

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

944 WRIT PETITION NO.11979 OF 2019

ARVIND NAMDEVRAO RODEWADKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Shinde Dhananjay M.
AGP for the respondent – State : Mr. A.S. Shinde
...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 26 AUGUST 2022

ORAL ORDER (SANDEEP V. MARNE, J.) :

By the present petition, the petitioner challenges the judgment and order dated 9-9-2019 passed by the Maharashtra Administrative Tribunal in Original Application no. 449 of 2019. Before the Tribunal, the petitioner had challenged and sought modification in respect of order dated 29-05-2019 by which he was transferred from Taloda, District – Dhule to Nashik instead of transferring him to one of the 10 choice postings given by him.

2. We have gone through the impugned judgment and order. We do not find any infirmity or jurisdictional error being committed by the Tribunal while dismissing the Original Application.

3. There are administrative instructions which clearly prohibit choice postings in the event of an employee or officer under suspension or against whom criminal prosecution is pending. We are, therefore, in agreement with the view taken by the Tribunal that the petitioner did not have any right to claim choice postings.

4. However, Mr. Shinde, learned counsel appearing for the petitioner submits that the criminal trial on account of which the petitioner was denied choice posting has resulted in his acquittal vide judgment and order dated 30-06-2022 passed by the Special Court, Nanded. He submits that on account of his acquittal in the criminal case, his case now be considered for grant of one of the choice postings. He also invites our attention to the order passed by this Court on 30-09-2019 by which one post was directed to be kept vacant. He submits that the case of the petitioner be considered for posting against that vacant post. He submits that the petitioner has made a representation on 07-07-2022 for grant of choice posting.

5. We direct the respondents to consider the application made by the petitioner on 07-07-2022 on its own merits.

6. Mr. Shinde, learned Advocate for petitioner expresses an apprehension that in view of the provisions of Rule 4 of the Maharashtra Government Servants Regulation of Transfers and

Prevention of Delay in Discharge of Official Duties Act, 2005, the respondents may not consider his case for posting till April – May – 2023. He invites our attention to the provisions of Rule 4(4)(i) under which the Government is empowered to effect mid-term transfer against newly created posts or the posts which became vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave.

7. Since the sanctioned post at Jalgaon has been directed to be kept vacant in pursuance of the order passed by this Court, we see no difficulty in directing the respondents to consider the case of the petitioner under the provisions of Rule 4 (4)(i) of the Act of 2005 while deciding grant of posting to him.

8. We, however, do not express any opinion about the entitlement of the petitioner for posting on that post.

9. The petition is accordingly disposed of. No costs.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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