

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.108 OF 2017**

DISTRICT : PUNE

Smt. Nilambari Mahesh Nawale,)
[since before marriage –)
Miss Nilambari Balasaheb Kajave])
Aged 33 years, working as Craft Instructor in Trade)
namely ITESM, having office at below named)
Respondent No.1, R/o Aboli Society, B6/103,)
Scheme No.3, Krishna Nagar, Chinchwad, Pune-19)..Applicant

Versus

1. The Joint Director of Vocational Education and)
Training, Regional Office, Ghole Road, Pune-5)
2. The Director of Vocational Education & Training,))
(Though Joint Director), Vocational Education)
and Training Directorate, 3, Mahapalika Marg,)
Post Box No.10036, Mumbai-1)
3. The State of Maharashtra,)
Through Principal Secretary, Skill Development)
and Entrepreneurship Department,)
Mantralaya, Mumbai 400032)

4. Smt. Meera Anantrao Karad,)
 Age adult, occ. Government service as)
 Craft Instructor in Trade namely Technician)
 Power Electronics System in the office of the)
 above named respondent no.1.)
5. The Principal,)
 Industrial Training Institute (Girls), Aundh,Pune)..Respondents

Shri A.V. Bandiwadekar – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for Respondents No.1 to 3 & 5

Shri Y.P. Deshmukh with

Shri V.P. Potbhare – Advocates for Respondent No.4

CORAM : Shri P.N. Dixit, Member (A)

CLOSED ON : 18th June, 2018

PRONOUNCED ON : 29th June, 2018

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant, Shri A.J. Chougule, learned Presenting Officer for Respondents No.1 to 3 & 5 and Shri Y.P. Deshmukh with Shri V.P. Potbhare, learned Advocates for Respondent No.4.

2. The Applicant is before this Tribunal as she challenges her transfer from the Trade of Technician Power Electronics System (TPES) to Information Technology and Electronics System Management (ITESM) in place of respondent no.4.

3. The Applicant did diploma in Industrial Electronics Engineering. On 19.11.2011 (Exhibit B) Respondent no.2 forwarded instructions to all Joint Directors in Maharashtra laying down criteria to be adopted while absorbing Class III and IV employees in different ITI under their control. This was followed by GR dated 3.7.2014 (Exhibit C), giving approval to the conversion of various trades under Centre of Excellence Scheme to Craft Instructor Training Scheme. As a fall out of this Respondent no.1 issued office order on 21.8.2015 (Exhibit D) effecting absorption of large number of Craft Instructors to the respective trades. The Applicant was working in ITI, Shirol as Craft Instructor (Basic Electrical and Electronics and Computer) but the said trade came to be closed and the Applicant was absorbed in the post of TPES vide order dated 25.8.2016 in ITI (Girls), Aundh, Pune-7 (Exhibit D-1).

4. By separate but similar office order dated 25.8.2016 (Exhibit E) Respondent no.1 absorbed Respondent no.4 in ITESM in vacant post in ITI (Girls), Aundh, Pune-7. On 30.8.2016 (Exhibit F) Respondent no.5 informed Respondent no.1 that the appointment of the Respondent no.4 being as Electronics Mechanic should be done either in the trade of Electronics Mechanic or TPES. On 1.9.2016 (Exhibit G) Respondent no.5 informed Respondent no.1 that the original appointment of Respondent no.4 being as Electronics Mechanic, her absorption may be done in the trade of Electronics Mechanic or TPES. On 12.9.2016 (Exhibit H) Respondent no.5 informed Respondent no.1 that by way of absorption the Respondent no.4 has been relieved on 31.8.2016 from the post of Craft Instructor Basic Digital Electronics so as to post her in ITESM trade as Craft Instructor.

5. Vide application dated 30.9.2016 Respondent no.4 requested Respondent no.1 to post her as Craft Instructor (Technician Power Electronics System) under Respondent no.5. Respondent no.1 vide letter

dated 21.10.2016 (Exhibit I) directed Respondent no.4 to join the post already offered to her stating that her absorption in the said post is of purely temporary nature and assured her that as and when there would be vacancy in Pune Division in the original trade, her request would be considered. Accordingly, Respondent no.4 joined the post of ICTSM Trade as Craft Instructor on 29.10.2016.

6. On 2.12.2016 Respondent no.1 transferred Applicant from Trade of Technician Power Electronics System to ICTSM Trade as Craft Instructor in place of Respondent no.4 and vice versa. Respondent no.5 issued order on 3.12.2016 relieving the Applicant from the said post.

7. Learned Advocate for the Applicant has prayed to set aside the order dated 2.12.2016 passed by Respondent no.1 transferring the Applicant from the Trade of TPES to ITESM in place of Respondent no.4 and vice versa. He contends that this order is issued to favour Respondent No.4; and therefore, is malafide, illegal and therefore should be quashed.

8. In response to above Respondent no.4 through her affidavit (page 88-95) avers as under:

“3) She completed Bachelor in Electronics and Telecommunication Engineering Degree (BE) course in 2004 and came to be appointed on regular basis and after following the due procedure on a clear, vacant and sanctioned post of Craft Instructor Electronics Mechanic trade/course CTS at Industrial Training Institute (ITI) at Solapur. On 2.9.2010 by mutual transfer, she joined service on the post of Craft Instructor (Electronics) at ITI (Girls), Aundh, Pune and currently is working in the same institute for the trade TPES.

4) Pursuant to GR dated 22.4.2010 the Government started Centre of Excellence (COE) with some trades and, in that, the batch conducted by and the post held by her got converted into Craft Instructor (Electronics) in Centre of Excellence (COE). The said COE was based on multi-skill, multi-entry and Multi-exit principle. The COE was being run from the same premises as ITI Aundh.

5) In view of the un-employability, it was decided to close down COE and re-introduce new Trades in Craftsmen Training Scheme. In the Minutes of the meeting of Sub-committee of National Council for Vocational Training (NCVT) on Norms and Courses held on 2nd June, 2014, detailed guidelines/criteria have been given for the conversion of courses from COE to CTS. For academic year 2014-15, the States were given option to convert existing COE courses into pre-designated CTS Courses. Thereafter vide GR dated 3rd July 2014 issued by the Higher & Technical Education Department, Government of Maharashtra, it was resolved to close down the COE by conversion of the same into CTS trades/courses. Instructions were issued to Heads of the respective ITIs to get their posts converted into posts for the proposed courses as indicated therein. A table indicating the conversion of erstwhile Trade/Module into new CTS Trade proposed to be introduced by the Respondent no.5's institution is annexed at Exhibit 3.

6) By further GR dated 9.7.2015 scheme/guidelines were laid down to decide equivalence of courses under COE with the courses proposed to be run on conversion into Craftsman Training System (CTS). The Schedule-A annexed to the said GR sets out the COE Trades and their corresponding CTS Equivalent trades wherein at Sr. No.5 against Electronics is mentioned Electronics Mechanic. The appointment of Applicant is from the trade of Electronics

Mechanic, and the trade of TPES is a new course introduced as a substitute for earlier one batch of Electronics course, which the Respondent No.4 was conducting. The said factual position is clear from the letter dated 30.8.2016 by Respondent No.5, to the Respondent no.1. However, the Respondent no.1 chose to ignore/disregard the same and took no action for a long time to correct the mistake of administration in not absorbing the Respondent No. 4 against the said course. According to Respondent No.4, she could not and ought not to have been assigned to the Trade of ICTSM which is equivalent to trade of Information Technology as shown in the Schedule A.

7) In view of the closure of COEs, persons similar to Respondent no.4 had become surplus and were to be absorbed on appropriate post as per the applicable Rules/guidelines and more particularly the Instructions/Guidelines dated 19.11.2011 issued by the Respondent no.2 to all the Joint Directors in the State of Maharashtra.

8) On correct interpretation of the instructions contained in 19.11.2011, it is clear that, in fact, the Applicant has benefitted of choice posting contrary and/or in disregard to said instructions and more particularly the procedure laid down therein for absorption of surplus teachers. If the said instructions are strictly followed in letter and spirit, Respondent No.4 being senior in service and also being from the same institute/region was required to be given priority while absorbing those rendered surplus. However, though the Trade being conducted by Respondent No.4 got converted into TPES, she was wrongly denied initially absorption against said trade. Thus, no favour as alleged or otherwise has been shown towards Respondent No.4 in re-allotting her the Trade of TPES and

the administration has only corrected mistake committed by it earlier which it is entitled and within its power to do so at any point of time upon the mistake being pointed out.

9) Vide letter dated 25.8.2015 the Respondent No. 4 had duly raised objection against her being posted/absorbed against the trade of ITESM, when her initial appointment was for Trade of Electronics Mechanic, which post/course was available and in fact 100% admission was recorded to said course/post in August, 2015. No action was however taken on several letters/representations given by Respondent No.4. One such letter which sets out her grievance is of 6.9.2016 which was also not acted upon by the Respondent no.1. Respondent No.4 had also raised objection and pointed out to the Respondent No. 5 that the trade shown against her name in the chart prepared pursuant to the GR dated 3.7.2014 is wrong as she was neither appointed to nor on transfer re-designated to the course of Basic Digital Electronics. However, Respondent No.4 was told that it is temporary list and does not affect her original appointment which is for Electronics. Respondent No.4 though has reasons to believe that there is mischief played in wrong nomenclature being introduced for the course of the Respondent No.4 and later on inaction to correct the obvious mistake solely with a view to favour/accommodate the Applicant, by the authority.

10) Respondent No.4 had a vested right in the post for the Trade of TPES which right was sought to be defeated by foisting the Applicant on said post and wrongly putting her to the trade of ICTSM. The Applicant has failed to show what right existed in her favour to be considered and more so over and above Respondent No.4, for the post of Craft Instructor TPES pursuant to closure of

COE. Applicant is junior in service to her and also at the relevant time was working at Kolhapur region and therefore was a candidate from outside and by no stretch of imagination could have been considered before her for absorption in Aundh ITI where Respondent No.4 continued to work. The glaring illegalities and mistakes committed have only been and rightly so, though belatedly, rectified by the administration and Applicant has no locus to challenge the same. The Applicant cannot base her claim on mistakes or illegalities committed by the administration and as no right is shown by the Applicant in her favour the Original Application is baseless, lacks merit and liable to be dismissed summarily.

11) Further it is relevant to note that, the syllabus of Electronics and TPES are much similar (80%) and for that reason also there is no illegality in the Respondent No.4 being considered for said course on closure of the Trade of Electronics in COE which Applicant was teaching. Whereas, the syllabus of ICTSM is significantly different and therefore it is not proper, appropriate to put the Respondent No.4 to said course. The Applicant before transfer was teaching the course by name "Computer Skills" at Kolhapur ITI and her initial appointment was also for the trade of Electrical, Electronics and Computer Skill and it is a matter of fact that even after joining at Aundh ITI, Pune she continued to teach the course of ICTSM though her appointment was shown for TPES. Letter dated 23.2.2017 by the Respondent no.5 addressed to Respondent no.1 which supports the above fact is annexed.

12) The Applicant needs to be thankful to the administration for being absorbed in Pune region ITI (Girls) institute which is also apparently contrary to procedure laid down vide Instructions dated 19.11.2011.

13) In view of the aforesaid, except for allegations of malafide the Applicant has failed to substantiate and show any vested right in her superior to that of the Respondent No.4 for being considered for TPES and thus the Application be dismissed since the Applicant does not deserve nor is entitled to any of the relief sought for, much less any interim relief as prayed for in said Application.

9. Respondent No.1 in his affidavit in reply (pages 50 to 87) states that Applicant as well as Respondent no.4 are Craftsman Instructor. As the Applicant's educational qualification pertained to Electronics Group she was deputed to vacant post in Electronics Group available in different ITI in the region, as per her request on 9.7.2014 (Exhibit R-1). Those who were found surplus were deputed purely on temporary basis until further order to the vacant post. Accordingly the Applicant was appointed in the cadre of Excellence Scheme to ITI (Girls), Aundh, Pune on 21.8.2015. The Applicant continued to get salary from ITI, Shirol, Kolhapur. The order dated 25.8.2016 para 2 mentions that posting of surplus employee shall be done on transfer depending upon administrative ground, educational qualification and the Groups (like Mechanical/ Electrical/ Electronics/ Automobiles or other equivalent trades).

10. The Respondent no.4 was appointed on 24.10.2008 under Craftsman Training Scheme as a Craft Instructor Electronics Mechanic. As per the Government Resolution dated 22.4.2010 the Respondent no.4's trade (Craft Instructor Electronics Mechanic) under Craftsman Training Scheme was converted to Center of Excellence Scheme (Basic Electrical and Electronics). As per GR dated 3.7.2014 the Respondent no.4's trade (Basic Electrical and Electronics) under Center of Excellence Scheme converted to Craftsman Training Scheme (Technician Power Electronics System).

11. Through oversight the Respondent no.1 by his order dated 25.8.2016 converted Respondent no.4's trade converted to Information Technology and Electronics System Maintenance trade. Considering the actual fact and figures as per GR the Respondent no.1 revised order dated 2.12.2016.

12. The affidavit further states that Respondent no.1 revised order issued dated 2.12.2016 as per GR dated 22.4.2010 and 3.7.2014. The affidavit further mentions vide para 23 (page 57) as under:

23. The order dated 21.8.2015 issued by the Respondent no.1 was a deputation order and not absorption order. This order is for those Craft Instructors who became excess due to closer of Center of Excellence Scheme. And to utilize their services depending their education qualification and availability of the posts in different ITIs. Due to this stop gap purely temporary deputation order, though the Applicant was working in the Respondent no.5's office, the Applicant got the salary from ITI, Shirol, District Kolhapur. At the same time the Respondent no.4 was working as a regular employee in the Respondent no.5's office and getting the salary from the Respondent no.5's office only.

13. If further stats in para 25 that the order dated 21.8.2015 issued by the Respondent no.1 was purely temporary deputation order as per request of the Applicant.

14. The Respondent no.1 mentions in para 32 that the Respondent no.1 issued the order dated 2.12.2016 as per the GR dated 22.4.2010 and 3.7.2014. If further states that vide letter dated 7.3.2017 Respondent no.1 informed Respondent no.4 who was due for transfer in the year 2017 and hence the transfer was effected.

15. In the affidavit in rejoinder (pages 153 to 167), advocate for the Applicant contended that the concerned Respondents have no authority, power and jurisdiction to issue the impugned order. He further states that the Applicant was not given personal hearing. According to him the orders issued in favour of the Applicant earlier were valid and there was no scope for the Respondents to do this exercise again. According to the Applicant, the orders issued on 19.11.2011 by the Respondent no.1 was perfect. He further states that the original appointment of Respondent no.4 as mentioned in the order dated 17.8.2008 is Craft Instructor (Electronics Mechanic). He states that this curriculum/study course is not closed anywhere in the State of Maharashtra. According to him changing the Applicant's trade as well as that of Respondent no.4 is totally wrong and illegal. The Ld. Advocate for the Applicant supports his arguments by deposing in para 23 as under:

23) With reference to para 10, I deny that the Respondent no.4 has any vested right as claimed by her in the post of Trade of TPES. I say that even the fact about myself being considered as junior, the Respondent no.4 is also not relevant in the present case, since the allotment of trade does not depend upon the seniority amongst them who were declared as surplus and who accordingly came to be absorbed.

16. In the affidavit in sur-rejoinder (pages 168 to 173) filed by the Respondent no.4 the above allegations have been refuted by stating as under:

5) All the employees in the State who were appointed for CTS but were working for COE scheme were declared surplus on closure of COE scheme and their absorption has taken place. Also the trade of Applicant is not completely closed down but it is merged into

“Electrician” and as per the order no.10323 dated 25.8.2016, most of the employees appointed for the trade Basic Electrical, Electronics and Computer Skills i.e. to which the Applicant originally belongs, are absorbed for the trade Electrician only. However, it is only in case of the Applicant that she was favored and sought to be absorbed, though temporary, to altogether different trade of TPES. Respondent No.4’s trade of EM (Electronic Mechanic) is equivalent to TPES as per the GRs of closure and absorption and 80% syllabus of the two trades is same/similar, whereas, there is no such similarity vis-a-vis the trade of the Applicant, still for reasons best known to the authority, the Applicant was given priority for absorption to the trade/post of TPES.

6) Whereas Respondent No.4 has experience to teach both EM and TPES trade subjects, the Applicant has been teaching ICTSM trade for past three years and on that ground also the Respondent No.4 is better fit and entitled to be considered for the trade of TPES.

7) The earlier orders no.10322 and 10323 dated 25.8.2016 were obviously wrongly issued to Respondent No. 4 and the Applicant overlooking the relevant fact of the Respondent No.4 being a senior candidate and regular employee from the same institute where TPES is being conducted [converted from COE (Electronics)] whereas the Applicant is deputed employee from out of district. Administration is within its powers/authority to correct any patent illegality and/or mistakes that may have been committed by it and the decision making unless proved by cogent evidence to be malafide ought not to be interfered with as per the law laid down by the Hon’ble Apex Court.

8) Apparently the administration has showered favors on the Applicant by giving her deputation as per outward no.10813 dated 30.9.2014 on the post of Electronic Mechanic (when there was no regular post of Electronics Mechanic in the institute) and then surprisingly changed the Applicant's order of deputation from trade EM to TPES in outward No.6507 dated 21.8.2015 i.e. once again deputation without any strong administrative reason and when pertinently at the relevant date the deponent was already excess in the same institute and eligible and entitled as per Guidelines of 2011 to be absorbed against the TPES post. However, Respondent no.1 instead gave Respondent No.4 the ICTSM trade on same date 21.8.2015 causing grave prejudice and injustice to the Respondent No.4 as the said trade is in Information Technology Sector.

9) As regards paragraph no.17, Respondent No.4 denies the contents therein. As per the GR dated 3.7.2014, the Applicant's trade is converted in Electrician trade and as per the rules of absorption dated 19.11.2011, the Applicant should be absorbed for original trade or equivalent trade. Post of Electrician are vacant and available and Applicant could and ought to have been absorbed against the same as was done in large number of similarly situated instructors as the Applicant.

10) Respondent No. 4 denies that the absorption was done by following the due procedure and guidelines laid down in letter dated 19.11.2011. In fact, it is the specific grievance of the Respondent No.4 that in flagrant violation of binding rules/directions the Respondent No. 1 has carried out the entire exercise of absorption of surplus instructors and resulted in grave injustice and prejudice to the Respondent No.4. Respondent No. 4 refers to and relies on the procedure followed in similar cases in other regions of the State

which would clearly show the illegalities/irregularities committed by the Pune office in doing absorption exercise. As EM trade is not available in the institute, as per the applicable GR of 2014 and guidelines contained in 2011 letter; the Respondent No.4 ought to be considered for the equivalent trade which as per the 2014 GR happens to be TPES.

12) Respondent No.4 further states, it is wrong and baseless to state that she was not aggrieved by the preference being given to the Applicant for the post of TPES to which Respondent No. 4 was entitled. Respondent No. 4 says that, as an employee it is but natural that she would prefer to exhaust her departmental remedies and persuade the administration itself to see its mistakes and get the same corrected instead of rushing to the court as in the case of present applicant. Respondent No. 4 had given letters / complaints /representations to the Respondent authorities from time to time and time spent in persuading the authority cannot be deemed to be waiver of any right vesting in her.

13) As regards paragraph no.21, Respondent No. 4 says that the exercise of absorption and at least the earlier orders of absorption to the extent of the Respondent No.4 and the applicant were patently illegal, arbitrary and not in conformity with the applicable rules/GR/guidelines and on realizing the obvious mistake the authority in its wisdom and rightly so has corrected its mistake, which it is well within its powers to do so and there is no legal impediment to the same nor any shown by the Applicant in support of its contention. It is pertinent to note that, the appointment of Applicant is for COE Production and Manufacturing – Basic Electrical, Electronics & Computer Skills, which is merged into Electrician and not into TPES, so the Applicant should have been

absorbed for Electrician trade and not TPES as per the rules of absorption of 19.11.2011. The said fact itself shows that there was violation of procedure and rules laid down in Guidelines dated 19.11.2011.

17. The learned Advocate for Respondent no.4 therefore contended that the authority has acted legally and in bonafide manner and allegations of malafide or collusion are baseless and incorrect.

18. The Respondent no.1 in his additional affidavit in reply (page 174 to 190) states as under:

10) The Respondent no.4 had given the request application on 6.9.2016 and 30.9.2016 to the Respondent no.1. Also the Respondent no.4 submitted her grievance by application to Hon'ble Minister of Skill Development and Entrepreneurship Department, Maharashtra State, Mantralaya, Mumbai on 8.9.2016. In that the Respondent no.4 mentioned that as per GR dated 3.7.2014 the Respondent no.1 has not absorbed the Respondent no.4 in the trade of Technician Power Electronic System. Instead she was absorbed in Information Technology and Electronic System Maintenance which is injustice to her.

11) On the same request application the Hon'ble Minister passed the remark to the Respondent no.1 to verify the case and submit. In that the Respondent no.1 again verified the order dated 25.8.2016 and found that the conditions in conversion of Center of Excellence Scheme (COE) in sector Basic Electrical and Electronics was converted to Craftsman Training Scheme as Technician Power Electronic and Electronics and Computer Skill is converted to Craftsman Training Scheme as Electrician was not considered in the

order dated 25.8.2016 which is not as per GR dated 3.7.2014 and issued the corrective order dated 2.12.2016.

12) The Applicant was surplus employee, so her final absorption would be done after the guidelines of the Government.

19. In view of the foregoing the issue to be decided is whether the impugned order issued by Respondent no.1 can be considered as malafide, illegal and irrational.

20. After examining all available documents furnished, my findings regarding the same is negative, for following reasons:

The impugned order does not appear to have been issued to favour Respondent No.4. It was a result of enquiry because of the representation by Respondent No.4. As admitted by the Respondent No.1, there was an error by him in denying her rightful position. The Applicant as per her request was adjusted in the present position, purely on temporary basis and thus is not entitled to refuse the rightful position of Respondent No.4. Respondent No.1 has corrected the error in the impugned order on the basis of material available and is rational and logical.

21. As there is no malafide, or irrationality in correcting earlier error, the OA is dismissed without costs.

(P.N. Dixit)
Member (A)
29.6.2018

Dictation taken by: S.G. Jawalkar.

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