

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.766 OF 2023

**DISTRICT : NASHIK
SUBJECT : TRANSFER**

Mrs. Priyanka Devidas Mohite,)
Age 42 years, D.O.B.: 14.05.1982)
Occ.: Awal Karkoon. R/at. Asmita Heights, Flat No.7,)
Ashoka Marg, Nashik.)... **Applicant**

Versus

1) The District Collector,)
Nashik.)
2) Smt. Meghana B. Pagare.)
Awal Karkoon, Account Branch,)
District Collector Office, Nahik.)...**Respondents**

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

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : DEBASHISH CHAKRABARTY, MEMBER (A)

DATE : 04.01.2024

JUDGMENT

1. The Applicant Smt. P.D. Mohite who is 'Awal Karkoon' has invoked provisions of 'Section 19' of 'The Administrative Tribunal Act, 1985' to challenge 'Transfer Order' dated 11.05.2023 issued by 'District Collector, Nashik' by which she has been posted as 'Treasury Awal Karkoon' in 'Tahsil Office, Surgana District Nashik' and seeks to be posted instead as 'Awal Karkoon' in either 'Supply Branch' or 'Scarcity Branch' in office of 'District Collector, Nashik'.

2. The learned Advocate for Applicant stated that 'Revenue and Forest Department' had approved 'Inter District Transfer' of Applicant from 'Thane District' to 'Nashik District' on 16.08.2011 when she was working on the post of 'Clerk'. The Applicant upon joining in 'Nashik District' after her 'Inter District Transfer' was posted on 29.09.2011 as 'Clerk' in 'Tenancy Branch' in office of 'District Collector Nashik'. Then she was transferred as 'Clerk' in 'Tahsil Office Dindori, District Nashik' on 29.05.2018. Thereafter on 20.07.2018 the Applicant was promoted as 'Awal Karkoon' and posted in 'Home Branch' in office of 'District Collector Nashik'.

3. The learned Advocate for Applicant then stated that on 08.05.2023 a list of 'Awal Karkoons' who were eligible to be transferred under 'General Transfers: 2023' was published by 'District Collector, Nashik' and options were called from them, as per GAD GR dated 09.04.2018. So, accordingly Applicant on 09.05.2023 had submitted 10 Options for 'General Transfers 2023 of Awal Karkoon'.

4. The Learned Advocate for Applicant further stated that 6 posts of 'Awal Karkoons' were vacant, when Applicant had submitted her 10 options on 09.05.2023 for 'General Transfer 2023'. Then on 11.05.2023 when 'Counseling Session' for 'General Transfers 2023' of 'Awal Karkoons' was conducted; Applicant had requested that out of 10 options submitted by her as 6 posts of 'Awal Karkoons' were available she be accommodated on any one of them on grounds that her Daughter and Son were studying in Nashik; while her Husband was working on the post of 'Awal Karkoon' in 'Mokhada Tahsil of Thane District' and because her elderly and ailing Mother-in-law was residing with her at Nashik.

5. The learned Advocate for Applicant thereupon submitted that the 'Transfer Order' dated 11.05.2023 of 'District Collector Nashik' by which the Applicant has been transferred from post of 'Awal Karkoon' in 'Home

Branch' in office of 'District Collector Nashik' to the post of 'Treasury Awal Karkoon' in 'Tahsil Office Surgana, District Nashik' has caused injustice to Applicants as none of the 10 options given by her for 'General Transfer 2023' was considered by 'District Collector Nashik'.

6. Learned Advocate for Applicant further stated that the name of Applicant was at Serial No.28 of the 'Seniority List' while the name of Respondent No.2 was at Serial No.38. Respondent No.2 had been working as 'Awal Karkoon' in 'Scarcity Branch' but came to be accommodated as per her request as 'Awal Karkoon' in the 'Accounts Branch' in office of 'District Collector Nashik'. On the contrary the Applicant was posted to 'Tribal Area' on 11.05.2023 for which she had never opted. Further learned Advocate of Applicant mentioned that subsequent to 'Transfer Order' dated 11.05.2023; as the post at 'Awal Karkoon' in 'Supply Branch' in office of 'District Collector Nashik' had fallen vacant due to incumbent 'Awal Karkoon' who was at Serial No. 19 of the Seniority List being posted as 'Supply Inspector' in 'Tahsil Office Trambakeshwar, District Nashik', therefore on 21.05.2023 Applicant submitted representation for accommodation against this vacancy of 'Awal Karkoon' in 'Supply Branch' in office of 'District Collector Nashik'. Then again on 26.05.2023 the Applicant submitted another representation requesting 'District Collector Nashik' to post her in any 'Vacant Post' of 'Awal Karkoon' in Nashik.

7. Learned Advocate mentioned that the Applicant had earlier worked in 'Tribal Areas' on two occasions i.e. 'Mokhada Tahsil, District Thane' and 'Dindori Tahsil, District Nasik. In spite of this she has again been posted to 'Tribal Area' as 'Treasury Awal Karkoon' in 'Tahsil Office Surgana, District Nasik'.

8. The learned P.O. relied on the 'Applicant-in-Reply' filed on 21.07.2023 on behalf of 'District Collector Nashik' and stated that 'Transfer Order' dated. 11.05.2023 of Applicant has been passed by

observing the provisions of 'The Maharashtra Government Servant Regulation of Transfer and Prevention of delay in discharge of official Duties Act, 2005' and policy guidelines as per G.A.D. G.R. dated 09.04.2018 and 21.11.2022. She submitted that except Applicant, none of the other 42 employees who are in cadre of 'Awal Karkoons' have made any grievance about the 'Transfer Order' dated 11.05.2023 of 'District Collector, Nashik'.

9. The learned P.O. emphasized that Applicant was trying to bend the guidelines for her personal benefit. The 'Transfer Order' dated 11.05.2023 was issued after observing the 'Order of Precedence' from Sr.No.01 to Sr.No.07 in 'Statement 2' under 'Annexure-1' of G.A.D. G.R. dated 09.04.2018. The Applicant comes at Sr. No. 7 of the 'Order of Precedence' and therefore her 10 Options came to be considered after those of other 'Awal Karkoons' who were entitled to higher 'Order of Precedence' from Sr.No.01 to Sr.No.06. Accordingly, after considering 'Administrative Exigency'; choice of few available posts of 'Awal Karkoon' were offered orally to Applicant during the course of 'Counseling Session'. The Applicant in the 'Counseling Session' had herself desired to be posted as 'Treasury Awal Karkoon', in 'Tahsil Office, Surgana District Nashik'. Thus she has been posted as per her choice to post of 'Treasury Awal Karkoon' in Tahsil Office, Surgana District Nashik.

10. Learned P.O. stated that Applicant should have joined on the post of 'Treasury Awal Karkoon' in Tahsil Office Surgana District Nashik instead she has been absent from duty till date without seeking prior permission or being granted leave by 'Competent Authority'. Hence representations submitted on 21/05/2023 and 26/05/2023 to be posted in 'Supply Branch' in office of 'District Collector Nashik' or for other posts of 'Awal Karkoons' at Nashik has no merit. Learned P.O. further stated that it was not proper for Applicant to now refer to her Husband's posting as 'Awal Karkoon' in 'Mokhada Tahsil of Thane District' as that both of them were earlier working together and it was

Applicant who had willingly opted for 'Inter District Transfer' from 'Thane District' to 'Nashik District'. Therefore once the Applicant has joined Nashik District then she can be transferred to any office under the jurisdiction of 'District Collector Nashik'. The Applicant has claimed that she has served previously in Tribal Areas for substantial periods but it is evident from record that she has worked in 'Tahsil Office Dindori District Nashik' of only for One and Half Months and rest of her service of almost Eleven and Half Years has been in various offices at 'District Headquarters of Nashik District' including office of 'District Collector Nashik'. Hence the Applicant has no justiciable grounds to claim another posting in 'Supply Branch' or 'Scarcity Branch' in office of 'District Collector Nashik' or in any other office such as of 'SDO Nashik' or 'Tahsil Office Nashik;' which are both located at 'District Headquarters' of 'Nashik District'.

11. The learned Advocate for the Applicant and the learned P.O. were heard at length regarding the contentions of the Applicant. The 'Transfer Order' of Applicant dated 11.05.2023 to the post of 'Treasury Awal Karkoon, in Tahsil Office, Surgana' District Nashik was issued by 'District Collector, Nashik' as per recommendations submitted by 'CSB No.2' which held its meeting on 11.05.2023 under chairmanship of 'RDC Nashik'. The Minutes of Meeting of 'CSB No.2' held on 11.05.2023 indicate that Applicant after her 'Inter District Transfer' from Thane District to 'Nashik District' on 16.08.2011 had all along worked in various branches in office of 'District Collector, Nashik' except for short time when she worked as 'Clerk' in 'Tahsil Office, Dindori District Nashik' from 09.05.2018 to 20.07.2018. Thus the length of total service of Applicant in office of 'District Collector the Nashik or in offices at district headquarters in Nashik must have been duly considered by 'CSB No.2' to reject her request to be posted again as 'Awal Karkoon in either 'Supply Branch' or 'Scarcity Branch' in office of 'District Collector, Nashik'. The representations of Applicant thus appear to be without merit as 'CSB No.2' had for appreciable reasons recommended that

Applicant to posted as 'Treasury Awal Karkoon in Tahsil Office, Surgana, District Nashik'. The 'Affidavit-in-Reply' of District Collector Nashik emphasizes that provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' were observed and guidelines in G.A.D. G.R. of 09.04.2018 and G.A.D. G.R. of 21.11.2022 had been implemented. Further it also affirms that Applicant herself had desired to be posted as 'Treasury Awal Karkoon' in 'Tahsil Office, Surgana' District Nashik'.

12. The interesting fact in Applicants case is that almost all of 10 Options given by her were for posts of 'Awal Karkoon' in various branches in office of 'District Collector Nashik' or in office of 'S.D.O. Nashik'; except for two posts of 'Awal Karkoon in Tahsil Office Trimbakeshwar' District Nashik.

13. 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 also 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.***

14. The Hon'ble Supreme Court of India 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 continued posting at one station or in one department not conducive to good administration as such continued posting creates vested interest. The Hon'ble Supreme Court of India in ***UOI v NP Thomas, AIR 1993 SC 1605 : (1993) Supp (1) SCC 704*** has

observed that since posts in public employment are generally transferable post, it follows that an employee has no vested right to remain at the post of his posting. The Hon'ble Supreme Court of India in ***UOI v SL Abbas, AIR 1993 SC 2444 : (1993) 4 SCC 357*** has been observed that who is to be transferred where, is a matter for the appropriate authority to decide.

15. The Applicants conduct is thus another classic case of 'Gaming the System' by some Government Servants. The guidelines in G.A.D. G.R. of 09.04.2018 and G.A.D. G.R. of 21.11.2022 require 10 Options to be given by Government Servants but does not restrict them to mandatorily give only 1 Option per 'Office' in every Tahsil or maximum of 2 Options in 'Offices' located at District HQ thus allowing liberty to Government Servants, to give all 10 Options in 'Offices' of chosen 'Tahsils' or for certain offices at 'District HQ'. The guidelines in G.A.D. G.R. of 09.04.2018 and G.A.D. G.R. of 21.11.2022 have not made it binding on Government Servants to give 10 Options equitably across 'Offices' located in each Tahsil and even at District HQ. The Applicant by limiting her 10 Options only to offices located in Nasik and Trimbakeshwar Tahsils of District Nashik seems to have mastered the art of giving 10 Options as per guidelines in G.A.D. G.R. of 09.04.2018 and G.A.D. G.R. of 21.11.2022 in such a manner that there would always be higher probability of getting preferred choice of posting given the better density of posts of 'Awal Karkoon' in office of 'District Collector Nashik'. The Applicant even after being posted as 'Treasury Awal Karkoon in Tahsil Office, Surgana, District Nashik' by submitting representations to implore 'District Collector, Nasik' has infact conducted herself in such manner as may colloquially be referred to as 'Window Shopping' on the 'High Street of Transfers'.

16. The 'Gaming of System' as enumerated above needs to be immediately curbed by carrying out appropriate modifications in policy guidelines under G.A.D. G.R. of 09.04.2018 and G.A.D. G.R. of

21.11.2022; for which copy of this judgment be forwarded to (i) Additional Chief Secretary (Services) GAD and (ii) Additional Chief Secretary (Revenue) Revenue and Forest Department.

17. The Applicant's contentions are thus without any merit and her 'Transfer Order' dated 11.05.2023 by which she is posted as 'Treasury Awal Karkoon in Tahsil Office, Surgana, District Nashik' by 'District Collector, Nasik' needs no interference and is upheld. Hence the following order.

ORDER

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

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

Place: Mumbai
Date: 04.01.2024
Dictation taken by: N.M. Naik.

Uploaded on: _____