Thakur

[Spl/MAT/F-5/E]

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

NO.MAT/MUM/JUD/ 156 /2016
Maharashtra Administrative Tribunal
Pay & Accounts Barrack Nos.3 & 4,
Free Press Journal Marg,
Nariman Point, Mumbai 400 021.
Date : 14 JAN 2016

ORIGINAL APPLICATION NO. 1069 OF 2015.

1. Shri Birbal L. Valvi,
R/at. 154, Suraj Kesari Nagar, Nandurbar.

....**APPLICANT/S.**

VERSUS

1 Govt. of Maharashtra, Through Addl. Chief Secretary, Revenue & Forest Department, Mantralaya, Mumbai-32

2 Divisional Commissioner, Nashik Division, Dist. Nashik.

...RESPONDENT/S

Copy to : The C.P.O. M.A.T., Mumbai.

The applicant/s above named has filed an application as per copy already served on you, praying for reliefs as mentioned therein. The Tribunal on the ***13th*** day *of* ***January, 2016*** *has made the following order:-*

APPEARANCE : Shri M.D. Lonkar, Advocate for the Applicant.
Ms. N.G. Gohad, P.O. for the Respondents.

CORAM : **HON'BLE JUSTICE SHRI A.H. JOSHI, CHAIRMAN.**

DATE : **13.01.2016.**

ORDER : Order Copy Enclosed/ Order Copy Over Leaf.

13/1/2016

Research Officer,
Maharashtra Administrative Tribunal,
Mumbai.

(7)

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.1069 OF 2015

DISTRICT : NASHIK

Shri Birbal L. Valvi)
Tahsildar, Sanjay Gandhi Yojana,)
Municipal Corporation Area, Nashik,)
R/at 154, Suraj Kesari Nagar, Nandurbar.) ...Applicant.

Versus

1. Government of Maharashtra,)
Through Additional Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032.)

2. Divisional Commissioner,)
Nashik Division, Dist. Nashik.) ...Respondents

Shri M.D. Lonkar, the Advocate for the Applicant.
Ms N.G. Gohad, the learned Presenting Officer for the Respondents.

CORAM : Justice Shri A.H. Joshi, Chairman

DATE : 13.01.2016

ORDER

1. Heard Shri M.D. Lonkar, the learned Advocate for the Applicant and Ms N.G. Gohad, the learned Presenting Officer for the Respondents.

2. Heard both the sides. Perused the Original Application and annexures. Facts leading to O.A. can be narrated in brief as follows:-

a) The applicant was posted and was serving as Tahsildar, Sanjay Gandhi Yojana, Nasik, District Nasik.

b) He was kept under suspension by Government by an order dated 10.09.2014.

c) The order revoking suspension says that the separate order of posting would be issued.

d) By order dated 01.12.2015, the applicant was posted in Nagpur Division, with direction that Commissioner, Nagpur may give him detailed order for posting.

3. The applicant is aggrieved by the order dated 01.12.2015. The applicant's prayer reads as follows:-

> "(a) This Hon'ble Tribunal be pleased to hold and declare that the impugned order dated 1.12.2015 issued by Respondent No.1 to the extent of giving posting to the Petitioner consequent upon order of reinstatement dated 10.11.2015 also issued by Respondent No.1 to Nagpur Division instead of Nashik Division as illegal and bad in law and the same be quashed and set aside with directions to the Respondents to post the Petitioner in any non-executive post in Nashik Division with all consequential service benefits."
>
> *(quoted from page 8 of the O.A.)*

4. Learned Advocate for applicant has relied on averment contained in ground No.7.4 as the foundation of the prayer. Text of said para 7.4 of the O.A. is quoted below:-

> "7.4. The Petitioner submits that the impugned order dated 1.12.2015 rendering the posting of the Petitioner in Nagpur Division is inconsistent with the order of reinstatement dated 10.1.2015, in as much as, while reinstating the Petitioner vide order dated 10.11.2015 reference is made to Government Circular dated 20.4.2013, however subsequent order is passed dated 1.12.2015 by which posting is given to the Petitioner in Nagpur Division. "
>
> *(quoted from page 6 of the O.A.)*

5. Applicant's contention is that :-

a) After revocation of suspension the applicant ought to have been posted in Nasik district or division only.

b) Giving the posting in Nagpur Division is contrary to Government's own decision as spelt out in order dated 10.11.2015.

6. The portion from order dated 10.11.2015 on which the learned Advocate for applicant has placed reliance is quoted below :-

> ".....श्री.बिरबल वळवी यांचे निलंबन संपुष्टात आणून त्यांना विभागीय चौकशीच्या निर्णयाच्या तसेच शासन परिपत्रक क्रमांक निप्रआ-१११२/प्र.क्र.८२/११-अ, दिनांक २०.०४.२०१३ मधील मार्गदर्शक सुचनानुसार जिल्हाबाहेर अकार्यकारी पदावर पदस्थापना देण्याच्या अटींच्या अधिन राहून सेवेत पुन:स्थापित करण्यात येत आहे.''
>
> *(quoted from page 20, Exb.'F' of the O.A.)*

7. The applicant has placed reliance on the averments contained in the Affidavit-in-Reply where it is admitted that the applicant ought to have been posted within Nasik Division, though outside Nasik District.

8. This Tribunal has considered the submission of learned Advocate for the applicant.

9. The order passed by the Government that he should be posted outside Nasik District does not mean or presuppose that the posting "must" be given in the Nasik Division only.

10. Competency of the Government to post the applicant any other location in the State of Maharashtra is not disputed. It is also not shown that the Government was under statutory obligation to the order of applicant's posting only within the Nasik Division.

11. So long the order passed by the Government is not shown to be contrary to the provision of law, this Tribunal cannot invoke and exercise its power and authority to interfere in the executive action within its powers under article 226 of the Constitution of India.

12. It appears that the applicant does not like the order or finds it to inconvenient however the text of order dated 10.11.2015 *ipso facto* does not render the impugned order either contrary to law or devoid of authority.

13. Hence, the applicant has failed to show either lack of authority or illegality in the action taken by the Government.

14. In the result, Original Application does not merit any interference and is rejected.

15. Parties are directed to bear own costs.

sd/-
(A.H. Joshi, J.)
Chairman

TRUE COPY

vso

13/1/2016

Asstt. Registrar / Research Officers
Maharashtra Administrative Tribunal
Mumbai