

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.429 OF 2021  
(Transfer)**

**DISTRICT: - AURANGABAD.**

**Vikas s/o Prakash Tupare,** )  
Age-36 years, Occu. : Service )  
(as Awwal karkoon, Tehsil Office, Sillod), )  
R/o: Flat No.206, R.L. Park, Sillod, Tal. Sillod) )  
Dist. Aurangabad. )  
Mob: 8975238575. )..**APPLICANT**

**V E R S U S**

- 1. The State of Maharashtra,** )  
Through its Addl. Chief Secretary, )  
Revenue & Forest Department, )  
M.S., Mantralaya, Mumbai-32. )
- 2. The Divisional Commissioner,** )  
Aurangabad, Near Delhi Gate, )  
Aurangabad. )
- 3. The Collector, Aurangabad.** )  
Central Administrative Building, )  
Fazalpura, Aurangabad. )
- 4. The Tehsildar, Sillod,** )  
Main Administrative Building, )  
Main Road, Sillod, )  
Dist. Aurangabad. )
- 5. Mr. Bhavlal Shekunath Dhakne,** )  
Awwal Karkoon, )  
C/o O/o: Vanjamabandi Adhikari, )  
Aurangabad. )..**RESPONDENTS**

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**APPEARANCE** : Shri A.S. Deshmukh, learned Advocate  
for the applicant.  
: Shri V.R. Bhumkar, learned Presenting  
Officer for the respondent Nos.1 to 4.  
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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J)**  
**DATE** : **17.03.2022**  
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## **ORDER**

By invoking the jurisdiction under Section 19 of the Administrative Tribunals Act, 1985, the challenge in this Original Application is made to the impugned transfer order of the applicant and the respondent No.5, both dated 06.08.2021 (Annex. 'A-6') and (Annex. 'A-7') respectively issued by the respondent No.3 i.e. the Collector, Aurangabad.

2. **The facts in brief giving rise to this application are as follows:-**

- (i) At the time of issuance of respective transfer orders, the applicant and the respondent No.5 were working on the post of Awwal Karkoon respectively in the office of Tehsil, Sillod and in the office of Vanjamabandi Adhikari, Aurangabad (Forest Settlement Officer, Aurangabad). By the impugned transfer order of the

applicant dated 06.08.2021 (Annex. 'A-6'), the applicant has been transferred from the post of Awwal karkoon, Tehsil Office Sillod to the post of Awwal Karkoon, Marathwada Vikas Mandal (Marathwada Development Corporation-MDC), Aurangabad. By impugned transfer order dated 06.08.2021, the respondent No.5 has been transferred from the post of Awwal Karkoon, Vanjambandi Adhikari, Aurangabad to the post of Awwal karkoon, Tehsil Office, Sillod, the post held by the applicant.

- (ii) The applicant entered in the service of Government of Maharashtra in it's Revenue Department as a Clerk on 08.07.2010. He was promoted to the post of Awwal Karkoon on 31.12.2016. The post of Awwal karkoon falls in the Group-'C'/Class-'III' category of State Service.
- (iii) It is further contended that while posted at Tehsil Office, Soygaon in the mid 2018 vide order dated 31.05.2018, the applicant was transferred in the Divisional Commissioner Office at Aurangabad. However, by subsequent order dated 15.06.2018, the said order of transfer of the applicant dated 31.05.2018 was cancelled. Thereafter, by order dated

28.06.2018 (Annex. 'A-1'), the applicant was posted as Awwal Karkoon in the Tehsil Office, Sillod. He joined on the said post as per joining report dated 29.06.2018 (Annex. 'A-2').

- (iv) In view of above, at the time of passing of impugned transfer order 06.08.2021, the applicant had completed only one tenure of three years at Sillod and his name was not in the list of officials due for transfer in the cadre of Awwal karkoon. Accordingly, as reflected in such list (Annex. 'A-4 (ii)', the employees working on the post of Awwal Karkoon in Aurangabad District were called for counseling as per communication dated 09.08.2021 (Annex. 'A-3') and (Annex. 'A-4'). Even communication dated 23.04.2021 (Annex. 'A-5') addressed by the respondent No.4 i.e. the Tahsildar, Sillod to the respondent No.3 i.e. the Collector, Aurangabad would show that the applicant was not due for transfer and he requested the respondent No.3 to delete the applicant's name from the list of Awwal Karkoons due for transfer which was previously prepared. Hence, the applicant fell under the category of Awwal Karkoon not due for transfer.

- (v) In spite of above, the impugned transfer order of the applicant dated 06.08.2021 (Annex. 'A-6') transferring him from Tahsil Office, Sillod to the post of Awwal Karkoon, Marathwada Vikas Mandal (Marathwada Development Corporation-MDC), Aurangabad is passed. The said impugned transfer order dated 06.08.2021 (Annex. 'A-6') is signed by the Resident Deputy Collector, who is not a competent transferring authority of the applicant. On this ground alone, the impugned transfer order is illegal and is liable to be quashed and set aside.
- (vi) Moreover, the said impugned transfer order of the applicant is also mid-tenure transfer order as the same is issued before applicant completed two tenures of three years each as contemplated under Section 3 of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act, 2005') applicable to Class 'III'/Group 'C' employees being from the non-secretariat services. It is issued in contravention of the provisions of Section 4(5) of Transfer Act, 2005. It is applicable for mid-tenure transfer orders to be passed in special case and

with the approval of the immediately superior transferring authority mentioned in the table of Section 6 of the Transfer Act, 2005.

- (vii) It is further stated that the said impugned transfer order of the applicant dated 06.08.2021 (Annex. 'A-6') seems to have been issued on the basis of one confidential letter dated 05.08.2021 issued by the respondent No.4 i.e. the Tahsildar, Sillod which is mentioned as reference no.2 letter. In view of that, the applicant secured the copy of said confidential letter dated 05.08.2021 (Annex. 'A-8'). In this regard, it is stated that out of three complaints referred thereto, one complaint is withdrawn by the complainant therein and remaining two complaints are closed and therefore, those complaints can be said to be disposed of. In these circumstances, the impugned transfer order of the applicant is illegal and not tenable in the eyes of law.
- (viii) Consequently, the impugned transfer order of the respondent No.5 dated 06.08.2021 posting him on the post held by the applicant at Sillod is also not tenable in the eyes of law and the same is liable to be quashed and set aside.

(ix) It is also stated that the impugned transfer order of the applicant dated 06.08.2021 (Annex. 'A-6') is issued in contravention of parameters laid down in the paragraph No.8 of G.R. dated 11.02.2015 (Annex. 'A-11') and paragraph Nos. 5 to 8 of G.R. dated 29.07.2021 (Annex. 'A-12'). It is further stated that the respondent No.3 has effected large numbers of transfers of personnel from the cadre of Awwal Karkoons exceeding ceiling of 25% imposed by the respondent No.1 as per G.R. dated 29.07.2021 (Annex. 'A-12') as reflected from various General Transfers orders produced at Annex. 'A-13' collectively. In view of same, the impugned order of transfer of the applicant dated 06.08.2021 (Annex. 'A-6') is liable to be quashed and set aside.

2. The application is resisted by filing affidavit-in-reply on behalf of the respondent Nos.3 and 4 of Shri Shankar Narayanrao Lad serving as Tahsildar, General Administration, Collector Office, Aurangabad. Thereby the adverse contentions raised in the Original Application are denied. The respondents have submitted that the impugned transfer order of the applicant dated 06.08.2021 (Annex. 'A-6') is justifiable in view of the fact firstly that the applicant was serving as Awwal Karkoon in the Tehsil

Office, Soyegaon w.e.f. 31.12.2016 within the Sillod Sub-Division till 31.05.2018. Thereafter, as per order dated 28.06.2018, the applicant came to be transferred to the post of Awwal karkoon in the Tehsil Office Sillod, in the Sub-Division Sillod only. Thus the applicant was service in the Sillod Sub-Division of Collectorate, Aurangabad since 31.12.2016. The applicant, therefore, completed his first tenure in Tahsil Office Soyegaon and subsequent tenure of three years in Tahsil Office, Sillod.

3. In view of the same, the general transfer order of the applicant dated 06.08.2021 is in accordance with law. Moreover, while working in the Tahsil Office, Sillod, there were three complaints received by the respondent No.3 i.e. the Collector, Aurangabad and also by the respondent No.4 the Tehsildar, Sillod regarding the corrupt practices and irregularities committed by the present applicant. Considering those complaints, the respondent No.4 i.e. the Tahsildar Sillod submitted the confidential report dated 05.08.2021 (Annex. 'R-1') in the office of the respondent No.3 i.e. the Collector, Aurangabad. He thereby recommended the transfer of the present applicant from Tahsil Office, Sillod. In view of the same, the impugned order of the transfer of the applicant is legal and proper. It is denied that the impugned transfer order of the applicant dated 06.08.2021 signed by the Resident Deputy Collector without any authority. It is submitted that the said

authority has signed the order in concurrence of transferring authority i.e. the Respondent No.3- District Collector, Aurangabad. In view of above, no fault can be found in the impugned transfer order of the applicant. No any comment is offered as regards the impugned transfer order of the respondent No.5 dated 06.08.2021 (Annex. 'A-6'). In the circumstances, the respondent Nos.3 and 4 prayed for dismissal of the Original Application.

4. I have heard the arguments advanced by Shri Avinash S. Deshmukh, learned Advocate for the applicant on one hand and Shri V.R. Bhumkar, learned Presenting Officer for the respondent Nos.1 to 4 on other hand.

The respondent No.5 has not appeared though duly served and has not contested the proceeding.

5. Perusal of the impugned transfer order of the applicant and the respondent No.5 dated 06.08.2021 (Annex. 'A-6') and (Annex. 'A-7') respectively would show that both the orders are signed by the Resident Deputy Collector, Aurangabad. Admittedly, the Resident Deputy Collector is not the competent transferring authority. The competent transferring authority of the post of Awwal Karkoon is the District Collector, Aurangabad being head of the department and appointing authority. The applicant has assailed both the orders contending that the same are not issued by the respondent No.3 i.e. the District Collector, Aurangabad who

is the competent transferring authority of the applicant. However, close scrutiny of the said orders would show that Resident Deputy Collector has issued the said orders in concurrence and under the instruction of the respondent No.3 i.e. the Collector, Aurangabad. In view of the same, there is reason to believe that both the impugned order are issued by the competent transferring authority i.e. the respondent No.3.

6. The impugned transfer order of the applicant dated 06.08.2021 (Annex. 'A-6') is assailed on the ground that it is mid-tenure order and is passed in contravention of relevant provision of Section 4(5) of 'Transfer Act, 2005' which is as follows:-

“4(5) Notwithstanding anything contained in Section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior <sup>1</sup>[approval of the immediately superior] Transferring Authority mentioned in the table of Section 6, transfer a Government servant before completion of his tenure of post.”

7. Undisputedly, the respondents have come out with the case that the applicant came to be posted on the post of Awwal Karkoon at Tahsil Office, Soyegaon w.e.f. 31.12.2016. He worked at Soyegaon till 31.05.2018. Tahsil Office, Soyegaon comes under Sillod Sub-Division of office of respondent No.3 i.e. the Collector, Aurangabad. Thereafter, the applicant was transferred to Tahsil Office, Sillod by order dated 28.06.2018 (Annex. 'A-1'). As per the said order, the applicant joined on the said post w.e.f. 29.06.2018

as per joining report which is at Annex. 'A-2'. At the time of issuance of general transfer order dated 06.08.2021 (Annex. 'A-6'), the applicant completed three years tenure at Tahsil Office, Sillod which comes under Sub-Division Sillod. In view of same according to the respondents, the applicant completed one tenure at Tahsil Office, Soyegaon and second tenure of three years at Tahsil Office, Sillod. Hence, the applicant completed two tenures in one Sub-Division of Sillod and therefore, the impugned transfer order of the applicant dated 06.08.202 which is issued as General Transfer Order is legal and proper.

8. If the facts of this aspect are analyzed, it is seen that the applicant worked at Tahsil Office, Soyegaon from 31.12.2016 till his transfer to Tahsil Office, Sillod vide transfer order dated 28.06.2018 (Annex. 'A-1'). This will show that he completed the tenure of about one and half years at Tahsil Office, Soyegaon. Thereafter, as per record the applicant worked at Tahsil Office, Sillod from 29.06.2018 till passing of impugned transfer order dated 06.08.2021 (Annex. 'A-6'). He completed three years tenure at Tahsil Office, Sillod. Hence, in Sub-Division, Sillod, the applicant worked in total for four and half years.

9. As per the proviso of Section 3 of Transfer Act, 2005, for the employees falling in the category of Group 'C'/Class 'III', the normal tenure is of two tenures of three years each at one place of

posting. The said provision does not recognize two posting at one Sub-Division as sought to be contended on behalf of the respondents. In view of the same, as per the provisions of Section 3, the tenure of the applicant is to be considered at Tahsil Office, Sillod which is of about three years. The applicant has not completed two tenures of 3 years each at Tahsil Office, Sillod. In view of the same, the applicant will not fall in the category of employees due for transfer in General Transfer of the year, 2021.

10. In fact, this position that the applicant was not due for transfer in general transfer of the year, 2021 seems to have been accepted by the respondents as in the list of Awwal Karkoon due for transfer in the year, 2021 (Annex. 'A-4' collectively), the name of the applicant does not appear. However, in the said list, the name of the respondent No.5 namely Shri Bhavlal Shekunath Dhakne appears at Sr.No.14. In view of the same, it is crystal clear that impugned transfer order of the applicant dated 06.08.2021 (Annex. 'A-6') is issued mid-tenure. Therefore, it is to be seen as to whether the said transfer order of the applicant is issued by following the parameters laid down under Section 4(5) of Transfer Act, 2005 which has already been reproduced.

11. In this regard, the respondents have contended that the complaints of corruption and irregularities while working at his present posting were received. Further in this regard, the

respondent No.4 i.e. the Tahsildar, Sillod submitted confidential report dated 05.08.2021 (Annex. 'A-8') to the respondent No.3 i.e. the Collector, Aurangabad and sought transfer of the applicant from Sillod. However, it is not the case of the respondents that the said administrative ground of complaints was placed before the requisite Civil Services Board and that after considering the said alleged administrative ground, the Civil Services Board recommended the transfer of the applicant and in his place the transfer of the respondent No.5 and that approval of immediately superior transferring authority as mentioned under Section 6 of Transfer Act, 2005 was obtained.

12. Perusal of the impugned transfer order of the applicant dated 06.08.202 (Annex. 'A-6') would show that the same is effected as the applicant has completed tenure of three years and for administrative reason. The said order does not show the compliance of Section 4(5) of Transfer Act, 2005.

13. Even if the report dated 05.08.2021 sent by the respondent No.4 i.e. the Tahsildar, Sillod to the respondent No.3 i.e. the Collector, Aurangabad (Annex. 'A-8') is considered, it is seen that three complaints are referred therein. Those complaints are of alleged corruption. Nothing is produced by the respondents, prima-facie, to show the compliance of paragraph No.8 of G.R. dated 11.02.2015 (Annex. 'A-11') whereby certain parameters are laid

down for transfer on the ground of complaints. The contents of paragraph No.8 of the said G.R. dated 11.02.2015 are as follows:-

“८. एखाद्या प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचा-याच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधीत अधिकारी/कर्मचा-यांची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधीत अधिकारी /कर्मचा-यांच्या तक्रारीसंबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारीमधील गांभीर्य विचारात घेऊन, संबंधीत अधिकारी/कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे याबाबत बदली प्राधिका-याने ठोस निर्णय घ्यावा. संबंधीत अधिकारी/कर्मचा-याच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधीत अधिकारी/कर्मचा-याला त्याच पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याबाबत बदली प्राधिका-याने निर्णय घ्यावा. मात्र संबंधीत अधिकारी/कर्मचा-याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिका-याचे मत झाल्यास त्याबाबतची कारणमिमांसा नमुद करून बदली प्राधिकारी संबंधीत अधिकारी/कर्मचा-याची बदली त्याच्या लगतच्या वरिष्ठ प्राधिका-याकडे प्रस्तावित करू शकतो. लगतच्या वरिष्ठ प्राधिका-याकडे असा प्रस्ताव प्राप्त झाल्यास बदली प्राधिका-याने नमूद केलेली कारणे योग्य आहेत किंवा कसे याची छाननी करून स्वतःचे मत स्पष्ट करून बदली प्राधिका-याच्या प्रस्तावाला मान्यता द्यावी किंवा बदली प्राधिका-याचा प्रस्ताव फेटाळून लावण्यात यावा. ज्या प्रकरणात बदली प्राधिका-याच्या प्रस्तावानुसार गैरवर्तणुकीच्या अनुषंगाने शासकीय अधिकारी /कर्मचारी यांची बदली करण्यात येते अशा प्रकरणात संबंधीत अधिकारी/कर्मचारी यांची बदली केल्यानंतर त्यांच्या विरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी.”

14. As against that in this regard, the applicant has produced on record documents at Annex. 'A-9' collectively to prima-facie show that complaint No.1 therein is withdrawn by the complainant

therein namely Shaikh Akram Sh. Akbar and two other complaints were closed. In view of same, confidential letter dated 05.08.2021 (Annex. 'A-8') is of no any use.

15. It is true that this Tribunal in its limited jurisdiction cannot go in the sufficiency of the administrative reason but in this case the applicant prima-facie has stated that there is no reason to proceed on the basis of the allegation mentioned in the said confidential letter dated 05.08.2021 (Annex. 'A-8').

16. In the circumstances as above, in my opinion, it is crystal clear from the record that the impugned transfer order of the applicant dated 06.08.2021 which is mid-tenure transfer order is passed in violation of Section 4(5) of Transfer Act, 2005. The impugned transfer order of the respondent No.5 dated 06.08.2021 (Annex. 'A-7') is incidentally challenged. Legality of the said order is not required to be considered independently. By the said impugned transfer order, the respondent No.5 is transferred on the post held by the applicant. Once the impugned transfer order of the applicant dated 06.08.2021 (Annex. 'A-6') is held being no sustainable in the eyes of law, the impugned order of the respondent No.5 dated 06.08.2021 (Annex. 'A-7') is also required to be quashed and set aside.

17. In the circumstances as above, in my opinion, impugned transfer order of the applicant and the respondent No.5 both dated

06.08.2021 (Annex. 'A-6') and (Annex. 'A-7') respectively are liable to be quashed and set aside being unsustainable in the eyes of law for the reasons as discussed hereinabove. I, therefore, proceed to pass the following order:-

**ORDER**

The Original Application is allowed in following terms:-

- (a) The impugned transfer order of the applicant and the respondent No.5 dated 06.08.2021 (Annex. 'A-6') and (Annex. 'A-7') respectively both issued by the respondent No.3 being signed by the Resident Deputy Collector on behalf of the respondent No.3 i.e. the Collector, Aurangabad are hereby quashed and set aside.
- (b) The respondent No.3 is directed to repost the applicant on the post of Awwal Karkoon, Tehsil Office Sillod, District Aurangabad within the period of 15 days from the date of this order.
- (c) No order as to costs.

**(V.D. DONGRE)**  
**MEMBER (J)**

**Place:- Aurangabad**

**Date :- 17.03.2022**

SAS O.A.429/2021(Transfer)