandry Department. The applicant therefore claims that he has every right to return back to his original department as there are vacancies available now and he was shifted earlier only because he was declared as surplus. The relief sought by the Applicant is as follows:

“(7) (i) Direct the Respondent No. 2 to repatriate the Applicant on his parent department since the vacancies are available with the Respondent No. 2, in the interest of justice.

(ii) To grant stay to the Advertisement issued by the Responder No. 1 on 29/5/2015 to fill up the vacancies of class IV employees in the Respondent No. 2 division during the pendency of the present original application, in the interest of justice.”

4. The material portion of the affidavit dated 29/02/2016 by Respondents No. 1 and 2 is as follows:

“Applicant was adjusted to another department by additional employee cell of the Respondent No. 3 there for question of repatriation of parent department does not arise. Thus applicant say is not correct and may denied.”

5. The relevant portion of the affidavit filed by Respondent No. 3, the Divisional Commission, Nagpur, on 18/7/2016, is as follows:

“5. It is further submitted that the Finance Department has issued a G.R. dated 10.9.2001 and thereby directed to take the review of government surplus officer/ employee and send the information to the surplus cell of the Finance Department. The Finance Department has given guidelines regarding implementation of the said G.R. dated 10.9.2001. Copy of the said G.R. dated 10.9.2001 is at ANNEXURE- R-3-III.

6. It is further submitted that after review of the surplus employee as per the direction given in G.R. dated 10.9.2001 by the Finance Department, the Finance Department will send the list of the said surplus employee to the concerned Divisional Commissioner's office and accordingly the Divisional Commissioner's office was given the power to pass an appropriate order regarding the absorption of the said surplus employee. Copy of the said G.R. dated 24.1.2006 is annexed herewith at ANNEXURE- R-3-IV.

It is further submitted that as per the G.R. dated 24.1.2006 the responsibility was caste upon the Divisional Commissioner/Respondent No.3 to provide the surplus employee to the concerned Division Head/Office Head who had demanded the employees to fill up the vacant posts in their respective establishment.

7. The answering respondent no.3 further submitted that after following the above said procedure once an employee is declared to be surplus and was absorbed in some another department, thereafter the said particular

employee cannot be repatriated in his parent/original department until the department in which he is absorbed have not declared to be a surplus. On the other hand it is submitted that unless the government has not passed an appropriate order to repatriate the said surplus employees into their parent department, the applicant cannot be repatriated to its parent/original department.

It is respectfully submitted that the applicant cannot force the government to pass an appropriate order and to repatriate the applicant to its parent department.

6. The Respondent No. 4, in the affidavit filed on 08/01/2019 has stated as follows:

“(5) It is specifically submitted that, in the order dtd. 25.09.2006 passed by the Divisional Commissioner, Nagpur Division, Nagpur declaring the Applicant as surplus employee and in the order of absorption dated 10.03.2008 passed by the Project Officer, Integrated Tribal Development Department, Aheri, District: Gadchiroli, there was no any term or condition incorporated as to repatriation of Applicant to the parent department in case of any vacancy created therein in future. Thus, there is no question arise as to the repatriation of the Applicant to the parent department.”

7. In view of the above discussion, the facts of the case are as follows:

Divisional Commissioner, Nagpur vide order dated 25/9/2006 had declared the Applicant as surplus employee in the Animal Husbandry Department and proposed shifting him to the Tribal Welfare Department. The Applicant was relieved vide order dated 29/2/2008 and was absorbed in the Tribal Development Department vide Order dated 10/3/2008.

8. The Government had announced a scheme for survey of excess employees in all the departments and their absorption in other departments as

per provisions in the GRs dated 1/11/1999 and 10/9/2001. After the identification of excess positions, the Applicant was shifted from the Animal Husbandry Department to the Tribal Department as he was declared as an excess employee. This absorption as per the Government declared scheme is of permanent nature and does not create any right on the part of the employee to go back to his parent department or does not restrict the Government from filling vacancies, if any, created in future. Shifting from one department to another is possible if there are specific provisions declared by the Government in this regard. There is no such provision available for the employee declared as excess in one department, after his/her absorption in another department, to go back to the earlier department. Therefore, it is difficult to grant any relief to the Applicant which is not specifically provided in the Scheme. Hence, we pass the following order -

ORDER

1. The O.A. is dismissed.
2. No order as to costs.

(NitinGadre)
Member(A).

(Justice M.G.Giratkar)
Vice Chairman.

Dated :- 25/09/2024.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman and Member (A).

Judgment signed on : 25/09/2024.