

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.570 OF 2019

DISTRICT : SOLAPUR

Shri Prashant B. Sure.)
Age : 39 Yrs., Working as Awal Karkun,)
Residing at R-96, Nirmity Vihar,)
Vijapur Road, Solapur.)...**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 B.D. Swami.)
Awal Karkun, District Supply Office,)
Solapur.)
4. Shri D.L. Swami.)
Awal Karkun, Establishment)
Branch, Collector Office, Solapur.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

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

DATE : 31.01.2020

JUDGMENT

1. Heard Shri Punam Mahajan, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. Short point posed for consideration in the present O.A. is whether the impugned transfer order dated 31.05.2019 is sustainable in law in view of G.R. dated 09.04.2018 and the ground of discrimination raised by the learned Advocate for the Applicant.

3. The Applicant was serving as Awal Karkun, SETU Office, Collector Office Compound, Solapur. In general transfer of 2019, he was due for transfer and submitted 10 options which are as follows :-

अ.क्र.	पसंतीक्रम
१.	अ.का, कुळकायदा शाखा, जि.का. सोलापूर
२.	अ.का, अन्नधान्य वितरण कार्यालय, सोलापूर
३.	अ.का, करमणूक कर शाखा, सोलापूर
४.	अ.का, उपजिल्हाधिकारी (पुर्नवसन) कार्यालय, सोलापूर
५.	अ.का, उपविभागीय अधिकारी कार्यालय, सोलापूर क्र.२, सोलापूर
६.	मंडळ अधिकारी शेळगी, तहसिल कार्यालय उत्तर सोलापूर
७.	मंडळ अधिकारी ति-हे, तहसिल कार्यालय उत्तर सोलापूर
८.	मंडळ अधिकारी वडाळा, तहसिल कार्यालय उत्तर सोलापूर
९.	मंडळ अधिकारी मुस्ती, तहसिल कार्यालय दक्षिण सोलापूर
१०.	मंडळ अधिकारी पुर्नवसन, पुर्नवसन शाखा, जि. का. सोलापूर

4. However, his options were ignored and by order dated 31.05.2019, he was transferred in Employment Guarantee Scheme, Tahasil Karyalaya, North Solapur. Being aggrieved by it, the Applicant has filed the present O.A. contending that the Respondents 3 & 4 though juniors to him, they were given posting from the choices given by the Applicant ignoring his seniority.

5. In reply, the Respondents 1 & 2 admits that the Respondents 3 & 4 are juniors to the Applicant and were given posting from the choices given by the Applicant. However, the Respondents 1 & 2 sought to contend that considering the administrative exigencies and recommendation of the Civil Services Board (CSB), the Applicant was posted at EGS, Tahasil Karyalaya, North Solapur.

6. True, the Government servant has no vested right to ask for a particular place, as transfer is an incidence of service. However, the State Government has issued G.R. on 02.04.2018 adopting policy of transfer by counselling which *inter-alia* laid down detail procedure and requirements to be complied with for transfer of Government servant. As such, in view of G.R. dated 02.04.2018, the transfers were required to be done in pursuance of instructions given therein in fair and judicious manner. The discretion with the executive needs to be exercised judiciously.

7. Though the Applicant has given 10 options which were admittedly vacant at the relevant time, not a single option out of 10 options were considered and he was posted at totally different place. There is absolutely no whisper in the minutes of CSB (Page No.183 of P.B.) for denial of options given by the Applicant. It is not the case of the Respondents that the Applicant is ineligible to work on the post as per the options given by him. Admittedly, the post of Awal Karkun and Senior Clerk are interchangeable. Therefore, while giving options, the Applicant has given 5 options for posting as Circle Officer. However, the Respondent No.3 – Shri B.D. Swamy was posted as Senior Clerk, Food Grain Distribution Office, Solapur (Option No.2 of the Applicant) and Respondent No.4 – D.L. Swamy was posted on the post of Awal Karkun, Tenancy Branch, Collector Officer, Solapur (Option No.1 of the Applicant). Admittedly, the Respondents 3 & 4 are juniors to the Applicant.

8. As per G.R. dated 09.04.2018 (step No.6(iii)), the posting is required to be given as per the seniority of the concerned Government servant. The G.R. also provides for preparation of seniority list first and then to give the posting so that seniority of the Government servant is respected.

9. However, in the present case, the Applicant's seniority has been ignored and the options given by the Applicant were given to Respondents 3 & 4. No reason for such discrimination and deviation from the instructions in G.R. dated 09.04.2018 is forthcoming.

10. Indeed, as pointed out by the learned Advocate for the Applicant that by order dated 17.01.2020, the Tahasildar has given additional charge of Circle Officer, Tire, South Solapur. This shows that there was no ineligibility on the part of Applicant to give him posting on the post of Circle Officer, Tire at the time of general transfer in view of Option No.7 of Tire given by him.

11. As such, the impugned transfer order suffers from arbitrariness and it is in violation of G.R. dated 02.04.2018. The Applicant is subjected to discrimination only to favour Respondents 3 & 4. The impugned order is, therefore, not sustainable in law. In view of order dated 17.01.2020 giving additional of Circle Office, Tire to the Applicant, it would be appropriate to continue him on the said post which indeed he has claimed as per Option No.7 in general transfers. Hence, the following order.

ORDER

(A) The Original Application is allowed.

(B) The impugned order dated 31.05.2019 qua the Applicant is quashed and set aside.

- (C) The Respondent Nos.1 & 2 are directed to post the Applicant as Circle Officer, Tire, North Solapur within a month from today.
- (D) No order as to costs.

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

Mumbai
Date : 31.01.2020
Dictation taken by :
S.K. Wamanse.

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