

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.701 OF 2023

**DISTRICT : SOLAPUR
SUBJECT : TRANSFER**

Shri Nagannath Dashrath Jodh,)
Age – 51 years, Working as Circle Officer,)
Bhose, Tal. Mangalweda, Dist. – Solapur.)... **Applicant**

Versus

1) State of Maharashtra,)
Through Principal Secretary,)
Forest (Revenue and Forest Department))
Mantralaya, Mumbai-400 032.)

2) The Collector,)
Collector Compound, First Floor Main Building,)
Sidheshwar Peth, Solapur - 41300.)...**Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Smt. Archana B. Kololgi, learned Presenting Officer for the Respondents.

CORAM : DEBASHISH CHAKRABARTY, MEMBER (A)

DATE : 14.09.2023

JUDGMENT

1. The Applicant Shri N. D. Jodh has challenged his transfer order by Respondent No.2 dated 17.06.2023 by which he was transferred from the post Circle Officer, Bhose , Taluka Mangalweda, Solapur District to the post of Awal Karkun, EGS Tahsil, Karmala Solapur District by invoking the provisions of Section 19 of the Administrative Tribunal Act, 1975.

2. The Applicant was represented by Smt. Punam Mahajan, learned Advocate while the Respondent No.1 and 2 were represented by Smt. Archana B. K., learned P.O.

3. The learned Advocate for the Applicant stated that by order dated 24.01.2019, the Applicant was promoted from the cadre of Talathi and then posted as Circle Officer, Bhose, Taluka Mangalwedha, Solapur District.

4. The learned Advocate for the Applicant further stated that Respondent No.2 by letter dated 10.05.2023 had published the Seniority List of the Circle Officers due for General Transfer wherein the name of the Applicant was shown at Sr. No.16. Further along with the Seniority List the Respondent No.2 had also published the list of probable Vacant Posts of Circle Officers.

5. The learned Advocate for the Applicant thereupon stated the background to the impugned Transfer Order dated 17.06.2023 and mentioned that the Applicant had exercised all 10 options for choices of postings of Circle Officer as mentioned below:-

Sr. No.	Choice of Postings
1	Borale Circle, Mangalwedha
2	Chale Circle, Pandharpur
3	Wagholi Circle, Mohol
4	Sangola Circle, Sangola
5	Andhalgaon Circle, Mangalwedha
6	Solapur (Kasabe) Circle, Uttar Solapur
7	Puluj Circle, Pandharpur

Sr. No.	Choice of Postings
8	Pathkal Circle, Mangalwedha
9	Marawade Circle, Mangalwedha
10	Gherdi Circle, Sangola

6. The learned Advocate for the Applicant then stated that without taking into consideration the 10 options given for choice of postings of Circle Officer, the Applicant has been transferred by order dated 17.06.2023 of Respondent No.2 to the post of Awal-Karkun, EGS Tahsil Karmala Solapur District.

7. The learned Advocate for the Applicant emphasized that by GR of G.A.D. dated 09.04.2018 the State Government had adopted policy of transfer after "Counseling Session" so that the Government Servant could get posted as far as possible as per their choices of postings. Also she pointed out that Government Servants are to be given posting based on choices of postings as per their position in the Seniority List.

8. The learned Advocate for the Applicant stressed on the point that in terms of the G.R. of G.A.D. dated 09.04.2018 the choices of posting given by the Applicant ought to have been considered in terms of the position of Applicant shown at Sr. No.16 in the Seniority List for General Transfer. She further reiterated that out of all the choice of postings of Circle Officers given by the Applicant those shown at Serial Numbers 1, 5, 8 and 9 in Para 5 above are still available being Vacant Posts. The Applicant can thus be accommodated on any of these Vacant Posts of Circle Officer by the Respondent No.2. She stated that the Applicant is still not relieved to join the post of Awal Karkun EGS Tahsil Karmala and till date is serving on the post of Circle Officer, Bhose, Tahsil. Mangawedha, Solapur District.

9. The learned Advocate for the Applicant further submitted that no reasons have their recorded either by the Civil Services Board (C.S.B.) or by the Respondent No.2 as the 'Competent Authority' as they ignored the seniority of the Applicant at Sr. No.16 in Seniority List for General Transfers of Circle Officers and not recorded specific reason about not considering any of the 10 options given for choice of posting by the Applicant.

10. The learned P.O. on behalf of Respondent No.2 contended the arguments which were made by the learned Advocate for Applicant by referring to the brief Affidavit-in-Reply filed by Respondent No.2 on 10.08.2023.

11. The learned P.O. on behalf of Respondent No.2 stated that provision of the G.R. of G.A.D. dated 09.04.2018 has not been contravened at any time. Further, Respondent No.2 has never ignored the seniority of the Applicant which is at Sr.No.16. Also it was stated by learned P.O. that the reasons recorded by Civil Service Board (CSB) were self-explanatory.

12. The learned P.O. on behalf of Respondent No.2 submitted that the Applicant has interpreted the G.R. of G.A.D. dated 09.04.2018 wrongly and as per his own convenience because Clause 5 (IV) in Appendix 1 specifically provides that even if Government Servant has given choices of postings the Competent Authority still has power to transfer such Government Servant to any other available post based on "Administrative Exigencies".

13. The learned P.O. on behalf of Respondent No.2 further stated that the Civil Services Board (CSB) has taken into consideration all the 10 options given for choice of postings by the Applicant and recommended that the applicant should be transferred on the post of Awal Karkun E.G.S., Tahsil Karmala, Solapur District on grounds of 'Administrative

Exigencies' and by taking into consideration all available Vacant Posts of both Circle Officers and Awal Karkuns.

14. The Applicants prayer is to consider him for transfer to any post of Circle Officer from amongst 10 options given for choice of postings at the time of "Counseling Session" on 28.05.2023. The Affidavit-in-Reply filed by Respondent No.2 on 10.08.2023 makes it evident that impugned order, dated 17.06.2023 has been issued considering 'Administrative Exigencies'. The perusal of proceedings of the Civil Services Board (CSB) reveals that (i) 30 posts of Circle Officers were available as Vacant Posts and (ii) 25 posts of Circle Officers would become Vacant Posts upon transfers were effected. Further, perusal of proceedings of the Civil Services Board (CSB) also indicates that besides these 58 posts of Circle Officers there were another 65 posts of Awal Karkuns required to be filled up on account of the interchangeability of the posts of Circle Officers and Awal Karkuns. The proceeding of Civil Services Board (CSB) thus reveals that in all 123 posts of both Circle Officers and Awal Karkuns were available to be filled up and because priority was required to be given to handling of Natural Calamities and EGS etc, the request made by the Applicant to consider his 10 options given for choice of postings could not be recommended by Civil Services Board (CSB).

15. The proceedings of Civil Services Board (CSB) indicates that 28 Circle Officers were considered for transfer based on (i) Seniority List (ii) Choices of Postings and (iii) Administrative Exigencies. Although no Government Servant is vested with any right to seek particular place of posting because transfer is considered as an 'Incidence of Service', nonetheless, the State Government has issued G.R. of G.A.D. on 02.04.2018 adopting policy of transfer by "Counselling Session" which *inter-alia* lays down detail procedure to be complied with before effecting transfers of Government Servants. As such, in view of G.R. of G.A.D. dated 02.04.2018, the transfers are required to be done in pursuance of instructions given therein in fair and judicious manner. Though the

Applicant had given 10 options for choice of postings which were admittedly Vacant Posts of Circle Officers at the relevant time, none were considered by Civil Services Board (CSB) and he was transferred to the post of Awal-Karkun, EGS Tahsil Karmala, Solapur District. There is absolutely no mention in the proceedings of Civil Services Board (CSB) about the reasons for denial to the Applicant of all 10 options given for choice of postings by the Applicant.

16. The decision taken by the Respondent No.2 as the Competent Authority based on the recommendations of the Civil Services Board (CSB) for reasons stated above does not enable the Tribunal to conclude that there was indeed expected degree of transparency and absence of arbitrariness and that indeed all provisions of G.R. of G.A.D. dated 09.04.2018 had been fully observed while effecting the transfer of the Applicant to post of Awal Karkun EGS, Tahsil Karmala, Solapur District. Hon'ble Supreme Court of India in the case of **East Coast Railway & Another Vs. Mahadev Appa Rao & Ors, (2010) 7 SCC 678**, has emphasized the crucial importance of application of mind and recording of reasons by all Public Authorities. The relevant extract of the judgment is reproduced as under:-

“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.”

17. The Competent Authority who is also the Respondent No.2 had been directed by the Tribunal on 20.06.2023 to maintain 'Status Quo' when 'Interim Relief' was granted to the Applicant. Further, as averred by Applicant since on the date of grant of 'Interim Relief', out of the 10 options given for choice of postings of Circle Officer, the posts at Sr.No.1, 5, 8 and 9 as mentioned in Para 5 were mentioned to be still available. Therefore, based on the facts and circumstances of the case, it would suffice if 'Special Meeting' of Civil Services Board (CSB) is convened within next 15 days by Respondent No.2 who is also the Competent Authority to reconsider the request of the Applicant to post him on any of the four available Vacant Posts of Circle Officer.

ORDER

- (A) The Original Application is Allowed.
- (B) Special Meeting of Civil Services Board (CSB) to be convened by Respondent No.2 who is also the Competent Authority within next 15 days to reconsider the request of the Applicant to post him on any of the four available Vacant Posts of Circle Officer and forthwith convey decision of the Competent Authority to the Applicant.
- (C) No Order as to Costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Place: Mumbai
Date: 14.09.2023
Dictation taken by: N.M. Naik.

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