

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.873 OF 2018

DISTRICT : PUNE

Shri Rajesh Ramchandra Tatkare.)
Age : 47 Yrs., Occu.: Police Inspector at)
Economic Offence Wing, Pune City and residing)
at 6/3, Swargate Police Quarter, Near Swargate)
Police Station, Pune.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Director General of Police.)
Shahid Bhagat Singh Marg, Colaba,)
Mumbai – 400 001.)...Respondents

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

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 12.04.2019

JUDGMENT

1. In the present Original Application, the Applicant is challenging the transfer order dated 25.05.2018 whereby he has been transferred from Gondia

to Pune City invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant is service as Police Inspector. At the time of impugned transfer order, he has been serving as Police Inspector, Gondia. He had completed two years tenure in Gondia District (Tribal Area). As he was due for transfer in general transfer of 2018, he had submitted representation on 02.02.2018 giving options at Palghar, Thane and Pune (Rural) in terms of Circular dated 11.07.2000 as well as G.R. dated 06.08.2002, which *inter-alia* provides for giving choice posting to the Government servants who have worked well for two years in Tribal Area or Naxalite Affected Area. However, by impugned order dated 25th May, 2018, he was transferred as Police Inspector in Pune City. He contends that vacancies were available at Palghar and Thane, but he was not given posting as per his first and second choice, but instead posting was given in Pune City though his third option was Pune (Rural). With these pleadings, he approached the Tribunal and seeks modification of the order dated 25th May, 2018, so as to transfer him at Thane (Rural) or Ratnagiri (Rural).

3. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.77 to 89 of P.B.) *inter-alia* denying the Applicant's entitlement to the relief claimed. The Respondents denied that there is any breach of instructions contained in Circular dated 11.07.2000 or G.R. dated 6th August, 2002. The Respondents contend that considering the fact that the Applicant had served at Navi Mumbai for seven years, he was not considered for giving posting at Palghar or Thane as per his option Nos.1 & 2. In so far as Pune is concerned, the Respondents contend that only one vacancy was available in Pune (Rural) where one Shri Yashwant Nalawade, who is also worked in Gadchiroli District was found suitable for posting in Pune (Rural) from the point of administrative exigency. As

such, only vacancy available was in Pune City, and therefore, the Applicant has been posted in Pune City considering his third option as Pune Revenue District. With these pleadings, the Respondents sought to justify the impugned transfer order.

4. Shri K.R. Jagdale, learned Advocate for the Applicant principally relied on Circular dated 11.07.2000 and G.R. dated 6th August, 2002 wherein instructions have been given to give choice posting to the Government servants of Group 'A' and 'B', who worked well for two years in Tribal Area. As per the instructions, such Government Officers should be posted as per their choice District. The learned Advocate for the Applicant has, therefore, submitted that though the vacancy was available at Palghar and Thane, the Respondents have not considered him for those two places and instead posted in Pune City. He, therefore, sought to contend that, if the Government servants who have worked for Tribal Area are not given posting as per the choice, then the very purpose of G.R. would frustrate, and therefore, the impugned order is liable to be modified.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer reiterated the pleas raised in Affidavit-in-reply and pointed out that the Applicant having served in Navi Mumbai for about eight years, the posting was given to him in Pune City. He has further pointed out that PEB considered the service record (as regard places where the Applicant worked) and in its wisdom, given posting in Pune City instead Pune (Rural). Thus, the sum and substance of his submission is that there is substantial compliance of instructions contained in Circular dated 11.07.2000 as well as G.R. dated 6th August, 2002.

6. Needless to mention that the transfer is an incidence of service and the Government servant has no vested right to ask for any particular post and it is always choice of the employer to see where a particular employee deserves to be posted. True, by Circular dated 11th July, 2000 as well as by G.R. dated 6th August,

2002, certain instructions/guidelines have been issued to accommodate the Government servants on the places of their choice, who worked well for more than two years in Tribal/Naxalite Area. It is not in dispute that the Applicant had worked two years at Gondia, which is admittedly the Tribal Area. The instructions given in Circular or G.R. are administrative instructions and that itself does not vest right in favour of Applicant or any Government servant to ask for a particular post only. All that, these Circular and G.R. provides to accommodate such Government servant as per the choice given by them.

7. In the present case, the Applicant has given three options i.e. Palghar, Thane and Pune (Rural). However, he was posted in Pune City and not Pune (Rural). The Respondents explained that the posting was given as per Revenue District and Pune (Rural) as Pune (Rural) falls in one Revenue District Pune. It is also made clear that only one vacancy was available in Pune (Rural) where Shri Yashwant Nalawade, who had also worked in Gondia District was posted. As Pune (Rural) and Pune City are the part of Pune Revenue District, the Applicant was posted in Pune City. This being the position, there is substantial compliance of Circular dated 11.07.2000 as well as G.R. dated 06.08.2002, as posting was given as per third option.

8. It would not be out of place to mention here that the Applicant had worked for about 7 to 8 years in Navi Mumbai in the period from 2008 to 2015. Earlier, he was posted in Thane (Rural) as Police Constable from 1992 to 2001. Thus, for about 17 to 18 years, he served in Navi Mumbai and Thane. Still he had given option at Palghar and Thane. Perhaps this was considered by PEB and the PEB thought it appropriate to give the posting to the Applicant at Pune City. While transferring the Government servants, the concerned authority also needs to consider the representations or the choices claimed by other Government servants and balance needs to be maintained. If one person is allowed to serve for a longer period only in one particular area, that would send wrong signal, and

therefore, the decision of PEB not to post the Applicant at Palghar and Thane as per his first and second options cannot be termed illegal or arbitrary. Needless to mention that where the transfer order does not suffer from any malice or arbitrariness, normally it should not be interfered by the Tribunal. In the present case, I see no illegality in the impugned transfer order, much less to set aside the same.

9. In this behalf, it would be appropriate to refer the Judgment of Hon'ble High Court in **2008 (2) Mh.L.J. 640 (Shri V.V. Gadekar, Deputy Engineer Vs. MHADA)**, wherein it has been held as follows :

“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power.”

10. The necessary corollary of aforesaid decision leads me to conclude that the challenge to the impugned order holds no water and O.A. deserves to be dismissed. Hence, the following order.

ORDER

- (A) The Original Application is dismissed with no order as to costs.
- (B) The Applicant is at liberty to make a fresh representation to the Respondent No.2 for posting at Ratnagiri, as prayed in the relief clause, which can be considered by Respondent No.2 in accordance to Rules.

(C) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 12.04.2019

Dictation taken by :

S.K. Wamanse.

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