

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.38 OF 2017

DISTRICT : NASHIK

1. Shri Abhay B. Bhalerao.)
Age : 43 Yrs, Working as Craft)
Instructor, I.T.I. Dindori, Tal.: Dindori,)
Dist : Nashik and R/o. A/305,)
Hari Vihar, Near Bacchav Classes,)
Jail Road, Nashik.)

2. Shri Pravin P. Sangar.)
Age : 45 Yrs, Working as Craft)
Instructor, I.T.I. Dindori, Tal.: Dindori,)
Dist : Nashik and R/o/ Type B, 11/6,)
Gangotri Vihar, Amrut Dhan,)
Panchvati, Nashik - 3.)...**Applicants**

Versus

1. The Director of Vocational Education)
& Training Directorate, Through)
Joint Director, Having Office at)
Vocational Education & Training)
Directorate, 3, Mahapalika Marg,)
Post Box No.10036, Mumbai-1.)

2. The State of Maharashtra.)
Through Principal Secretary,)
Skill Development & Entrepreneurship)
Department, Mantralaya,)
Mumbai - 400 032.)...**Respondents**



Mr. A.V. Bandiwadekar, Advocate for Applicants.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

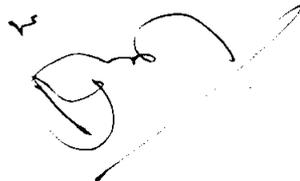
P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 28.04.2017

JUDGMENT

1. This Original Application (OA) is brought by two Craft Instructors who by the order of 30th September, 2016 issued by the 1st Respondent – Director of Vocational Education and Training through the Assistant Director were transferred vice each other on request. S/Shri V.L. Sonawane and A.S. Bhoje also were transferred, more or less as a consequence to the transfers of these two Applicants. However, by the order herein impugned dated 9th December, 2016, the list was modified omitting the names of these Applicants which has brought the Applicants up before me.

2. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicants and Mrs. A.B. Kololgi, the learned Presenting Officer (PO) for the Respondents.



3. It must have become clear from the inaugural Paragraph itself as to what the case is like. The Applicant No.2 – Mr. Sangar came to be transferred from Industrial Training Institute, Dindori to the same Institution at Nashik and he was to be succeeded by Mr. V.L. Sonawane. The 1st Applicant – Mr. Bhalerao came to be transferred from Dindori to Nashik and he was to be succeeded by Mr. A.S. Bhoje. These transfers were made by the order dated 30.9.2016 (Exh. 'B', Pages 19 to 23 of the Paper Book (PB)). The Applicants as well as S/Shri Sonawane and Bhoje are Group 'C' employees and it is not in dispute at all that the transfer aspect of their service condition is governed by the statute enshrined in the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act). The normal tenure would be six years in each place of posting.

4. However, by an order of 9th December, 2016 which is herein impugned, the order dated 30th September, 2016 was so modified as to exclude from the list of transfers, the names of the two Applicants before me and also the consequential transfers.



A handwritten signature in black ink, consisting of a stylized 'B' followed by a flourish, positioned above a horizontal line.

5. In the Affidavit-in-reply filed by both the Respondents by Mr. Ravte K. Sakharam, Inspector in the office of the 1st Respondent, the above discussed facts are not in dispute. But it is pleaded that, after reverification of the order dated 30.9.2016, some discrepancies were found in it. Therefore, to rectify those discrepancies, the order dated 30.9.2016 was set aside and the revised order which is herein impugned was issued after getting sanction from the Government (Respondent No.2). It is claimed that the procedure in the Transfer Act was followed. The impugned order is fully implemented and most of the persons who had been transferred thereunder have assumed their respective charges. The fact that the Applicants have already completed their tenure of six years on 31.5.2016 is admitted in Para 9 of the reply. Now, the fact with regard to the revised order having been made in view of "some discrepancies" has been repeated all over again and again in the said Affidavit-in-reply. But pertinently, this alleged discrepancy has not been amplified or clarified at all and there is no plea whatsoever of this particular aspect of the matter. In my opinion, the facts which are within the exclusive domain of the Respondents ought to have been clearly pleaded and wherever there was an occasion and possibility for documents to be produced, they should have produced it. The provisions of the Transfer Act are to be



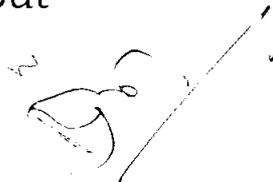
strictly adhered to because the transfer aspect of the service condition is codified and the judicial forum like this Tribunal will be fully empowered to examine as to what those discrepancies were there, because the issue is not so much of what a discrepancy is there according to the Respondents, but as to whether, the so called discrepancy is something that could pass muster with the judicial forum. In my opinion, the Respondents were in duty bound to clearly spell out as to what those discrepancies were and not only that, but they should have fortified it by other relevant factors including the documents. The best evidence rule will be squarely applicable and although rendered in different factual set up, but the law laid down by the Hon'ble Supreme Court in **Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif, 1968 AIR 1413** will be fully applicable. I do not think, the Respondents could be allowed to leave the crux of the matter in secret and then expect a finding for them by this Tribunal.

6. It is further pleaded that, directions were issued to all the Joint Directors to effect not to effectuate by actual relief to the personnel who had been transferred by the order of 30.9.2016.



7. There is a reference to two OAs having been moved in this Tribunal at its Aurangabad Bench. That reference is to be found in Para 11 of the Affidavit-in-reply and also in subsequent Paragraphs. Those were the **OAs Nos.854/2016 (Smt. Ashalata K. Dhattrak Vs. The State of Maharashtra and Ors.)** and **O.A.855/2016 (Prajakta Y. Gaikwad Vs. The State of Maharashtra and Ors.)**. There S/Shri V.L. Sonawane and A.S. Bhoje were also impleaded as private party Respondents while the present Applicants were not so impleaded. Those Applicants are also Craft Instructors like the present Applicants and they had questioned the move of the Respondents of having not considered them for request transfer while S/Shri Sonawane and Bhoje were considered. It appears that in this particular OA, the Respondents want to contend in effect that so as to not create any complications in view of those two OAs, they have taken the steps which has ultimately given rise hereto.

8. By an order of 16.11.2016, the Hon'ble Member (J) at Aurangabad made separate but identical orders. In Para 2, it was recorded that the grievance of the Aurangabad Applicants was that, they were not being accommodated despite requests from time to time while the private Respondents (S/Shri Sonawane and Bhoje) were being adjusted vide the order dated 5.10.2016, but



that order was “stayed” by the Respondents themselves. No interim relief apparently was granted till such time as the reply was filed by the State.

9. In the meanwhile, in so far as **OA 854/2016 is concerned (Smt. Ashalata Dhatrak)**, the Hon’ble Bench of this Tribunal at Aurangabad presided over by the Hon’ble Member (J) vide the order dated 2.2.2017 disposed it of. Instead of paraphrasing, I had better reproduced the entire order of this Tribunal from Para 3 onwards.

“3. The learned Advocate for the Applicant submits that the present Original Application may be disposed of in view of the observations made by the respondent Nos.3 & 4 in paragraph Nos.19 & 20 of their affidavit in reply.

4. The learned Presenting Officer for Respondent Nos.1 to 4 and learned Advocate for Respondent Nos.5 & 6, both have in agreement with the aforesaid submission made by the learned Advocate for the Applicant.

5. It would be appropriate to reproduce the observations made by the respondent Nos.3 & 4 in paragraph Nos.19 & 20 of their affidavit in reply and it reads as follows:-

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“19. As regards to para no.VI (14) of the original application, I say and submit that, applicant is appointed in the year 2010 and she is not completed service tenure for transfer, therefore she is not due for regular transfer till 2016. Therefore, as per procedure laid down in Transfer Act, 2005, her request application for transfer has been submitted to higher authority for further action. The Respondent No.3 has limited rights for transfer of their employees.

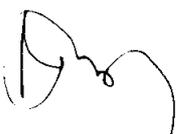
20. As regards to para no. VI (15) of the original application, I say and submit that, considering administrative need in future then only, applicant's request will be considered if she comply necessary norms as mentioned in Act.”

6. In view of the aforesaid submission made by the learned Advocate for the Applicant and in view the observations made by the Respondents Nos.3 & 4 in paragraph Nos.19 & 20 of their affidavit in reply, the present Original Application stands disposed of with no order as to costs.

Sd/-
MEMBER (J)”

10. The above extract must have made it clear as to the way in which that OA came to be disposed of at Aurangabad. I do not, therefore, think that any substantial change would be there for the Respondents to alter their stand emerging from the order dated 30th September, 2016.

11. The above discussion must have made it quite clear that the order of 30th September, 2016 which the Respondents claim to have been passed in accordance with the law, gave rise to the creation of certain rights in favour of the Applicants, and therefore, there ought to have been, but there is no material to hold justified the impugned action and once that was done, then obviously any modification or whichever name one might call it by, would in effect made no difference to the conclusion that the second one was also an instance of transfer which was manifested by the impugned order. It was, therefore, imperative on the part of the Respondents to justify the transfer or the absence of transfer of the Applicants with reference to the relevant provisions of the Transfer Act. They have failed to do so and in fact to repeat, they have used an obscure looking laconic expression, "some discrepancies" which is something, which I have already discussed in extenso. In my opinion, it is not open to

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anybody to make light of the mandate of the statutory provisions of law in matters such as this one. If the Respondents had the powers to modify the earlier order which had the potential to give rise to the right in the Applicants, then it was imperative on their part to fortify that stand by convincing evidence which is something that I have already elaborately discussed hereinabove.

12. Mr. Bandiwadekar, the learned Advocate for the Applicant told me that the 2nd order was without the sanction of the Government. Now, neither in case of the 1st order nor the 2nd order have the Respondents cared to place on record any material as discussed hereinabove, and therefore, even as I refrain from finding any fact thereabout, the position and situation would be no better for the Respondents.

13. Mrs. A.B. Kololgi, the learned PO for the Respondents invited my attention to Para 7 of the Affidavit-in-reply at Page 61 of the PB and in fact, the other Paragraphs of the said Affidavit-in-reply in so far as Para 7 is concerned. The sum and substance thereof is that, a special transfer order was issued after going through the applications routed through the Joint Directors and that order was made on 30.9.2016. But after reverification,



whatever the term might mean in the actual fact situation and the relevant context, discrepancies were found, etc. I have considered that aspect of the matter hereinabove. I have little hesitation in out rightly rejecting the contention to the contrary of the learned PO though the industry that had gone into her presentation of the case of the Respondents to salvage it, may still be commended.

14. The Respondents are hereby directed to act in accordance with the order of transfer dated 30.9.2016 in so far as the Applicants and S/Shri Sonawane and Bhoje are concerned. If need be for that, a Corrigendum be issued to the impugned order. Compliance within four weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
28.04.2017

28-04-17

Mumbai

Date : 28.04.2017

Dictation taken by :

S.K. Wamanse.

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