

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**M.A.NO.384 OF 2023 IN  
ORIGINAL APPLICATION NO.393 OF 2023 with  
ORIGINAL APPLICATION NO.393 OF 2023 (A'bad)  
(Through video conference)**

DISTRICT : AURANGABAD

Shivaji Gangdahr Wajge	)	
Age : 55 years, Occ. Service,	)	
As Instructor (Electrician),	)	
R/o. Government Polytechnic, Quarters,	)	
Osmanpura, Aurangabad	)	<b>....Applicant</b>

**Versus**

- |    |                                    |   |                         |
|----|------------------------------------|---|-------------------------|
| 1. | The Director, Technical Education  | ) |                         |
|    | Maharashtra State, 3 Municipal     | ) |                         |
|    | Corporation, Marge, Post Box       | ) |                         |
|    | No.1967, Mumbai 400 001            | ) |                         |
| 2. | The Deputy Director, Technical     | ) |                         |
|    | Education, Division, Aurangabad,   | ) |                         |
|    | Pir Bazar, Osmanpura, Tq. & Dist.  | ) |                         |
|    | Aurangabad.                        | ) |                         |
| 3. | Mr. Yogesh Prakesh Deslekar,       | ) |                         |
|    | Age : Major, Occ. Service,         | ) |                         |
|    | R/o. C/o. Government Engineering,  | ) |                         |
|    | College, Aurangabad, Station Road, | ) |                         |
|    | Aurangabad                         | ) | <b>....Respondents.</b> |

Mr. K.G. Salunke, learned Advocate for the Applicant.

Mr. M.S. Mahajan, learned Chief Presenting Officer for the Respondents.

**CORAM** : **Justice Mridula Bhatkar (Chairperson)**

**DATE** : **04.09.2023.**

**J U D G M E N T**

1. Learned Advocate for the Applicant Mr. Salunkhe has submitted that the he has served Respondent No.3 on 13.06.2023 and has filed affidavit on service on 16.06.2023.

2. Learned Advocate has filed M.A.No.384/2023 praying for recall of order dated 24.08.2023 passed in O.A.No.393/2023.

3. In view of above, O.A.No.393/2023 is hereby taken up for rehearing and hence, M.A.No.384/2023 stands disposed of.

4. The Applicant working as Instructor (Electrician) in Government Polytechnic, Aurangabad challenges the order dated 19.05.2023, issued by the Respondent No.2, transferring him from Government Polytechnic, Aurangabad to Government Polytechnic, Ambad, District Jalna in place of the Applicant and Respondent No.3 is transferred in his place. The Applicant further prays that Respondent No.2, Deputy Director, Technical Education be directed to transfer the applicant to Government Polytechnic at Nanded on the vacant post of Mr. Baskar Kasarpetkar.

5. Learned Advocate has submitted that the Respondent No.3, Mr. Yogesh Prakesh Deslekar is transferred to Aurangabad in the place of the Applicant from Government Engineering College,

Aurangabad to Government Polytechnic, Aurangabad. Learned Advocate has submitted that in the list dated 29.05.2023 the Applicant's name appears at Serial no.2 and Respondent No.3's name appears at Serial No.4. Learned Advocate has submitted that the Applicant has submitted that Respondent No.3 is accommodated at Aurangabad itself i.e. he was earlier working at Government Engineering College, Aurangabad and is now transferred to Government Polytechnic, Aurangabad. Learned Advocate has pointed out letter dated 29.03.2023 (Exhibit-A, page 15). By this particular letter dated 29.03.2023 the Acting Deputy Polytechnic officer, Aurangabad has called the list of the candidates who are due for transfer and whose names are mentioned in the said list. In this letter reference is made of Government Resolution (G.R.) dated 09.04.2018. In this list the,

Applicant's name appears at Sr. No.115,  
Mr. Baskar R. Kasarpetkar's name appears at Sr. No.116  
and Respondent No.3's name appears at Serial No.121.

Learned Advocate has submitted that one Mr. Baskar Ramarao Kasarpetkar is due for transfer from Government Polytechnic College, Nanded and hence one post at Nanded will fall vacant. Learned Advocate has drawn our attention to Annexure A-4, wherein the Applicant has given three choices namely,

- (i) Government Polytechnic, Nanded,
- (ii) Medicine Polytechnic, Aurangabad and
- (iii) Government Polytechnic, Aurangabad.

6. Learned Advocate has placed reliance on the Circular dated 17.01.2023 issued by the Respondent No.1, the Director, Technical Education. Learned Advocate has pointed out that as

per this Circular of Respondent no.1 minimum three options were required to be given and if minimum three options are not informed then the Government servant would be transferred to the place other than this choice. Learned Advocate has submitted that he could lay his hands on this circular today and it is very much relevant and it is placed on record. The said Circular be quoted as Exhibit-I. Learned Advocate has submitted that since the post at Nanded is still vacant the Respondent ought to have considered the name of the Applicant. He fails to understand the impediment for posting the Applicant on the vacant post at Nanded. Learned Advocate has further pointed out order dated 17.08.2023. The reliance is placed on minutes of the meeting dated 24.05.2023 of the Civil Services Board. The minutes reveal that two posts were kept vacant on account of the instructions from the Higher Officer and from the Hon'ble the Minister. Learned Advocate has submitted that there is no provision to keep the posts vacant either at the instance of the Higher Officer or at the instance of the Hon'ble the Minister. It stated that the Civil Servants who have not complete the period of six years are likely to be transferred and therefore the two posts are kept vacant. Thus, the reason given for keeping two posts vacant in the said minutes is incomprehensible and illegal. In the list dated 29.03.2023 the candidates at Serial Nos.2, 3, 5, 7, 14, 131 and 145 are disabled persons. Hence, all these candidates including candidate at Serial No.3, Mr. Baskar Ramarao Kasarpetkar are transferred from Aurangabad to Aurangabad i.e. at the same place. They are accommodated at Aurangabad as they are

disabled. Learned Advocate has pointed out that the application of Mr. Yadav Kishanrao Dhale who is at present working at Government Polytechnic, Jalna has requested that he is to be transferred at Nanded because of his disability. Learned Advocate has submitted that the Government wants to accommodate this person at Nanded. Learned Advocate has submitted that Mr. Yadav Kishanrao Dhale has put in more than 22 years of his service at Nanded. Learned Advocate has submitted that both, Applicant and Mr. Yadav Kishanrao Dhale are working as Instructor (Electrician).

7. Learned Advocate Mr. Salunkhe has submitted that if at all Mr. Dhale is going to be transferred at Nanded then the Applicant will make representation that he is to be transferred to Jalna in the place of Mr. Dhale as the Applicant has to look for the proposal of his marriageable daughter, so it will be inconvenient to him even if he is transferred either at Jalna or Ambad. Learned Advocate has submitted that the Applicant is going to retire on 31.05.2026 i.e. after three years and therefore it is requested that he be transferred to his home town at Nanded.

8. Learned Chief Presenting officer has submitted that the minutes of the meeting report are consolidated. The minutes of the meeting disclose that the board has applied the mind and has considered the total vacancies and issues of disabled persons like Mr. Yadav Dhale. Learned C.P.O. has submitted that the post at Ambad is vacant and somebody is to be appointed so it is not

possible for the Government to transfer the Applicant to any other post, than Ambad. On query learned C.P.O. has submitted that the distance between Jalna City and Ambad is 30 kilometers.

9. Considered submissions of learned Advocate and learned Chief Presenting Officer.

10. I have gone through the record and the documents which are pointed out by learned Advocate and learned C.P.O. The circular dated 17.04.2023 though it was not earlier before me, but was read over by learned Advocate and is now placed and considered. The Applicant was due for transfer and the minutes of the meeting which are placed before this Tribunal reveal that the Members of the Civil Services Board have applied the mind and have considered 30% of the total due employees for transfer. It is also mentioned that the two posts out of all the vacant posts are kept vacant. The post at Nanded is one of them. Submissions of learned Advocate in respect of Mr. Yadav Dhale are not accepted in view of the object of the Disabilities Act, 2016 thereby protecting the rights of the disabled Government servants, so also in view of Clause 3(i) of memorandum dated 08.10.2018, which reads as under,

*“(i) A Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.”*

11. From the photo it appears that Mr. Dhale has only one leg and is standing on the crutches. Transferring him on the place of his choice is a correct policy adopted by the State to keep such persons in the main stream. So far as the submissions of the applicant in respect of accommodating him at Jalna are concerned it is to be noted that the he has already joined duty at Ambad, Jalna. It is open for the Applicant to make representation to the Government in due course of time in view of his family responsibilities and so also in view of his date of retirement. If such representation is made by the Applicant the Government may consider it sympathetically in accordance with law and the G.Rs.

12. In view of above O.A. is disposed of.

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**

prk