

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.560 OF 2018

DISTRICT : MUMBAI

Shri Prashant S. Pawar)
Age : 40 years, Occu.: Food Safety Officer Area)
Code 91 (Vasai), Thane and residing at)
Panchamrut CHS, Room No.606, G.K. Marg,)
Worli, Mumbai - 400 013.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Secretary, Medical Education)
& Drugs Department, New Mantralaya,)
G.T. Hospital Complex, L.T. Marg,)
Mumbai 400 001.)
2. The Commissioner.)
Food & Drug Administration, M.S,)
Survey No.341, 2nd Floor, BKC, Bandra (E),)
Mumbai – 400 051.)
3. Mr. Santosh Madhukarrao Wazarkar.)
A-1503, Laxmi Narayan Residency,)
Pokharan Road No.2, Thane (W).)...Respondents

Mr. K.R. Jagdale, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents 1 & 2.

Mrs. Punam Mahajan, Advocate for Respondent No.3.

CORAM : SHRI JUSTICE M.T. JOSHI, VICE-CHAIRMAN

DATE : 05.10.2018



JUDGMENT

1. Heard Shri K.R. Jagdale, learned Counsel for the Applicant, Smt. A.B. Kololgi, learned Presenting Officer for the Respondents 1 & 2 and Shri K.R. Jagdale, learned Advocate for Respondent No.3.

2. By the present O.A, the Applicant is seeking the following relief.

"By suitable order or directions this Honourable Tribunal may be pleased to modify the impugned transfer order dated 31.05.2018 passed by Respondents and transfer & post the Applicant on the preferential posting on transfer on the vacant post of Food & Safety Officer at Thane (APMC Market) Area Code No.80 as per the guidelines of the GR dated 09.04.2018, forthwith, will all other consequential service benefits."

(Quoted from Page 7 of Paper-book)

3. The Government Resolution dated 9th April, 2018 (Exh. 'A', Page 11) is central to the submissions from both the sides. The reading of the G.R. would show that, in order to see that the grievances of the various Government servants in transfer should be minimum, the detailed guidelines are issued by the State to the competent authorities in this regard.

4. So far as the present controversy is concerned, the case of the Applicant is that, he was required to be considered for the choice posting, he being working in difficult area, he has given his option as per the preferences. The preferences he had given are at Page No.35. The concerned Respondent has selected preference No.7 i.e. Thane-91 and the impugned order of transfer of the present Applicant from difficult area to Thane-91 came to be passed. At that time, the choice No.1 Thane-80 sought by him was kept vacant. Aggrieved by the said decision of the concerned Respondent, the Applicant has filed the present O.A.

5. During the pendency of the present O.A, the concerned Respondent had issued separate transfer order on 30th August, 2018 (Exh. 'R2', Page 127). Vide the said transfer order, the Respondent No.3 Shri Santosh Vazarka, who was working at Nashik 129 was transferred to Thane-80.



6. Shri Jagdale, the learned Advocate for the Applicant submits that the Government Resolution dated 9th April, 2018 would show that the detailed instructions are issued to the competent authority as to how the procedure of transfer should be carried out. He has invited the attention of the Tribunal to stage No.5, Page 17 from the said G.R. It would show that, out of the option given by the concerned Respondent, the competent authority is required to consider the preferences. Firstly, the preference given by the employee working in difficult area is required to be considered. After exhausting this exercise, the next of the categories would be to consider the options given by the employees who were posted in non-difficult area.

7. In the circumstances, Shri Jagdale, the learned Advocate for the Applicant submitted that the Respondent No.1 did not at all considered the preferences. As the option No.1 given by the present Applicant was kept vacant and later on the said posting was given to the Respondent No.3 after the general transfer orders, therefore, he submitted that, in total violation of the Government Resolution, the Respondent-State itself has acted in the present case.

8. The submissions from the side of the Respondent-State is that many Officers had asked for same posting i.e. at Thane-80 and, therefore, it was not possible to post the present Applicant at the said place. One Mr. R.D. Pawar, who was suffering from the illness was placed at the top of the list of the persons who had sought posting at Thane-80. The G.R. cannot be construed as a statutory provision of giving any right to the employee of seeking the particular posting.

9. The learned P.O. had relied on the decision of the Division Bench of the Hon'ble Bombay High Court in Writ Petition No.7614 of 2010 (The State of Maharashtra Vs. Shri Deepak B. Vaishnav, dated 5.10.2010) wherein this general principle is reaffirmed. It was reiterated in the said decision that the employee cannot as a matter of right ask for a particular post.

10. Smt. Punam Mahajan, learned Counsel for Respondent No.3 submits that, though the present Respondent No.3 is added on the intervention application of the present Applicant, the transfer order issued in his favour during the pendency of the



O.A. is not challenged. The quashing of the said order is also not sought. She further submits that the G.R. is merely a guideline and the same cannot be treated as law enforceable at the behest of the employee. She relies on the ratio of Union of India & Ors. Vs. S.L. Abbas : (1993) 4 SCC 357 wherein it was declared that, unless the order of the State is shown to be mala-fide and in violation of any statutory provision, the Court or Tribunal cannot interfere in the same.

11. The learned Advocate for Respondent No.3 submitted that, even earlier the Respondent No.3 was posted in difficult area. The posting at Nashik was not his choice posting at that time, and therefore, when he is now posted at Thane-80, the same cannot be faulted with.

12. Upon hearing both the sides, in my view, the O.A. deserves to be allowed for the reasons to be follows :

Reasons :

Considering the fact that large number of employees remain dissatisfied with the transfer orders, the Government of Maharashtra had issued the elaborate guide-lines vide G.R. dated 9th April, 2018 (Exh. 'A'). Inter-alia, the said G.R. provides for bifurcating the employees due for transfer in two categories i.e. (i) employees who are employed in difficult areas and (ii) who are posted in non-difficult areas. Stage No.5 of G.R. would show that, first preference of the employee who are to be transferred from difficult areas is required to be considered. The options given by them are required to be "preferentially considered" and thereafter, recommendations are required to be made.

It is an admitted fact that the first choice station given by the present Applicant at Thane-80 was kept vacant during general transfer by Respondent No.1. None of the competing claim of the employees coming from difficult areas was considered for Thane-80. However, after the general transfer, the next of the transfer order is passed whereby the Respondent No.3 is posted at the said place, who was from non-difficult station.



Why exercise as given in the G.R. is not followed is nowhere explained by the Respondent-State. It is merely stated that, there were competing claims for the said post. However, none of the competing claim was accepted by the Respondent-State at that time.

Later on, however, the said post is filled-in by appointing Respondent No.3 - Mr. Santosh M. Wazarkar, who presently was not working in difficult area. The ratio of the case relied on by the learned P.O. as well as Smt. Mahajan re-affirm the established principle of law as regards the transfer. It is ^{quite} tried to say that a transfer is an incidence of the employment. The employee has no inherent right in asking for any choice posting and the administration has to take into consideration its exigencies in transferring the employees. For that purpose, Section 4 of the "Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 takes care of all these difficulties.

It is needless to state that the discretion to be exercised by any authority including the State should have a sound reasons behind the same. The exercise of discretion cannot be arbitrary. In the present case, the posting sought by the present Applicant at Serial No.1 was kept vacant during the general transfer orders and, thereafter, the transfer order was issued in favour of Respondent No.3 to the said post. The preferential treatment which was directed by the G.R. so far as employees already working in difficult area is concerned is ignored by the Respondent-State itself in the present case.

In that view of the matter, the principles which are laid down in the authorities quoted before me are not relevant to decide the present issue.

As the transfer order of Respondent No.3 is passed during the pendency of the present application, there is no need to challenge the said order.

In the circumstances, the act of Respondent-State of not posting the present Applicant as per the preferences given by him, is therefore, required to be interfered with.

In the result, the following order.

ORDER

The Original Application is hereby allowed without any order as to costs. The Respondent-State is directed to consider the options given by the present Applicant as per the preferences in terms of Stage 5 of the G.R. and to pass necessary orders, if necessary, by making certain amendments to certain transfer order passed as regards Respondent No.3. As Respondent No.3 would suffer by the present order, it is needless to say that the Respondent No.1-State would take care of the difficulties of the Respondent No.3, if any, to balance the equities. At present the post is vacant, the Respondent-State is expected to take the decision at the earliest including the decision on salary of Respondent No.3 within a period of six weeks from the date of this order. To act on Steno-copy.

Sd/-

(M.T. Joshi, J.)
Vice-Chairman

Mumbai

Date : 05.10.2018

Dictation taken by :

S.K. Wamanse.

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