

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.868 OF 2023**

**DISTRICT : PUNE  
SUBJECT : TRANSFER**

Shri. Nilprasad Namdeorao Chavan, )  
At Present Residing at )  
Suit No.1, Ravi Bhavan, )  
Civil Line, Nagpur- 440001 & )  
Permanently Residing at )  
R/o- B-204, Aurelia Society, )  
Pancard Club Road, )  
Near Punjab National )  
Bank, Baner, Pune – 411 045 ) ... **Applicant**

**Versus**

1) The State of Maharashtra, )  
Through its Secretary, )  
Revenue & Forest Department, )  
Mantralaya, Mumbai-01. )

2) The Additional Chief Secretary, )  
General Administration Department, )  
Mantralaya, Mumbai-01 )...**Respondents**

**Shri Aditya P. Kharkar, learned Advocate for the Applicant.**

**Shri Ashok J. Chougule, learned Presenting Officer for the Respondents.**

**CORAM : DEBASHISH CHAKRABARTY, MEMBER (A)**

**DATE : 15.12.2023.**

**JUDGMENT**

1. The O.A. No.868 of 2023 was taken up directly for Final Hearing under Section 22(2) of The Administrative Tribunal Act, 1985 to ensure expeditious decision regarding grievance of the Applicant who is 'Care-

Giver' to his 100% 'Blind Child' having legal entitlement under the 'The Rights of Persons with Disabilities Act, 2016'.

2. 'The Rights of Persons with Disabilities Act, 2016' contains various provisions relating to 'Service Conditions' of Government Servants which have to be implemented by the 'Appropriate Government'. So, in the case of Central Government it is done by Department of Personnel and Training while in the case of State Government it has to be done by G.A.D. However, G.A.D. thus far has displayed indolent attitude towards implementation of many provisions relating to 'Service Conditions' of Government Servants under 'The Rights of Person with Disabilities Act, 2016' especially about framing of policy guidelines relating to (i) 'Section 2(h)' - 'Discrimination', (ii) 'Section 2(y)' - 'Reasonable Accommodation'. Additionally, in respect of 'Section 20(3)' which requires every establishment of 'Appropriate Government' to provide 'Reasonable Accommodation' and appropriate barrier free and conducive environment to the employees with disability; and in respect of 'Section 20(5)' which specifically directs 'Appropriate Government' to frame policies for posting and transfer of employees with disability, appreciable initiatives are yet to be taken by G.A.D.

3. The case of Applicant had been considered on compassionate grounds by 'Revenue & Forest Department' as based on the representation of Applicant dated 23.03.2023 they had submitted proposal to G.A.D to consider his request to be retained in Pune Division because he is 'Care-Giver' to his 100% 'Blind Child'. The Revenue & Forest Department had even referred to the guidelines framed by Government of India's Department of Personnel & Training vide Office Memorandum F.No.42011/3/2014-Estt (Res) dated 08.10.2018. However, as they were advised by G.A.D. to follow the provisions of 'Maharashtra Government Allotment of Revenue Divisions for appoint by nomination and promotion to the posts in Group A and Group B (Gazetted and Non-Gazetted) Rules, 2021,' the 'Revenue and Forest

Department' issued 'Transfer Order' dated 05.06.2023 to move the Applicant to Nagpur Division and posted him as 'Deputy Collector (Land Acquisition), Gosekhurd Project, Nagpur'. The 'Revenue and Forest Departmental' though sympathetic to the cause of the Applicant who is 'Care Giver' to his 100% Blind Child; seems to have been restrained from taking desired decision about the Applicant's request to be retained in Pune Division only because of overriding advice given by G.A.D.

4. The G.A.D. by now was expected to have atleast adopted policy guidelines similar to those framed by 'Government Of India's, Department of Personnel and Training vide Memorandum F.No.42011/3/2014-Estt (Res) dated 08.10.2018' as they are appreciably progressive; having exempted Government Servants of the Central Government who are 'Care-givers' of their dependent Daughter/ Son/ Parents/ Spouse /Brother/ Sister with 'Specified Disability' under 'Section 2' of 'Right of Person with Disabilities Act, 2016' from the routine exercise of 'Transfer & Rotational Transfer' subject to 'Administrative Constraints'.

5. The G.A.D. therefore needs to move with alacrity to provide similar exemptions to Government Servants of the State Government who are 'Care Givers' under 'Section 2(d)' from routine exercise of 'Transfer' & 'Deputation' etc. subject to 'Administrative Constants'. The G.A.D. G.R. dated 09.04.2018 under its 'Annexure-2' of 'Schedule-1' mentions the order of precedence be given to Government Servant at the time of transfers and 'Care Givers' are placed at Sr. No.2. However, Government Servants who are 'Care Givers' under 'Section 2(d)' are not yet exempted from annual rounds of 'Transfer and Deputations'. Further even 'Maharashtra Government Allotment of Revenue Divisions for appoint by nomination and promotion to the posts in Group A and Group B (Gazetted and Non-Gazetted) Rules, 2021', it has been stated that exemption would be granted to only those Government Servants whose child was 'Mentally Retarded'. Inaction, thus far on the part of State

Government to frame policy guidelines which are more progressive has left such Government Servants who are 'Care Givers' with little option but to seek legal redressal of their grievances under of 'Section 19' of 'The Administrative Tribunal Act of 1985'.

6. The Applicant being 'Care Giver' under Section 2(d) deserves to be immediately posted back from Nagpur Division to Pune Division so as to enable him to take care of his 100% 'Blind Child'. The 100% Blind Child of Applicant has suffered enough in the absence of her 'Care Giver' father who though helpless is unable to be with her as he cannot show disobedience to service laws, rules and regulations which govern him and all other Government Servants. The Revenue & Forest Department against this backdrop must now respond to the call of conscience to uphold legal entitlements of the 100% 'Blind Child' of Applicant, under 'The Rights of Person with Disabilities Act, 2016'.

7. The 'Revenue and Forest Department' has submitted letter dated 29.11.2023 which mentions that an incumbent officer from the cadre of 'Deputy Collector' who is working as 'Forest Settlement Officer, Pune' is due to retire on 31.12.2023. Further, it was directed to provide information about prospective vacancies in posts of 'Deputy Collectors' in 'PMC' and 'PCMC' areas from 31.12.2023 upto 28.02.2024 which are not notified as (i) 'Electoral Registration Officer' under 'The Representation of People's Act, 1950' and (ii) 'Returning Officer' for Legislative Assembly Elections under 'The Representation of People's Act, 1951', but no such disclosure has been made by 'Revenue and Forest Department'. Against this background; Revenue & Forest Department must earmark the post of 'Forest Settlement Officer, Pune' which falls vacant on 31.12.2023 for the Applicant. The 'Transfer Order' of Applicant to post of 'Forest Settlement Officer, Pune' is to be issued by Revenue & Forest Department in relaxation of the provisions of 'Maharashtra Government Allotment of Revenue Divisions for appoint by nomination and promotion to the posts in Group A and Group B (Gazetted and Non-

Gazetted) Rules, 2021'. Further as any post which becomes vacant due to retirement can be forthwith filled by transfers anytime of the year under 'Proviso Clause (i)' of 'Section 4(4)' and because the case of Applicant more than that of other Government Servants fulfills prerequisite conditions of 'Special Reasons' and 'Exceptional Circumstances' for 'Mid Term' transfers to be effected under provisions of 'Section 4(4)(ii)' and 'Section 4(5)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005', there should now be no impediments for 'Revenue and Forest Department' to take appropriate action well in advance and issue 'Transfer Order' of Applicant after 31.12.2023 to post him as 'Forest Settlement Officer, Pune'.

8. The copies of Judgment be forwarded for information of Chief Secretary Government of Maharashtra and Additional Chief Secretary (Services) G.A.D. and 'Additional Chief Secretary (Revenue), Revenue and Forest Department'.

**ORDER**

- (i) The Original Application is Allowed.
- (ii) The Revenue and Forest Department shall issue 'Transfer Order' of Applicant to post him as 'Forest Settlement Officer, Pune' within 'Two Weeks' from 31.12.2023.
- (iii) No order as to Costs.

**Sd/-  
(Debashish Chakrabarty)  
Member (A)**

Place: Mumbai  
Date: 15.12.2023  
Dictation taken by: N.M. Naik.

Uploaded on: \_\_\_\_\_