

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.552 OF 2018

DISTRICT : THANE

Shri Sanjay A. Salunke.)
Age : 45 Yrs., Transferred from the post of)
Shirstedar in the office of Sub-Divisional)
Officer, Bhiwandi, District Thane to the post of)
Awal karkun, Metro Centre No.3 in the office)
of below named Respondent No.1 and R/O.)
Tirthadham Complex, Adharwadi Road, kalyan,)
District : Thane.)...**Applicant**

Versus

The District Collect, Thane.)...**Respondent**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondent.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 03.01.2019

JUDGMENT

1. In the present Original Application, the challenge is to the transfer order dated 23.05.2018 whereby the Applicant has been transferred from the post of Senior Clerk, Office of S.D.O, Bhiwandi to Senior Clerk, Metro Centre Kramank 3,

Collector Office, Thane contending that, it is in breach of Government policy which provides for transfer as per choice posting in general transfer.

2. Briefly stated the facts giving rise to this application are as follows :

The Applicant has joined service as Junior Clerk on 21.12.1995 and in due course, he was promoted to the post of Senior Clerk. He worked at various places under the administration of Respondent i.e. District Collector, Thane. He contends that, out of 24 years service, he had worked for 18 years in Tribal Areas viz. Jawahar, Talasari and Shahapur. The State Government took policy decision by G.R. dated 21.11.1995 to have *inter-se* transfers of the employees working in the cadre of Senior Clerk and those who are working in the cadre of Circle Officer for a period of two years, so that the employee should get experience of working in both the cadres for considering their cases for promotion to the post of Naib Tahasildar. Thereafter, the Government of Maharashtra by G.R. dated 11.07.2000 took a policy decision that the employees of Group 'C' and Group 'D' who have worked well in Tribal Areas for three years, be given the posting as per their choice in general transfer.

The Divisional Commissioner for Konkan Division by his letter dated 03.10.2017 made it clear that, inter-se transfer between Awal Karkun and Circle Officer in terms of G.R. dated 21.11.1995 (referred to above) should be implemented as per the seniority of the employees in respective cadres. The Respondent has published seniority list of Senior Clerks as on 01.01.2017 wherein, the name of the Applicant is figured at Serial No.29. Whereas Mr. Bamble, Mr. Prashant Kapde and Mr. Kiran Ketan are figured at Serial Nos.31, 89 and 135 respectively. Accordingly, on 26.02.2018, the Applicant has made representation to the Respondent for his transfer in the cadre of Circle Officer and has given choices for his posting. The S.D.O, Bhiwandi by his letter dated 08.05.2018 also recommended the transfer of the Applicant as per his choice in

the cadre of Circle Officer. However, contrary to the Government policy and the entitlement of the Applicant to the posting as a Circle Officer, the Respondent posted Mr. Bamble, Mr. Kapde and Mr. Ketan as Circle Officers though they were junior to the Applicant and thereby denied his claim. The Respondent by impugned order dated 23.05.2018 without considering his claim for choice posting in the cadre of Circle Officer, transferred him in the same cadre and posted him in the office of Metro Centre, Collector Office, Thane on vacant post. The Applicant has challenged this transfer order contending that, it is contrary to his entitlement as well as policy decision of Government referred to above. He further contends that the constitution of Civil Services Board (CSB) is not in accordance to law. With these pleadings, the Applicant contends that he is discriminated and has prayed to quash and set aside the impugned order dated 23.05.2018 with direction to the Respondent to post him in the cadre of Circle Officer at Padgha, Kharbao, Shahapur and Kalyan.

3. The Respondent resisted the application by filing Affidavit-in-reply (Page Nos.140 to 147 of the Paper Book) thereby denying the allegations made by the Applicant. The Respondent has not disputed that the Applicant has served for enough period in Tribal Areas and also not disputed the Government policy to transfer the employee from the cadre of Senior Clerk to Circle Officer *inter-se* in terms of Government policy as per the choices. However, the Respondent sought to contend that the instructions given in the G.R. or Circular does not create absolute right in favour of the Applicant to ask for choice posting. In the present case, the Applicant was not found eligible to post him as Circle Officer because of his non-performance and default report dated 31.10.2014 submitted by the then S.D.O. At the time of general transfer, the CSB in its meeting dated 23.05.2018 discussed the issue but found the Applicant not suitable for his posting as Circle Officer, and therefore, the question of giving him posting at the place of choice does not survive. This is the only ground whereby the

Respondent resisted the claim of the Applicant. As regard, the constitution of CSB, the Respondent contends that there is no irregularity much less illegality in the form of CSB. On these pleadings, the Respondent prayed to dismiss the application.

4. The Applicant has also filed Affidavit-in-rejoinder thereby countering the stand taken by the Respondent in its reply and contends that one stale alleged default report dated 31.10.2014 has been wrongly relied upon by the Respondent in its reply to deny him transfer in the cadre of Circle Officer. He further contends that the minutes of CSB does not reflect objective decision in this behalf. He, therefore, reiterated the contention raised in the O.A. and has also produced the copies of ACRs for the period from 2013-2014 to 2017-2018 to show that, his performance was 'Very Good', and therefore, he was entitled to transfer in the cadre of Circle Officer as per the choices given by him.

Reasons :

5. Mr. A.V. Bandiwadekar, learned Advocate for the Applicant vehemently urged that, in view of policy of Government as reflected in G.R. dated 21.11.1995 (Page 18 of P.B.), G.R. dated 11.07.2000 (Page No.21 of P.B.) and G.R. dated 06.08.2002 (Page 27 of P.B.), the Applicant was entitled to posting in the cadre of Circle Officer as per the choices given by him, as admittedly, he has rendered 18 years of service in Tribal Areas out of his total service of 24 years. He further canvassed that the ground taken by the Government that because of non-performance and complaint of the Applicant, he was not considered for posting in the cadre of Circle Officer is nothing but after-thought, as the same was not reflected in CSB minutes and secondly, it is stale report for which no action has been taken for the period of four years which therefore, loses its creditability and efficacy. He has further pointed out that some employees who were juniors to

the Applicant were given posting in the cadre of Circle Officer but the Applicant has been subjected to discrimination.

6. Per contra, Ms. N.G. Gohad, learned Presenting Officer contends that the Applicant cannot ask for posting as a Circle Officer as vested right and secondly, because of complaint dated 31.10.2014, the Respondent thought it appropriate not to post him as Circle Officer. Thus, the sum and substance of the submission of the learned P.O. is that because of alleged complaint, the Applicant is not entitled to posting in the cadre of Circle Officer.

7. In view of submissions advanced at the Bar, the following fact emerges as undisputed.

- “(i) The Applicant has served 18 years in Tribal Areas out of 24 years of service.
- (ii) In view of Government policy as reflected in G.Rs. dated 21.11.1995, 11.07.2000 and 06.08.2002, the Applicant was to be considered for posting in the cadre of Circle Officer as per the choices given by him.
- (iii) The SDO, Bhiwandi vide his letter dated 08.05.2018 also recommended for transfer and posting of the Applicant in the cadre of Circle Officer.
- (iv) Three employees viz. Mr. Bamble, Mr. Kapde and Mr. Ketan though were juniors to the Applicant were given posting in the cadre of Circle Officer.

8. Now, the question is whether the Applicant can be deprived of getting posting in the cadre of Circle Officer on the basis of alleged report / complaint. The Respondent has filed a copy of said report dated 31.10.2014 (Page No.148 of the P.B.) submitted by Mr. Sanjay Sarvade, the then SDO, Bhiwandi addressed to

Collector, Thane. In this letter, it is stated that the conduct of the Applicant is not befitting to the public servant as he was in a habit of misguiding or misleading the people and was in habit of asking for gratification. So far as this complaint is concerned, it is significant to note that, it does not find place in the minutes of CSB. There is no reference of this complaint in the minutes of CSB, and therefore, the stand now taken by the Respondent that it is after-thought ground, cannot be brushed aside. Had the said report was the reason for non-posting the Applicant in the cadre of Circle Officer, it would have figured in the minutes of CSB. However, it is not so.

9. Besides, there is nothing to show that any action in this behalf was taken during the period of four years. In fact, it ought to have been enquired into to find out whether the Applicant is really guilty of misconduct so that he could be punished in appropriate manner. However, nothing was done. In the said letter, the request was made to Collector to transfer the Applicant from the Office of SDO, Bhiwandi, but admittedly, the Applicant continued at the same post. This being the factual position, the complaint letter dated 31.10.2014 now cannot be used against him to deny him the post of Circle officer, particularly when, his ACRs for the period from 2013-2014 to 2017-2018 written by none other than SDO, does not reflect anything adverse against him. His grading in the ACR is 'Very Good'. Interestingly, the same SDO Mr. Sanjay Sarvade has written the ACRs of 2013-2014, 2014-2015 and 2015-2016 giving grading as 'Very Good' and he is shown of good character. In view of this ACR, it does not lie in the mouth of Respondent that because of non-performance of alleged complaint, the Applicant is not entitled to posting in the cadre of Circle Officer.

10. As such, in view of posting given to some of the employees who were juniors to the Applicant, there is no denying that the Applicant has been subjected to discrimination without valid and convincing reason. In fact, the SDO by his letter dated 08.05.2018 has recommended the name of the Applicant for

his posting in the cadre of Circle Officer. As such, the stand taken by the Respondent to deny the posting to the Applicant in the cadre of Circle Officer is self-contradictory and inconsistent. On the other hand, his ACRs which are written by same SDO Mr. Sanjay Sarvade does not reflect anything adverse against the Applicant. If the public servant is really indulging in misbehavior and misconduct, then he must be dealt with seriously and matter must be taken to its logical conclusion, but he cannot be denied his entitlement on the basis of stale complaint which is not shown substantiated by any material. Had the Respondent placed on record any other material to substantiate the said complaint, the fate of this application would have been different. However, there being nothing to that effect, the Applicant cannot be denied posting in the cadre of Circle Officer, particularly when ACRs of 2013-2014 to 2017-2018 does not reflect anything against him.

11. In view of above, having made it clear that the Applicant is entitled to posting in the cadre of Circle Officer, the learned P.O. was directed to inform the Tribunal about the vacancy position. Though the Applicant has sought direction to post him at Padgha, Kharbao, Shahapur or Kalyan, since those posts are already filled-in, his request for the posting at these places cannot be accepted, as it would affect and upset the administration. Today, the learned P.O. on instructions from the Resident Deputy Collector, Thane submitted that the vacancy is available at Titwala Tahasil Office, Kalyan and also tendered a letter dated 02.01.2019 issued by R.D.C, Thane. As such, without disturbing anybody else, the Applicant can be posted as Circle Officer, Titwala Tahasil Office, Kalyan.

12. The necessary corollary of above discussion leads me to conclude that the impugned order dated 23.05.2018 posting the Applicant in the cadre of Senior Clerk, Metro Centre No.3, Collector Office, Thane needs to be modified with direction to the Respondent to post the Applicant in the cadre of Circle Officer at

Titwala Tahasil Office, Kalyan and the application deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 23.05.2018 is hereby quashed and set aside.
- (C) The Applicant be posted as Circle Officer, Titwala Tahasil Office, Kalyan and Respondent is directed to issue necessary orders to that effect within two weeks from today.
- (D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 03.01.2019

Dictation taken by :

S.K. Wamanse.