

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.424/2023

DISTRICT:- NANDURBAR

Shri Lahu Manikrao Chavan,
Age : 35 years, Occ : Top Clerk (Awwal Karkoon),
R/o. Tahsil Office, Akrani,
Tq. Akrani, Dist. Nandurbar.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through: the Principal Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
- 2) The Divisional Commissioner,
Nashik Road, Nashik Division,
Nashik.
- 3) The District Collector, Nandurbar,
Maharashtra State, New Administrative
Building, Nandurbar.

...RESPONDENTS

APPEARANCE :Shri Rakesh N. Jain, Counsel for
Applicant.

:Smt. M.S.Patni, Presenting Officer for
the respondents.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN

Reserved on : 08-08-2023.

Pronounced on : 05-09-2023.

O R D E R :

1. Heard Shri Rakesh N. Jain, learned Counsel for the
applicant and Smt. M.S.Patni, learned Presenting Officer
appearing for the respondent authorities.

2. Applicant has filed the present O.A. seeking quashment of the order dated 26-05-2023 issued by respondent no.3 whereby he has been transferred from the post of Awwal Karkoon, Sanjay Gandhi Yojna, Tahsil Office Akrani to the post of Godown Manager, Khandbara, Tahsil Office, Nawapur.

3. The applicant was selected and appointed on the post of Clerk at Nandurbar w.e.f. 11-11-2013. In the year 2019, he came to be promoted to the post of Awwal Karkoon and was posted in the Tahsil office of Akrani, Tq. Akrani, Dist. Nandurbar. In the Annual General Transfers made in the year 2023, vide the impugned order he has been transferred to Tahsil Office, Nawapur as Godown Manager, Khandbara. It is the grievance of the applicant that after having worked for the period of 4 years in Tribal area, he had become entitled for his transfer on the post of his choice by virtue of the Government Circular dated 11-07-2000 and G.R. dated 06-08-2002.

4. Learned Counsel for the applicant submitted that the applicant has preferred an application to respondent no.2 at the time of Annual General Transfers while giving options as required for his next posting. Maximum 10

options were to be given for such transfer. The applicant gave the 10 options. Learned Counsel submitted that all the 10 posts for which the applicant had given options were vacant. Learned Counsel further submitted that in spite of the fact as aforesaid respondent no.2 transferred the applicant to the post of Godown Manager, Khandbara in Tahsil Office Nawapur for which the applicant has not given any option. Learned counsel further submitted that at his posting at Akrani the applicant had performed his duties with honesty and integrity and his performance of the said period was rated high. Learned counsel further submitted that Akrani is a tribal and inaccessible area as notified by the Government. After having worked for more than 4 years in such area, as per the Circular dated 11-07-2000 and G.R. dated 06-08-2002 the applicant had become entitled for claiming the posting of his choice. Learned counsel further submitted that contravening the aforesaid provision respondent no.2 instead of giving posting of his choice transferred the applicant to Nawapur on the post of Godown Manager, Khandbara for which applicant had not given choice.

5. Learned counsel further submitted that the impugned order is issued in violation of the provisions of

the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ("Transfer Act" for short). For the aforesaid reasons learned counsel prayed for allowing the application by setting aside the impugned order.

6. Respondent Nos.2 & 3 have filed their affidavit in reply and resisted the contentions raised in the O.A. and the prayers made therein. Respondent Nos. 2 & 3 in their affidavit in reply have contended that the transfer of the applicant has been made in accordance with the provisions under the Transfer Act, 2005 and the Circulars and G.Rs. issued from time to time thereunder. It is further contended that while working at Akrani the applicant had remained absent many times without obtaining prior permission of the higher authority. It is also alleged that the applicant had remained absent when important responsibilities were given to him. It is contended that applicant was appointed as Inspector/Supervisor for the work of Ward formation, Ward determination and for drawing reservation for election of village Chandsaili, Tq. Akrani, Dist. Nandurbar. It is further contended that applicant was absent on the dates when the reservation

draw for the said Village Chandsaili was scheduled. Respondents have alleged that the behavior of the applicant was irresponsible and careless. It is further contended that Tahsildar Akrani had submitted a proposal to Collector Nandurbar on 15-07-2022 for taking disciplinary action against the applicant for absence without permission and negligence in work. It has also been stated that Tahsil Office Akrani is not hilly area and is not inaccessible. It is further contended that present applicant does not fulfill criteria laid down in the Circular dated 11-07-2000 and hence he is not entitled for said benefit. It is further contended that while transferring the applicant, provisions of the Transfer Act and G.Rs. have been strictly followed and the recommendations have been obtained from the Civil Services Board. It is further contended that, none of the 10 posts for which the options were given by the applicant is now vacant, since postings are already given on all the said posts in the annual general transfers. For all above reasons, respondents have prayed for rejecting the application of the applicant.

7. I have duly considered the submissions made on behalf of the applicant as well as the respondents. I have

perused the documents produced on record. First question which requires to be answered in the present matter is, whether the applicant is entitled to the benefits under Circular dated 11-07-2000 and the G.R. dated 06-08-2002. The Circular dated 11-07-2000 provides that the employees belonging to Group-C and Group-D category performing satisfactory work for 3 years in the tribal area are to be given the next posting in the district of their choice. Alongwith the said Circular the list of tribal areas is also annexed. Akrani Taluka in Nandurbar District is included in the said list of tribal area. The applicant had worked for 4 years in the Tahsil Office, Akrani. Though in the affidavit in reply respondents have come out with the case that the Tahsil Office at Taluka Akrani is not in the hilly or inaccessible area, the submission so made cannot be given much weightage in view of the Government Circular dated 11-07-2000 and the list of tribal areas annexed therewith. It, therefore, cannot be denied that applicant did work for about 4 years in a notified Tribal Area.

8. Another question which may arise whether the applicant can be held to have performed satisfactory work

while posted at Akrani. In the affidavit in reply respondents have contended that behavior of the applicant was irresponsible and careless towards his work. It is also stated that Tahsildar, Akrani has submitted a proposal to Collector, Nandurbar on 15-07-2022 for taking disciplinary action against the applicant for absence from duty without permission and negligence in work. Respondents have placed on record statement of charge issued to the applicant. In that regard, in the rejoinder affidavit applicant has contended that on 20-05-2022 and 01-06-2022 he was on casual leave and in the period between 05-07-2022 to 20-07-2022 he was on leave on account of his illness. It is contended that he was suffering from Typhoid. Applicant has placed on record the documents evidencing that the Medical Leave was granted to him of 18 days during the period from 05-07-2022 to 22-07-2022. As such no allegation can be made against the applicant that he was unauthorisedly absent during the aforesaid period. In so far as the allegation of negligence in carrying out the work of determining the reservations of the Gram Panchayat Wards by lottery system is concerned, it is the contention of the applicant that on 01-07-2022 he has done the said job in the village Chandsaili and on 15-07-

2022 the draw was completed for the said village. Learned Counsel for the applicant submitted that in the departmental enquiry, if proceeded further, the applicant will be definitely exonerated from the charges levelled against him.

9. Learned Counsel for the applicant further submitted that performance of the applicant was always rated "Outstanding" and he got 9 out of 10 marks in his Annual Confidential Reports (ACRs). The applicant has placed on record ACRs of the relevant period. I have perused the said ACRs annexed with Annexure AR-1 (p.b.page 151 to 164). It is revealed that the performance of the applicant has been rated "Outstanding". Considering the facts as aforesaid, it appears to me that the applicant was eligible to be given benefits of the Circular dated 11-07-2000 and G.R. dated 06-08-2002 and he could not have been deprived from the said benefits only on the ground of his few days' absence. Considering the documents which the applicant has placed on record, it is revealed that the work of drawing reservations for Gram Panchayat Wards was performed by the applicant. However, I may not indulge in making any more discussion in that regard for the reason

that it is the applicant who has to prove his innocence and negate the charges framed against him during the course of the said departmental enquiry.

10. It appears to me that on the aforesaid ground the applicant cannot be deprived of the benefits of Circular dated 11-07-2000. I reiterate that the competent officers have rated his performance to be “Outstanding” in the ACRs written by them.

11. Respondents have also contended that all the 10 options for which the applicant had given preferences have heavy work load, and therefore, competent persons were required to be posted at the said places instead of the applicant. The contention as is raised by the respondents also cannot be accepted. When the performance of the applicant has been assessed by the competent authorities to be “Outstanding”, it will be unjust and unfair to say that the applicant was not that capable to perform the duties of the said posts. In the circumstances, even on that count the request of the applicant could not have been rejected.

12. After having considered the entire facts and circumstances involved in the present matter, I have

reached to the conclusion that injustice has been definitely caused to the applicant in not considering his request for his transfer at any place out of the 10 choices given by him. Since, now it has come on record that the appointments are already made on all the said 10 posts, it is not possible to give any mandate at this juncture for giving the posting to the applicant on any one of the said posts for the reason that the employees appointed on the said post are not party in the present O.A. However, certain directions can certainly be given to remove injustice caused to the applicant. Hence, the following order:

O R D E R

- [i] Respondent no.3 is directed to give posting to the applicant on any post for which he had given options if it becomes available because of the transfer, retirement or promotion of the employee presently working on the said post.
- [ii] If such posting could not be given in this academic year, applicant shall be positively given posting at the place of his choice in the next Annual General Transfers of 2024 by inviting fresh options from the applicant.
- [iii] O.A. is allowed in the aforesaid terms.
- [iv] No order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 05.09.2023.