

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.653 OF 2023**

**DISTRICT : SATARA  
SUBJECT : TRANSFER**

Mr. Krushna Piraji Japtap )  
Age: 46 years DOB: 12.11.1977, )  
Occ. Awal Karkoon at Koregaon, Dist. Satara. )  
R/at. At post Nigdi, Tal. Koregaon, Dist. Satara. )... **Applicant**

**Versus**

1) The Secretary, )  
Revenue and Forest Department, )  
Mantralaya, Mumbai. )

2) The District Collector, )  
Powai Naka, Satara. )

3) Mr. Sachin Kuchekar, )  
Tahasil Office Koregaon, )  
Tal. Koregaon, Dist. Satara. )... **Respondents**

**Shri Kishor R. Jagdale, learned Advocate for the Applicant.**

**Shri Ashok J. Chougule, learned Presenting Officer for the Respondent Nos.1 & 2.**

**Shri Rajesh M. Kolge, learned Advocate for the Respondent Nos.3.**

**CORAM : DEBASHISH CHAKRABARTY, MEMBER (A)**

**DATE : 15.12.2023**

**JUDGMENT**

1. The Applicant Shri Krushna Piraji Japtap who is from the cadre of 'Awal Karkoon' has invoked provisions of Section 19 of 'The Administrative Tribunal Act, 1985' to challenge the Transfer Order of dated 31.05.2023 of Respondent No.2 and seeks to be transferred in

place of Respondent No.3 to the post of Supply Inspector, Tahsil Office, Koregaon, District Satara.

2. The learned Advocate for the Applicant and learned P.O. for the Respondent No.1 and Respondent No.2 as well as learned Advocate for Respondent No.3 were heard at length with respect to the contentions of Applicant to be posted as 'Supply Inspector' in Tahsil Office, Koregaon, District Satara.

3. The learned Advocate for the Applicant states that Applicant on promotion from Clerk-cum-Typist to 'Awal Karkoon' was by Transfer Order dated 11.05.2018 of Respondent No.2 posted as 'Awal Karkoon' EGS; Tahsil Office, Khatav, District Satara. Though there were few 'Vacant Posts' of 'Awal Karkoon' at that time in Tahsil Office, Koregaon, District Satara yet on promotion by Transfer Order dated 11.05.2018 of Respondent No.2, the Applicant came to be posted as 'Awal Karkoon' EGS; Tahsil Office, Khatav, District Satara by ignoring the fact that he suffers from 'Permanent Disability' on account of 'Bilateral Hearing Impairment' to an extent of 49%. Hence, on 06.10.2021 the Applicant had approached the 'Commissioner of Disability Welfare, Maharashtra State, Pune' against the Transfer Order dated 11.05.2018 of Respondent No.2 and his Application came to be forwarded to the 'District Disabled Persons Complaint Redressal Officer' who is 'Deputy Collector, (Revenue)' in the office of Respondent No.2. The Applicant was given 'Personal Hearing' by the 'District Disabled Persons Complaint Redressal Officer' on 11.04.2022 as per guidelines of G.A.D. Circular dated 15.12.2004. The report submitted to 'Commissioner of Disability Welfare, Maharashtra State, Pune' by the 'District Disabled Persons Complaint Redressal Officer' on 19.04.2022 had concluded that Applicant's request to post him near to his 'Place of Residence' will be considered subject to availability of 'Vacant Posts' and 'Administrative Convenience'. Accordingly, on 06.10.2022 the Applicant had again

requested Respondent No.2 to post him as 'Awal Karkoon' in Tahsil Office, Koregaon, District Satara.

4. The learned Advocate for Applicant further stated that Applicant suffers from 'Permanent Disability' on account of 'Bilateral Hearing Impairment' to an extent of 49% and therefore seeks review of the Transfer Order dated 31.05.2023 Respondent No.2. On 15.05.2023 the Applicant had submitted two options as per the G.A.D. G.R. dated 09.05.2018 wherein (i) 'Option No.1' was to be posted as 'Supply Inspector in Tahsil Office Koregaon', District Satara which was then 'Vacant Post' and (ii) 'Option No.2' was to be posted as 'Awal Karkoon, Revenue' in Tahsil Office, Koregaon, District Satara which was to become 'Vacant Post' during 'General Transfer: 2023'.

5. The learned Advocate for the Applicant thereupon stated that he Applicant was indeed transferred near to his 'Place of Residence' from the post of 'Awal Karkoon, EGS in Tahsil Office, Khatav District Satara' to the post of 'Awal Karkoon, EGS in Tahsil Office, Koregaon District Satara' by 'Transfer Order' dated 31.05.2023 of Respondent No.2. However, by the same Transfer Order dated 31.05.2023; Smt. Sangita Ahire, Awal Karkoon was transferred to the post sought by Applicant as 'Option No.2' which is 'Awal Karkoon' Revenue in Tahsil Office, Koregaon, District Satara, but grave injustice came to be done to the Applicant by Shri Sachin Kuchekar, Awal Karkoon the Respondent No.3 who was already working as 'Awal Karkoon'; EGS in Tahsil Office, Koregaon, District Satara but was transferred to the post sought by Applicant as Option No.1 which is 'Supply Inspector Tahsil Office, Koregaon, District Satara'. The Respondent No.2 while issuing 'Transfer Order' dated 31.05.2023 therefore did not consider both 'Option No.1' and 'Option No.2' of the Applicant. Learned Advocate for the Applicant further stated it was important to note that Shri Sachin Kuchekar; Awal Karkoon who is Respondent No.3 was junior to Applicant in the Seniority List dated 11.05.2023 for 'General Transfers: 2023' of Awal Karkoons as the

Applicant was at 'Serial No.36' and the Respondent No.3 was at 'Serial No.42'.

6. The learned P.O. relied upon the Affidavit-in-Reply filed by Respondent No.2 on 14.08.2023 and stated it was an admitted fact that the Applicant has 'Permanent Disability' as he suffers from 'Bilateral Hearing Impairment' to an extent of 49%.

7. The learned P.O. thereafter stated that as per G.A.D. G.R. dated 09.04.2018, it was expected from all Government Servants that they should submit all 10 Options, which can be considered fairly by 'Competent Transferring Authority'. However, as Applicant had submitted only 2 Options viz. (i) Supply Inspector in Tahsil Office, Koregaon, District Satara and (ii) Awal Karkoon Revenue in Tahsil Office, Koregaon, District Satara, they were not considered and others from the cadre of 'Awal Karkoon' came to be posted on these posts sought by Applicant. The 'Transfer Order' dated 31.05.2023 was issued by Respondent No.2 for 'Administrative Reasons' in exercise of powers vested in him as 'Competent Transferring Authority' under the Maharashtra Government Servants (Regulation of Transfer and Prevention of Delay in Discharge of Official Duties) Act, 2005.

8. The learned Advocate for Respondent No.3 stated that the Applicant had given only 2 Options instead of 10 Options which is mandatory under the G.A.D. G.R. dated 09.04.2018 and therefore the Applicant was seeking only specific posts of (i) Supply Inspector in Tahsil Office, Koregaon, District Satara or (ii) Awal Karkoon Revenue in Tahsil Office, Koregaon, District Satara. The fact is that Applicant had been given posting as Awal Karkoon; EGS in Tahsil Office, Koregaon, District Satara which is close to his 'Place of Residence' whereas the Respondent No.3 who was previously working Awal Karkoon, EGS, Tahsil Office, Koregaon being eligible for transfer on completion of Normal Tenure of 3 Years, has been posted as per his 'Option No.7' as 'Supply Inspector' in

Tahsil Office, Koregaon, District Satara. Learned Advocate for Respondent No.3 further contended that as per G.A.D., G.R. dated 09.04.2018, the Applicant has no prerogative or right to seek any particular post such as of 'Supply Inspector' in Tahsil Office, Koregaon, District Satara'. Therefore, these facts show that the Applicant only wants to make the Respondent No.3 a scapegoat by impleading him; The decision taken by Respondent No.2 as 'Competent Transferring Authority' was after due consideration of recommendations made by CSB and it was thereupon that Respondent No.3 was posted as 'Supply Inspector' in Tahsil Office, Koregaon, District Satara.

9. The Applicant has submitted representation to 'District Collector, Satara' who is Respondent No.2 on 06.10.2021 to request for transfer from the post of 'Awal Karkoon, EGS in Tahsil Office Khatav', District Satara to any post of 'Awal Karkoon, in Tahsil Office, Koregaon, District Satara primarily on grounds that he suffers from 'Permanent Disability' on account of Bilateral Hearing Impairment' to an extent of 49%. The Deputy Collector (Revenue) in the office of Respondent No.2 who is also 'District Disabled Persons Complaint Redressal Officer' had given 'Personal Hearing' to the Applicant on 11.04.2022 and submitted his report to 'Commissioner of Disabled Persons Welfare, Maharashtra State, Pune' on 19.04.2022 giving assurance that request made by Applicant would be considered in due course for transfer to post which near his 'Place of Residence' as per provisions of G.A.D, Circular dated 15.12.2004.

10. The Transfer Order dated 31.05.2023 issued by Respondent No.2 has therefore fulfilled the assurance given in report submitted by 'District Disabled Persons Complaint Redressal Officer' on 19.04.2022 to the 'Commissioner of Disabled Persons Welfare, Maharashtra State, Pune' The Applicant has been transferred from the post of 'Awal Karkoon, EGS, Tahsil Office Khatav', District Satara to the post of 'Awal Karkoon, EGS, Tahsil Office, Koregaon', District Satara which fell vacant

upon transfer of Respondent No.3 from the post of 'Awal Karkoon', EGS in Tahsil Office, Koregaon', District Satara to 'Vacant Post' of 'Supply Inspector in 'Tahsil Office, Koregaon', District Satara. Two other employees, Smt. Swati Aadhav, Awal Karkoon, EGS in Tahsil Office, Satana, District Satara was posted as 'Awal Karkoon', EGS in Tahsil Office, Koregaon, District Satara while Smt. Sangita Ahir, Awal Karkoon in General Branch, Collector Office, Satara was posted as 'Awal Karkoon', Revenue in Tahsil Office, Koregaon, District Satara. Hence, amongst four posts of 'Awal Karkoons' in Tahsil Office, Koregaon District Satara that were filled up by Transfer Order dated 31.05.2023 of Respondent No.2; only the post of 'Supply Inspector' in 'Tahsil Office, Koregaon, District Satara' which was available being 'Vacant Post' came to be filled by lateral transfer of Respondent No.3 while the remaining three posts of 'Awal Karkoons' were filled by transfers of employees from outside of 'Tahsil Office, Koregaon, District Satara' including of the Applicant who was serving as 'Awal Karkoon', EGS in Tahsil Office, Khatav, District Satara.

11. The claim of the Applicant that he should have been posted as 'Supply Inspector' in Tahsil Office, Koregaon', District Satara therefore has to be examined against the backdrop of transfers effected for the four posts of 'Awal Karkoons' in 'Tahsil Office, Koregaon District Satara' by the Transfer Order dated 31.05.2023 of Respondent No.2 especially on grounds of invidious 'Discrimination' and grant of 'Reasonable Accommodation' under the 'The Rights of Persons with Disabilities Act, 2016'; as the Applicant suffers from 'Permanent Disability' on account of 'Bilateral Hearing Impairment' to an extent of 49% The non-implementation of G.R. 'Food and Civil Supplies and Consumer Protection Department' dated 24.05.2021 by Respondent No.2 cannot be overlooked as has earmarked suitable posts which can be held by Government Servants who are 'Persons with Benchmark Disability' and it includes the post of 'Supply Inspectors'. Important to observe here is the fact that the post of Supply Inspector in 'Tahsil Office, Koregaon,

District Satara' available as 'Vacant Post' when Transfer Order dated 31.05.2023 came to be issued by Respondent No.2 to post by lateral transfer the Respondent No.3.

12. The Applicant suffers 'Permanent Disability' on account of 'Bilateral Hearing Impairment' to an extent of 49% which categorizes him as 'Persons with Benchmark Disability' under 'Para C' of the 'Schedule' for 'Specified Disability' under 'The Right of Persons with Disability Act, 2016'.

13. 'The Rights of Persons with Disabilities Act, 2016' defines under (i) 'Section 2(h)' - "Discrimination" (ii) Section 2(y) - "Reasonable Accommodation". Further 'Section 3(5)' directs that 'Appropriate Government' as defined in 'Section 2(b)(ii)' shall take necessary steps to ensure "Reasonable Accommodation" for the person with disabilities. Additionally, provision of 'Section 20(3)' requires every establishment of 'Appropriate Government' to provide "Reasonable Accommodation" and appropriate barrier free and conducive environment to employees with disability' while 'Section 20(5)' directs that "Appropriate Government" may frame policies for posting and transfer of employees with disability. Furthermore, under provisions of 'Section 33' every 'Appropriate Government' is required to identify posts in their establishments which can be held by respective categories of 'Persons with Benchmark Disability' in respect of posts reserved for them in accordance with provisions of 'Section 34'.

14. The Applicant's claims that he should have been posted as 'Supply Inspector' in Tahsil Office, Koregaon, District Satara in place of Respondent No.3. So the 'Transfer Order' dated 31.05.2023 of Respondent No.2 who is 'Competent Transferring Authority' and by which Respondent No.3 came to be laterally accommodated from the post of 'Awal Karkoon', EGS in Tahsil Office, Koregaon, District Satara on the 'Vacant Post' of 'Supply Inspector' in Tahsil Office, Koregaon,

District Satara will have to be specifically tested against relevant provisions under 'The Persons with Disabilities Act, 2016', especially (i) Section 2(h) – “Discrimination”, (ii) Section 2(y) – “Reasonable Accommodation”.

15. The case of the Applicant needs to be decided specifically with reference to provisions of law under 'The Persons with Disabilities Act, 2016' as the Applicant suffers from 'Permanent Disability' on account of 'Bilateral Hearing Impairment' to an extent of 49% which categorizes him as 'Persons with Benchmark Disability' under 'Para C' of the 'Schedule' for 'Specified Disability' under 'The Right of Persons with Disability Act, 2016'.

16. The Hon'ble Supreme Court of India in its Judgment in ***B Varadha Rao v State of Karnataka, 1986 (3) Serv LR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287*** has observed that transfer is an ordinary incident of service and therefore does not result in any alteration of any condition of service to disadvantage of Government Servants. The Hon'ble Supreme Court of India has further observed that an employee cannot, as a matter of right, seek transfer to a place of his choice in ***K. Sivankutty Nair v. Managing Director, Syndicate Bank, 1984 (2) Serv LR 13 (Kant); Chief General Manager (Telecom) v. Rajendra Ch. Bhattacharjee, (1995) 2 SCC 532 : SC 813 : (1995) 2 Serv LR 1***. The Hon'ble Supreme Court of India has also observed in ***UOI v SL Abbas, AIR 1993 SC 2444 : (1993) 4 SCC 357*** that who is to be transferred where, is a matter to be decided by Appropriate Authority to decide.

17. The legal canvas woven by several judgments of the Hon'ble Supreme Court of India and Hon'ble High Court Bombay must form the backdrop against which 'Judicial Review' is to be undertaken of cases relating to Transfer Orders of Government Servants. The Government Servants who hold transferable post have no vested right to remain



posted at one place and Courts or Tribunals must not interfere with the Transfer Orders which are made in 'Public Interest' and for 'Administrative Reasons' unless such Transfer Orders are made in violation of any 'Statutory Provisions' or on the ground 'Arbitrariness' or 'Malafides'. Needless to emphasize that decisions of the Courts or Tribunals have to be based on assessment of specific facts of the case in totality vis-à-vis legal principles applicable. Therefore, even small variances in the factual matrix of any case can make substantial difference in the precedential value of Judicial Decisions.

18. The Hon'ble Supreme Court of India in the case of ***East Coast Railway & Another Vs. Mahadev Appa Rao & Ors. (2010) 7 SCC 678*** which has emphasized on the application of mind and recording of reasons by Public Authority by observing that :-

*"There is no precise statutory or other definition of the term "arbitrary". Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making an order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable."*

19. The ends of justice would be achieved by directing the Applicant to submit fresh representation to Respondent No.2 who is 'District Collector Satara' with regard to his request to be posted as 'Supply Inspector in Tahsil Office, Koregaon District Satara'. The 'District Collector, Satara' within 15 days thereafter must re-examine the submissions made in new representation of the Applicant, so as to ascertain if the earlier recommendations of 'CSB' was result of bias seeded in the minds of members of 'C.S.B.' against the Applicant; as *prima-facie* it does appear that implementation of G.R. 'Food and Civil Supplies and Consumer Protection Department' dated 24.05.2021 was

not recommended to Respondent No.2 as the 'Competent Transferring Authority' with malice and so as to not to post the Applicant but instead the Respondent No.3 on the available 'Vacant Post' of 'Supply Inspector in Tahsil Office, Koregaon District Satara'. The 'District Collector, Satara' as Respondent No.2 must with insight come to the conclusion if the recommendation of 'C.S.B.' had resulted in 'Discrimination' against the Applicant in contravention of 'Section 2(h)' under 'The Right of Persons with Disability Act, 2016'. The Applicant also deserved higher preference over the Respondent No.2 to be posted on the available 'Vacant Post' of 'Supply Inspector in Tahsil Office, Koregaon District Satara' as per guidelines in 'Annexure-2' under Schedule-1 of G.A.D. G.R. dated 09.04.2018. Thereupon, if answers to these are in the affirmative; then Respondent No.2 being 'Competent Transferring Authority' must belatedly ensure remediation happens and post the Applicant as 'Supply Inspector in Tahsil Office, Koregaon, District Satara' to obliterate 'Discrimination' against him under 'Section 2(h)' and also grant him 'Reasonable Accommodation' under 'Section 2(y)' read with Section 20(5) of 'The Right of Persons with Disability Act, 2016'.

20. The entire exercise as directed above should be completed forthwith by Respondent No.2 being 'District Collector, Satara' and the 'Competent Transferring Authority', in respect of the cadre of 'Awal Karkoons; The 'Transfer Order' of Applicant to the post of 'Supply Inspector, Tahsil Office, Koregaon' may thereupon be issued within Four Weeks in observance of the provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

**ORDER**

- A) The Original Application is Allowed.
- B) No Order as to Costs.

**Sd/-**  
**(Debashish Chakrabarty)**  
**Member (A)**

Place: Mumbai  
Date: 15.12.2023.  
Dictation taken by: N.M. Naik.

Uploaded on: \_\_\_\_\_