

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.569 OF 2019
(Subject : Transfer)**

Shri Manoj Vasantrya Mengarti,)
Age 52 years, Working as Awal Karkun,)
Residing at Plot No.275, Shivratna Nagar, Jule,)
Solapur 413 004.)..... **APPLICANT.**

VERSUS

1. The State of Maharashtra,)
Through Principal Secretary,)
Revenue and Forest Department)
Mantralaya, Mumbai 400 032)
2. The Collector,)
Collector Office, Siddheshwar Peth,)
Solapur 413 001.)
3. Shri M.L. Swami,)
Circle Office, Shelgi,)
Tal. North Solapur.)
4. Shri S.R. Gaikwad,)
Circle Office, Musti,)
Tal. South Solapur.)
5. Shri S.S. Gaikwad,)
Circle Office, Karajgi,)
Tal. Akkalkot, Dist. Solapur.)
6. Shri V.M. Jadhav,)
Circle Office, Kurudwadi)
Tal. Mahada.) **....RESPONDENTS**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents No.1 & 2.

Respondents No.3 to 6 served but absent.

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 29.01.2020.

J U D G M E N T

1. The Applicant has challenged the impugned transfer order dated 31.05.2019 invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal, 1985

2. Shortly stated facts giving rise to the Original Application are as under:-

The Applicant was serving as Awal Karkun Internal Audit Wing, Collector Office, Solapur w.e.f. 31.05.2019. He was due for transfer in the general transfer of 2019. Accordingly, in terms of Government Resolution (G.R.) dated 09.04.2018, he had submitted 10 options and sought transfer on the post of Circle Officer as per the preferences No.1 to 10. However, by transfer order dated 31.05.2019, he was given posting as Awal Karkun in Indira Gandhi Scheme, Tahasil Office, South Solapur by ignoring the options given by him. The posting given to him was not at all in the preferences given by him. He contends that in terms of G.R. dated 09.04.2018 preferences were required to be considered in terms of seniority. Respondents, however, ignored instructions given in G.R. dated 09.04.2018 and appointed Respondents No.3 to 6 as per their choices, though they are junior to the Applicant. He, therefore, contends that the transfer order dated 31.05.2019 is in contravention of G.R. dated 09.04.2018 and suffers from arbitrariness. He, therefore, prays to quash and set aside impugned order dated 31.05.2019.

3. Respondents No.1 and 2 resisted the application by filing affidavit-in-reply, *inter alia*, denying that the impugned transfer order suffers from any illegality or arbitrariness. Admittedly, the Applicant was due for transfer in general transfer of 2019 and had given options for transfer on the post of Circle Officer. Respondents sought to justify the impugned transfer order contending that from the point of administration the post of Awal Karkun in Indira Gandhi Scheme, Tahasil Office, South Solapur was required to be filled in and therefore the applicant was posted on that post. Respondents contend that the Applicant have no vested right to ask for particular posting and there is no breach or contravention of G.R. dated 09.04.2018.

4. Smt. Punam Mahajan, learned Advocate for the Applicant submits that in terms of G.R. dated 09.04.2018 options given by the Applicant ought to have been considered in terms of seniority but the Applicant's seniority was ignored and Respondent No.3 Shri M.L. Swami, was transferred as Circle Officer of Shelgi which was the option No.1 of the Applicant. She has further pointed out that no reasons are recorded by the Civil Services Board (C.S.B.) to ignore the seniority of the Applicant. On this line of submission, she submits that impugned order being in contravention of G.R. dated 09.04.2018 is liable to be set aside.

5. Par contra, Shri A.J. Chougule, learned Presenting Officer for the Respondents sought to justify the impugned transfer order contending that from the point of administration the post of Awal Karkun in Indira Gandhi Scheme, Tahasil Office, South Solapur was required to be filled-in on priority basis and therefore the Applicant was posted. He further submits that the G.R. dated 09.04.2018 itself does not vest right in favour of the Applicant to claim the posting as per options, as it is for the administration to fill-in the post as per the administrative requirement.

6. In view of submission in advance, the question posed is whether the impugned transfer order is in consonance with the G.R. dated 09.04.2018 and sustainable.

7. Undisputedly, Applicant was serving on the post of Awal Karkun and was due for transfer. The post of Awal Karkun and Circle Officer are interchangeable. The Applicant has given the following options, which are stated in page 4 of P.B. :-

- 1) Circle Officer Shelgi – Tal. North Solapur.
- 2) Circle Officer Musti – Tal. South Solapur
- 3) Circle Officer Kurudwadi – Tal. Mahada.
- 4) Circle Officer Akluj – Tal. Malshiras.
- 5) Circle Officer Tembhurni – Tal. Mhada.
- 6) Circle Officer Karajgi – Tal. Akkalkot.
- 7) Circle Officer Chapulgaon – Tal. Akkalkot.
- 8) Circle Officer Thire – Tal. North Solapur.
- 9) Supply Inspector – Tal. North Solapur.
- 10) Circle Office Wadala – Tal. North Solapur.”

8. By G.R. dated 09.04.2018 the Government had adopted policy of transfer by counseling so that the Government servants should get the posting as far as possible as per their preferences and modalities are given therein. It would be apposite to reproduce the instructions mentioned in step 6 (III) which is as follows, (page 16 of P.B.)

“संबंधित कर्मचा-याचा ज्येष्ठतेनुसार त्याच्याकडून प्राप्त विकल्प / पसंती विचारात घेऊन रिक्त पदांच्या उपलब्धतेनुसार कर्मचा-यास केवळ कार्यालय न देत संबंधित कार्यालयातील पदावर पदस्थापना दर्शवावी.”

9. Admittedly, the options given by the Applicant were vacant but none of them was considered by the Respondents and on the contrary, Respondent No.3 – Shri M.L. Swami who is admittedly junior to the Applicant was posted as Circle Officer, Shelgi which was the option No.1 of the Applicant. There is no denying that in seniority list, Applicant is at serial No.10, whereas Respondent No.3, Shri M.L. Swami is at serial no.25. Thus, Respondent

No.3, Shri M.L. Swami, being junior, his claim was considered in preferences to the Applicant ignoring his seniority.

10. Turning to the minutes of meeting of C.S.B., material to note that not a single reason is recorded for not giving any one of the choices, out of 10 preferences given by the Applicant. All those posts sought by the Applicant were vacant. It is no where the case of the Respondents that the Applicant was ineligible for posting as Circle Officer. Admittedly, the post of Awal Karkun and Circle Officer is interchangeable. As stated earlier the transfer was ought to have been effected considering the position in seniority list. The Applicant being senior to Respondent No.3 Shri M.L. Swami, he was thus entitled to be considered for appointment as Circle Officer, Shelgi as per the option No.1. However, it was given to Respondent No.3 without disclosing any reason for not giving the same to the Applicant. The submission advanced by learned P.O. that the post of Awal Karkun of Indira Gandhi Scheme, Tahasil Office, South Solapur was required to be filled-in from the point of administrative exigencies and therefore, the Applicant has been posted in the said post holds no water so as to deny option given by the Applicant. Any other employee could have been posted at that place to serve the administrative exigencies. The said post was not vacant but it was filled-in in view of the transfer of Shri B.M. Balbhadra working on the said post in same general transfers. Suffice to say there was no reason to deny the options given by the Applicant which were required to be considered on the basis of seniority. True transfer is on incidence of service and it falls within the domain of executive. However, when transfers are regulated and governed by particular policy then it has to be followed in letter and spirit. In present case there is contravention of G.R. dated 09.04.2018 and transfer order suffers from arbitrariness. It is thus quite clear that the Respondents No.1 and 2 have favoured Respondent No.3 by giving posting as Circle Officer at Shelgi ignoring the claim of the Applicant.

11. However, at this juncture, learned P.O. for the Respondents has pointed out that the one post of Circle Officer, Musti, Thane office, South Solapur has become vacant because of suspension of the incumbent namely Shri Sandeep Eknath Gaikwad. On instructions, he submits that Shri Sandeep Eknath Gaikwad is kept under suspension by order dated 06.01.2020 in view of the registration of crime under provision of the Prevention of Corruption Act, 1988. He, therefore, made fair submission that instead of quashing the order of Respondent No.3 Shri M.L. Swami as Circle Officer, Shelgi and without disturbing his transfers the applicant can be posted as Circle Officer, Musti, Tahsil Office, South Solapur. Learned Advocate for the Applicant fairly conceded to this submission made by learned P.O.

12. In view of the above, instead of disturbing Respondent No.3, it would be appropriate to direct the Respondents No.1 and 2 to post the Applicant as Circle Officer, Musti, Tahsil Office, South Solapur and the Original Application deserves to be allowed partly.

O R D E R

- 1) Original Application is allowed partly.
- 2) Impugned order dated 31.05.2019 qua the Applicant is quashed and set aside.
- 3) Respondents No.1 and 2 are directed to post the Applicant as Circle Officer, Musti, Tahsil Office, South Solapur, District Solapur within a month from today.
- 4) No order as to costs.

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