

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.419/2018

DISTRICT: - AURANGABAD

Rajendra s/o. Piraji Bagade,
Age : 54 years, Occu. : Service,
(as Circle Officer, Kanchanwadi,
Upper Tahsil Office, A'bad),
R/o. Sahkar Nagar, Aurangabad.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Principal Secretary,
Revenue & Forest Department,
M.S., Mantralaya, Mumbai-32.
- 2) The Collector,
Aurangabad.
- 3) The Tahsildar,
Upper Tahsil Office, Aurangabad.
- 4) Mr. L.K.Gadekar,
Awwal Karkoon,
Entertainment Tax Branch,
Collector Office, Aurangabad.

...RESPONDENTS

APPEARANCE :Shri A. S. Deshmukh Advocate for
Applicant.

:Smt. Priya Bharaswadkar Presenting
Officer for respondent nos.1 to 3

:Shri N.L.Jadhav Advocate for respondent
no.4.

CORAM : B. P. Patil, Member (J)

DATE : 4th October, 2018

J U D G M E N T
[Delivered on 4th day of October, 2018]

1. The applicant has challenged the order dated 31st May, 2018 issued by the respondent no.2 by which he has been transferred from the post of Circle Officer, Kanchanwadi, Tq. & Dist. Aurangabad to the post of Awwal Karkoon in Tahsil Office, Soygaon, Dist. Aurangabad by filing the present O.A.

2. The applicant has joined service with the respondents as Talathi in Jalgaon District on 14-02-1991. In the year 2006, he came on the establishment of respondent no.2 i.e. Collector, Aurangabad by inter-district transfer. Since then he is working on the establishment of Collector, Aurangabad. On 20-12-2016 he was promoted to the cadre of Circle Officer and posted at Kanchanwadi. On 21-12-2016 he joined as Circle Officer at Kanchanwadi and started discharging duties. In the vacancy created due to the suspension of one Mr. H.R.Sonawne applicant was posted at Kanchanwadi. Mr. Sonawne assailed order of his suspension by filing O.A.No.938/2016. O.A. was allowed by this Tribunal on 23-01-2017 and the order of suspension dated 15-12-2016 has been quashed and set

aside. Thereafter, on 08-02-2017 respondent no.2 issued an order reinstating Mr. Sonawne on the post of Circle Officer, Kanchanwadi and the applicant was transferred and posted as Circle Officer at Mahalgaon in Vaijapur Taluka of Aurangabad District. Being aggrieved by the said order, the applicant approached this Tribunal by filing O.A.No.99/2017 and prayed for quashing the order dated 08-02-2017. Meanwhile, he preferred an appeal against the said order on 08-02-2017 before the Hon'ble State Minister of Revenue, Government of Maharashtra on 06-03-2017. His appeal has been allowed by the Hon'ble the State Minister Revenue by order dated 08-03-2017 and his promotion dated 21-12-2016 was confirmed and the order dated 08-02-2017 issued by the respondent no.2 transferring him from Kanchanwadi has been cancelled with a direction to the respondents to post him on the post of Circle Officer at Kanchanwadi, Tq. & Dist. Aurangabad. Therefore, he had withdrawn the O.A.No.99/2017 on 10-03-2017. As a consequence of said order passed by the State Minister Revenue, the respondent no.2 was pleased to pass the order dated 18-03-2017 reposting the applicant as Circle Officer, Kanchanwadi and also continued him thereon. Accordingly, applicant joined the post of Circle

Officer, Kanchanwadi on 21-03-2017. It is contention of the applicant that the applicant has hardly worked as Circle Officer, Kanchanwadi for one year and 4 months and some days and he was not due for transfer as he has not completed his tenure of posting there.

3. It is further contention of the applicant that Mr. H. R. Sonawne had challenged the order dated 18-03-2017 by which the applicant was reposted at Kanchanwadi by filing O.A. before the Tribunal as well as before the Hon'ble High Court by filing a Writ Petition but subsequently he has withdrawn those cases and order dated 18-03-2017 was not disturbed and applicant continued to work on the said post.

4. It is contention of the applicant that while working on the post of Circle Officer, Kanchanwadi respondent no.2 issued order dated 21-06-2017 suspending him from the services. The applicant has preferred departmental appeal before the Divisional Commissioner, Aurangabad in which the Divisional Commissioner passed an order staying suspension of the applicant on 03-07-2017. In view of the stay granted by the Divisional Commissioner, the applicant has continued to work as Circle Officer at Kanchanwadi.

Appeal preferred by the applicant is still pending before the Divisional Commissioner, Aurangabad.

5. It is contention of the applicant that though the applicant was not due for transfer, respondent no.2 issued the impugned order dated 31-05-2018 transferring the applicant from the post of Circle Officer, Kanchanwadi to the post of Awwal Karkoon, Sanjay Gandhi Yojana in Tahsil Office at Sillod in place of one Mr. K.K.Jethe. On the very day respondent no.2 issued corrigendum to the transfer order and posted the applicant as Awwal Karkoon in place of Mr. Jethe at Soygaon instead of Sillod. Not only this but on the same day respondent no.2 issued another order and transferred the respondent no.4 as Circle Officer at Kanchanwadi in his place. It is the contention of the applicant that the impugned order has been issued in contravention of the provisions of Transfer Act as well as in violation of the provisions of G.R. dated 21-11-1995.

6. It is contention of the applicant that by the said G.R. dated 21-11-1995, the Government has taken a policy decision for interchanging the employees working in the cadre of Circle Officer and Awwal Karkoon with a view that they should acquire experience of working on those posts so

as to make them eligible for the promotion on the next higher post of Naib Tahsildar. As per the said G.R. tenure of 2 years on the post Circle Officer or Awwal Karkoon was provided. The Aurangabad District Talathi Sangh challenged the G.R. dated 21-11-1995 by filing O.A.No.300/2017 before this Tribunal. The O.A was partly allowed by the Tribunal by order dated 04-04-2018 and the Tribunal was pleased to declare that tenure of 2 years prescribed in paragraph 3 of the said G.R. stood impliedly repealed/modified and that tenure of the post of Awwal Karkoons and Circle Officers would be governed by the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.

7. It is contention of the applicant that in view of the decision of the Tribunal in O.A.No.300/2017 it was not permissible for the respondent no.2 to transfer the applicant before completion of his tenure on the present post in view of the provisions of Transfer Act, 2005. It is his contention that when he learnt that the office of respondent no.2 was in the process of effecting inter-cadre transfers of Circle Officers and Awwal Karkoons on the pretext of complying the provisions of G.R.

dated 21-11-1995, he submitted his representations dated 28-05-2018 and 30-05-2018 to the Additional Collector, Aurangabad who is Chairman of Civil Services Board No.3 and pointed out the decision dated 04-04-2018 delivered by this Tribunal and submitted that he was not due for transfer from the post of Circle Officer, Kanchanwadi but the respondent no.2 had not considered the said representations and issued the impugned order which is illegal.

8. It is further contention of the applicant that in the year 2012, respondent no.2 made an attempt to transfer one Circle Officer namely Mr. P.S.Lokhande to the post of Awwal Karkoon on the basis of G.R. dated 21-11-1995 but Mr. Lokhande approached this Tribunal by filing the O.A.No.376/2012 and challenged the order of transfer. The O.A. was allowed by the Tribunal on 03-12-2012 and transfer order of Mr. Lokhande was quashed and set aside on the ground that G.R. dated 21-11-1995 has no overriding effect on the provisions of the Transfer Act, 2005. It is his contention that the impugned order is in violation of the provisions of the Transfer Act, 2005. It is his contention that he has undergone Angioplasty and he is suffering from Heart Disease but his condition has not been

considered by the respondents while issuing the impugned order. Therefore, he has filed the present O.A. and prayed to quash and set aside the impugned order.

9. Respondent no.2 has filed his affidavit in reply and resisted the contention of the applicant. It is his contention that the State Government has taken policy decision and issued G.R. dated 21-11-1995 regarding interchangeable transfers of the Circle Officers and Awwal Karkoons with an intention that employees working in both the cadres can gain experience of both posts which would be useful to them while discharging the duties on promotional post of Naib Tahsildar. As per the said G.R. the transfers in between the cadres of Awwal Karkoon and Circle Officer are required to be effected on account of administrative exigencies. He has not disputed the fact that the tenure of the such interchangeable transfer was challenged by the Aurangabad District Talathi Sangh before this Tribunal by filing O.A.No.300/2017 and O.A. was partly allowed and Tribunal was pleased to modify the G.R. by modifying paragraph no.3 and it was held that tenure of the post of Awwal Karkoon and Circle Officer would be governed by the Transfer Act, 2005.

10. Legality and validity of the G.R. regarding interchangeable transfers between the posts of Awwal Karkoon and Circle Officer had been upheld by the Tribunal. It is his contention that directions issued by the Tribunal in O.A.No.317/2017 to the extent of tenure of interchangeable transfers between 2 cadres would be applicable prospectively to all such transfers made by the authorities. It is his contention that the seniority list of employees working in the cadre of Awwal Karkoon and Circle Officer in Aurangabad Division and Aurangabad District has been maintained by the office of Divisional Commissioner at Division level and by the District Collector at District level. While making interchangeable transfers all the eligible employees from the cadre of Awwal Karkoon and Circle Officer have to be considered and existing seniority list of the both posts has to be taken into consideration.

11. Divisional Commissioner, Aurangabad vide office order dated 23-05-2016 has constituted Civil Services Board No.3 for considering and recommending transfer of eligible employees due for transfer by the transferring authority i.e. District Collector, Aurangabad. Civil Services Board No.3 headed by Additional Collector, Aurangabad has considered cases of all the Government servants who

are due for transfer and interchangeable transfers in the cadre of Awwal Karkoon, Circle Officers and also considered the seniority list of the employees in the said cadres as per the policy decision of the Government vide G.R. dated 21-11-1995. The applicant was eligible and due for transfer on the post of Awwal Karkoon in view of the G.R. and therefore Civil Services Board has recommended his transfer on the post of Awwal Karkoon and accordingly the respondent no.2 issued transfer order. It is his contention that the directions given by the Tribunal in O.A.No.300/2017 as well as the provisions of G.R. dated 21-11-1995 have been strictly followed by the Civil Services Board while making transfer of the applicant and there is no illegality in the same.

12. It is further contention of the respondent no.2 that the applicant has joined the post of Awwal Karkoon in the office of Tahsildar, Soygaon as per the impugned order and submitted his joining report. While joining, he has submitted leave application stating that he was on medical leave from the period of 07-06-2018 to 01-07-2018 and the said application was filed in the capacity of Awwal Karkoon, Tahsil Office, Soygaon. The applicant has filed representations dated 28-05-2018 and 30-05-2018 in the

office of respondents with false contentions. The applicant has misinterpreted the directions issued by the Tribunal in O.A.No.300/2017 and there is no substance and merit in the representations made by the applicant. It is their contention that one Shri P.S.Lokhande has also discharged his duties as Awwal Karkoon in the Entertainment Tax Branch of the Collector Office, Aurangabad during the period from 05-06-2014 to 02-06-2016 as per the transfer order dated 31-05-2014. It is his contention that there is no illegality in the impugned order and therefore he supported the impugned order and prayed for dismissal of the O.A.

13. Respondent no.4 has also filed his affidavit in reply and resisted contentions of the applicant. It is his contention that the applicant has already joined on the post of Awwal Karkoon at Soygaon but he has wrongly mentioned his designation in the application. It is his contention that the applicant has used political influence and got order of reposting at Kanchanwadi as Circle Officer. It is his contention that the applicant was suspended and a departmental enquiry against the applicant is going on for serious charges. It is his contention that the applicant was due for transfer and therefore he has been transferred from

the present post. It is his contention that one Mr. A.P.Joshi has already joined on the post of Awwal Karkoon in the Entertainment Tax Branch in the Collector Office. Therefore, the applicant ought to have joined him as party respondent but the applicant has not joined him as party and therefore O.A. is liable to be dismissed. It is his contention that the Government took policy decision to make interchangeable transfers of the employees working in the cadre of Awwal Karkoon and Circle Officer for smooth functioning of the office. Its object behind it is that the Awwal Karkoons are made familiar with the duties of Circle Officer and Circle Officers should also be familiar with the work of Awwal Karkoon before they are posted on promotional post of Naib Tahsildar.

14. It is his contention that this Tribunal has upheld validity and legality of the G.R. dated 21-11-1995 in O.A.No.300/2017 and only modified the tenure of posting in the cadre of Awwal Karkoon and Circle Officer. It is his contention that the decision in O.A.No.300/2017 has to be implemented prospectively and there is no violation of the directions given by this Tribunal in O.A.No.300/2017 while issuing the impugned order. It is his contention that transfer of 28 employees has been made as per the

provisions of G.R. dated 21-11-1995. It is his further contention that he served for Indian Army for more than 22 years and mostly in High Altitude areas and for 2 years in Siyachin Glaciers and thereafter joined Revenue Department in 2008 on the post of Talathi and his only 4 years' service is remaining. It is his contention that he has joined the post of Circle Officer, Kanchanwadi and is discharging the duty. It is his submission that there is no illegality in the impugned order, and therefore, he prayed to reject the O.A.

15. I have heard Shri A.S.Deshmukh Advocate for Applicant, Smt. Priya Bharaswadkar Presenting Officer for respondent nos.1 to 3 and Shri N.L.Jadhav Advocate for respondent no.4. Perused documents placed on record by the parties.

16. Admittedly, the applicant has joined the service on the post of Talathi on 14-02-1991 on the establishment of Collector, Jalna. Thereafter, he has been transferred on the establishment of Collector Aurangabad in the year 2006 by way of inter-district transfer. In the year 2016, he was promoted in the cadre of Circle Officer by order dated 20-12-2016 and posted at Kanchanwadi. He took charge of

the post of Circle Officer, Kanchanwadi on 21-12-2016 and started discharging his duty on the said post. Admittedly, he was transferred on the vacant post at Kanchanwadi as then Circle Officer Mr. H.R.Sonawne was suspended. Admittedly, Mr. Sonawne challenged the order of his suspension dated 15-12-2016 by filing O.A.No.938/2016 and that O.A. was allowed and the order of his suspension was quashed. Admittedly, respondent no.2 i.e. Collector, Aurangabad issued an order dated 08-02-2017 and reinstated Mr. Sonawne on the post of Circle Officer, Kanchanwadi in place of the applicant and posted the applicant as Circle Officer at Mahalgaon in Vaijapur Taluka of Aurangabad District. The applicant has challenged the said order by filing O.A.No.99/2017. Not only this but he had filed an appeal before the Hon'ble State Minister for Revenue challenging the order dated 08-02-2017. His appeal came to be allowed on 08-03-2017 and the transfer order dated 08-02-2017 has been cancelled and respondent no.2 was directed to post him on the post of Circle Officer, Kanchanwadi. Accordingly, he has been reposted on the post of Circle Officer, Kanchanwadi by order dated 18-03-2017 by the respondent no.2. Admittedly, the applicant had withdrawn O.A.No.99/2017 on 10-03-2017.

There is no dispute about the fact that Mr. Sonawne challenged the order dated 18-03-2017 passed by respondent no.2 before the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad. But thereafter he had withdrawn the said proceedings. Admittedly, the applicant was suspended by respondent no.2 on 21-06-2017 when he was working as Circle Officer, Kanchanwadi. The applicant has challenged the said order by filing an appeal before the Divisional Commissioner and the Divisional Commissioner granted stay to the order of suspension of the applicant and thereafter the applicant joined his duties as Circle Officer. The applicant has continued to work as Circle Officer, Kanchanwadi. The applicant has been transferred by the respondent no.2 by the impugned order dated 31-05-2018 and posted as Awwal Karkoon in the Tahsil Office, Sillod in place of Mr. Jethe. Admittedly, respondent no.2 issued another order on the same day and posted the respondent no.4 in place of the applicant. There is no dispute about the fact that the applicant was relieved from the post of Circle Officer, Kanchanwadi and thereafter he joined his new posting and respondent no.4 joined the post of Circle Officer at Kanchanwadi. There is no dispute about the fact that the

impugned order has been issued by respondent no.2 in view of the provisions of G.R. dated 21-11-1995 and after considering the judgment of the Tribunal in O.A.No.300/2017. Admittedly, Aurangabad District Talathi Sangh challenged the G.R. dated 21-11-1995 before this Tribunal by filing the O.A.NO.300/2017. O.A. came to be allowed partly by this Tribunal and the Tribunal was pleased to declare that the tenure of 2 years prescribed in paragraph 3 of the G.R. dated 21-11-1995 stood impliedly repealed/modified and tenure of Awwal Karkoon and Circle Officer would be governed by the provisions of Transfer Act, 2005. Admittedly, the applicant has hardly worked for about 14 to 15 months on the post of Circle Officer, Kanchanwadi. By the impugned order, he has been transferred before completion of his tenure as provided in Transfer Act, 2005. Admittedly, the impugned order has been issued after decision of the Tribunal in O.A.No.300/2017 dated 04-04-2018.

17. Learned Advocate for the applicant has submitted that the applicant has been promoted on the post of Circle Officer on 20/21-12-2016 and thereafter he was posted as Circle Officer at Kanchanwadi. He had joined as Circle Officer on 21-03-2017. He has not completed his normal

tenure on the post. He has hardly completed 1 year, 4 months and some odd days. He has submitted that respondent no.2 issued the impugned order transferring the applicant in contravention of the provisions of Transfer Act before completion of normal tenure of posting by the applicant. He has submitted that the applicant will retire in near future, and therefore, there is no possibility of his promotion to the post of Naib Tahsildar. He has submitted that the impugned transfer is mid-term transfer and is in contravention of S.4(4) and S.4(5) of the Transfer Act, 2005. He has submitted that respondent no.2 has not properly considered the decision of the Tribunal in O.A.No.300/2017 while effecting transfer of the applicant. He has submitted that the transfer of the applicant has been effected in view of the G.R. dated 21-11-1995 without considering the provisions of the Transfer Act, and therefore, the same is illegal. On these grounds he prayed to allow the O.A. and to quash and set aside the impugned order and to repost the applicant at his earlier posting.

18. Learned P.O. has submitted that the impugned transfer order has been issued by the respondent no.2 on the recommendation of the Civil Services Board No.3. He has submitted that in view of the G.R. dated 21-11-1995,

employees serving in the cadre of Awwal Karkoon and Circle Officer can be transferred inter-se as the said posts are interchangeable. He has submitted that the object behind issuance of G.R. dated 21-11-1995 is that the employees working in both cadres can gain experience of both the posts so that it will be useful for them while discharging duty on promotional post of Naib Tahsildar. He has submitted that this Tribunal has upheld the validity and legality of the G.R. dated 21-11-1995. It has only modified/repealed clause no.3 of the G.R. which provides tenure on the post. He has submitted that the decision in O.A.No.300/2017 has been considered by Civil Services Board No.3 while making transfer of the applicant and there is no violation of the provisions of Transfer Act while passing the impugned order. He has submitted that the applicant was due for transfer as per his seniority and as per the policy of the Government as per G.R. dated 21-11-1995 the impugned order has been issued with the object that the employees should gain experience of both the posts. He has submitted that the applicant has been relieved from the present post and he has joined his new post. He has submitted that the impugned order has been issued on the recommendations of the Civil Services Board

No.3 by the respondent no.2 and there is no illegality in the same. Therefore, he has prayed to reject the O.A.

19. Learned Advocate for respondent no.4 has supported the impugned order on the ground that the impugned order has been issued by the respondent no.2 in view of the provisions of G.R. dated 21-11-1995. He has submitted that the respondent no.4 has joined the post of Circle Officer, Kanchanwadi. Therefore, he supported the impugned order and prayed to reject the O.A.

20. On going through the record it reveals that the Government took policy decision in the year 1995 and decided that the employees appointed on the post of Circle Officer and Awwal Karkoon have to be transferred on those post by interchangeable transfers and issued G.R. dated 21-11-1995 accordingly. Clause 3 of the G.R. dated 21-11-1995 provides that the interchangeable transfer should be made as per the seniority and tenure/period for the same should not be more than 2 years. Said clause has been challenged by the Aurangabad District Talathi Sangh by filing the O.A.No.300/2017 before this Tribunal. Division Bench of the Tribunal by its decision dated 04-04-2018 has partly allowed the O.A. and declared that

the tenure of 2 years prescribed in paragraph 3 of the G.R. dated 21-11-1995 stands impliedly repealed/modified and tenure of the Awwal Karkoons and Circle Officers will be governed by the provisions of Transfer Act, 2005. Thereafter, the impugned order has been issued by the respondent no.2.

21. On perusal of the minutes of the meeting of the Civil Services Board No.3 headed by the Additional Collector, Aurangabad dated 28-05-2018 (paper book page 132) it reveals that the proposal regarding transfers of the employees working in the cadre of Circle Officer and Awwal Karkoon have been placed before the Civil Services Board in view of the provisions of G.R. dated 21-11-1995. It has been specifically mentioned that the employees whose transfers have been proposed were senior one and they have completed their tenure in that post, and therefore, recommendation regarding transfer of those employees including the applicant has been made. On perusal of the same it reveals that no exceptional circumstances or special reasons have been recorded for transfer of the applicant from the present post. Admittedly, the applicant has not completed his normal tenure of posting on the post of Circle Officer at Kanchanwadi. The transfer of the applicant is

mid-tenure transfer. No doubt, the competent authority is empowered to make transfer of the Government servants before completion of his normal tenure in view of the provisions of S.4(4) and 4(5) of the Transfer Act, 2005 with prior approval of the next higher transferring authority. In this case, respondent no.2 is the competent authority for transfer of the Government servants working in the cadre of Awwal Karkoon and Circle Officer. He is empowered to make transfer before completion of tenure in view of the said provisions with the prior approval of the next higher transferring authority. In this case, neither Civil Services Board nor respondent no.2 recorded any special reasons in writing for making transfer of the applicant before completion of his normal tenure of posting. Not only this but no special cause or exceptional circumstance has been shown for transfer of the applicant. Prior approval of the next higher transfer authority as required u/s.4(4) and 4(5) of the Transfer Act has also not been obtained for the impugned transfer of the applicant. Respondent no.2 has not complied with the essential requirements of the provisions of S.4(4) and 4(5) of the Transfer Act, 2005 while making transfer of the applicant.

22. Therefore, in my opinion the impugned transfer order is not legal one. Consequently, it is not sustainable in the eyes of law. Respondent no.2 issued the impugned order without recording special reasons in writing and without making out exceptional circumstance and without obtaining prior approval of next/higher transferring authority to such transfer. Therefore, the impugned order is illegal. The impugned order seems to be arbitrary, and therefore, it requires to be quashed and set aside by allowing the present O.A.

23. In view of the above discussion in the foregoing paragraphs O.A. stands allowed. The impugned transfer order dated 31-05-2018 transferring the applicant from the post of Circle Officer, Kanchanwadi to Awwal Karkoon, Tahsil Office, Soygaon is hereby quashed and set aside. Respondent no.2 is directed to repost the applicant at his earlier post i.e. as Circle Officer, Kanchanwadi with immediate effect. There shall be no order as to costs.

(B. P. PATIL)
MEMBER (J)

Place : Aurangabad
Date : 04-10-2018.