

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 453 OF 2016

DISTRICT: BEED

Ashok s/o Suryabhan Dahiphale,
Age: 49 years, Occu: Service (as
Deputy Superintendent of Land
Records), R/o C/o Mr. Ravi Chalak,
Oppo. Petrol Pump, Manjarsumba Road,
Patoda, Dist. Beed.

.. **APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through its Principle Secretary
[Revenue] Revenue & Forest
Department, Mumbai-32.

- 2) The Settlement Commissioner
& District of Land Records,
M.S., Pune.

.. **RESPONDENTS**

APPEARANCE : Shri A.S. Deshmukh, learned counsel
for the Applicant.

: Shri V.R. Bhumkar, learned Presenting
Officer for the Respondents.

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

J U D G M E N T

(DELIVERED ON 10th OCTOBER, 2016)

The applicant Ashok Suryabhan Dahiphale, has
challenged the impugned order of his transfer dated

31.05.2016 issued by the respondent no. 2, whereby the applicant has been transferred from the post of Deputy Superintendent of Land Records, Patoda, Dist. Beed to the same post at Hatgaon, Dist. Nanded. The applicant is claiming modification in the said order and nothing more.

2. According to the applicant, before issuing impugned order of transfer, the respondent no. 2 called three options in the requisite pro-forma from all the employees, who were due for transfer. On 18.03.2016, the applicant submitted three options in the requisite pro-forma in the order of preference and the said options were Gangapur in Aurangabad District, Newasa in Ahmednagar District and Shirur Kasar in Beed District. It is stated that the applicant was holding additional charge of the post of Deputy Superintendent of Land Records, Shirur Kasar, District Beed and the said post is still lying vacant. However, without considering his options, the applicant has been transferred to Hatgaon and therefore, the applicant has claimed modification in the order and submits that he be posted at any place out of three places of his choice, instead of at Hatgaon, Dist. Nanded.

3. The respondent no. 2 i.e. the Settlement Commissioner & Director of Land Records (M.S.) Pune, was directed to file affidavit in reply. Accordingly, he has filed affidavit in reply and strongly objected for applicant's transfer or claim for modification of the transfer order as stated by the applicant.

4. Heard Shri A.S. Deshmukh, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents. The Settlement Commissioner, Pune Shri Sambhaji Kadu Patil, was also present at the time of hearing and he was also heard. I have perused the affidavit, affidavit in replied and various documents placed on record by the respective parties.

5. The only material point is to be considered in this case whether the applicant's claim for modification in the impugned order of his transfer as claimed by the applicant is legal and proper?

6. The learned Advocate for the applicant Shri A.S. Deshmukh, invited my attention to the fact that before transfer of the applicant, the applicant was directed to submit his three

choices of posting in the order of preference as per letter dated 18.03.2016, which is at paper book page no. 17 (Annexure A-2). Admittedly, the applicant has given three options in prescribed pro-forma. The said options are at paper book page no.18. The applicant has given options for Gangapur, Nevasa and Shirur Kasar as already stated hereinabove. However, his options were not considered and the applicant was transferred to Hatgaon.

7. It is true that as far as possible, it is necessary to consider the options given by the employee. However, that itself cannot be a ground to say that the order is passed without considering the options, is illegal.

8. The learned Presenting Officer has invited my attention to the letter dated 29.02.2016, placed on record by the applicant himself at paper book page no. 15 (Annexure A-1), whereby options were called. In the said letter, it was specifically mentioned that the employee can be transferred at any other than place of the options given by him.

9. The respondent no. 2 i.e. the Settlement Commissioner & Director of Land Records (M.S.), Pune has

filed his affidavit in reply on 19.09.2016. The said affidavit in reply is at paper book page nos. 34 to 39 (both inclusive). The Settlement Commissioner, Pune has clarified the position as to why, he was required to transfer the applicant at the place than on the place of options. The said explanation given in the affidavit in reply is as under:-

“04. The deponent submits that, after completion of three years tenure the applicant is transferred on administrative grounds from Patoda Dist. Beed to Hadgaon Dist. Nanded on vacant post vide order dated 31.05.2016 which is subject matter of present Original Application. At the relevant time of issuance of transfer order dated 31.05.2016 out of 16 posts 09 were vacant in Nanded district and by transferring applicant on administrative ground the department tried to fill-up vacant posts in Nanded district. The Deponent issued transfer order dated 31.05.2016 under the powers vested in him.

05. The deponent submits that, in fact, after issuance of transfer order under challenge the applicant intentionally has not joined duties at Hadgaon Dist. Nanded i.e. new place of his posting till date.

06. The deponent submits that, it is not always possible for the department while carrying out smooth administration to consider request of

applicant as prayed by him. Options given by the applicant are not binding upon the respondents and applicant cannot insist the department to give him posting at the place of his choice or as per option. The department has to fill reasonable posts within a district for smooth administration. In such a case the administrative grounds take precedence over the options. Every effort is made when officers are available to give posting as per options. When vacancies are more, the administrative convenience taken precedence. At the time of regular transfers i.e. May 2016 3 out of 15 Dy. S.L.R. post in Aurangabad District (i.e. 20%); 4 out of 11 Dy. S.L.R. posts in Beed District (i.e. 36%) and 9 out of 16 Dy.S.L.R. posts in Nanded (i.e.56%) were vacant. It was therefore, thought necessary to post the applicant in Nanded District for administrative reasons.

07. The applicant was promoted to Group-B (Dy. S.L.R.) on 16/7/2013 and he was allotted Aurangabad Division. As per the notification of Govt. of Maharashtra General Administration Department dated 8 June 2010 the rule No. 1 and 4 (d) are as below.

1) “Divisional Cadre Structure and Divisional Cadre Allotment for appointment by promotion to the post of Group ‘A’ and ‘B’ (Gazatted and Non-Gazatted), of the Government of Maharashtra Rules 2010

4(d)- as per the above mentioned Divisional Cadre allotment, the employee appointed by promotion in Group 'B' shall be required to complete a minimum period of six years."

Applicant is working in Aurangabad Division from 19.07.2013 and has not completed a minimum period of six years. As such he cannot be transferred anywhere outside Aurangabad Division and hence he cannot be posted as Deputy Superintendent of Land Records Newase in Nashik Division."

10. It is not the case of the applicant that he has been transferred due to malice. There is nothing on record to show that the respondent no. 2 in any manner is prejudiced against the applicant and therefore, there was no reason for respondent no. 2 not to post the applicant on the place of his choice. Whatever situation was existing has been considered by the respondent no. 2 in the interest of administration and not in the interest of any individual. I am therefore, fully satisfied that the reasons mentioned in the affidavit in reply filed by the respondent no. 2 cannot be doubted and therefore, in such circumstances, I do not find any reason to interfere in the discretionary power used by the respondent no. 2.

11. The learned Presenting Officer has invited my attention to **AIR 1993 SUPREME COURT 2486** in the case of **STATE OF PUNJAB AND OTHERS V. JOGINDER SINGH DHATT**, wherein the Hon'ble Apex Court has observed that in ordinary course and to prevent transferee from interfering with enquiry, order not causing any injustice, cannot be set aside in writ jurisdiction. In the present case, I do not find any illegality in not transferring the applicant at the place of his choice. The respondent no. 2 seems to have considered the administrative convenience. I therefore, do not find it a fit case to interfere, hence the following order:-

ORDER

The Original Application stands dismissed with no order as to costs.

MEMBER (J)
(J.D. KULKARNI)