

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.146 OF 2021

DISTRICT : AHMEDNAGAR

Chandrashekhar s/o. Suresh Kulthe,
Age : 47 years, Occu. : Service as Awal Karkoon,
R/o. Joshi Nagar, Dharangaon Road,
Tq. Kopargaon, Dist. Ahmednagar. **...APPLICANT**

V E R S U S

The District Collector (Revenue),
Ahmednagar, GPO Road, Hatampura,
Collector Office, Ahmednagar,
Dist. Ahmednagar. **...RESPONDENT**

APPEARANCE : Shri V.B.Wagh, Advocate for applicant.

: Shri M.P.Gude, Presenting Officer for
Respondent.

CORAM : **SHRI V.D.DONGRE, MEMBER (J)**

DECIDED ON : **13.08.2021.**

J U D G M E N T

1. This O.A. is filed invoking jurisdiction of this Tribunal under section 19 of the Administrative Tribunals Act challenging transfer order of the applicant dated 27-01-2021 Annexure A-3 whereby the applicant has been transferred as Awal Karkoon (Revenue), Tahsil Office, Rahata, Dist. Ahmednagar for seeking modification of issuing posting of

applicant as Awal Karkoon (EGS) or Awal Karkoon (Tenancy) Tahsil Office, Kopargaon.

2. The facts in brief giving rise to this Original Application are as follows:

3. The applicant was initially appointed as Clerk vide order dated 09-06-1999. Since then he worked at various places under the office of respondent authorities. Vide order dated 24-03-2013, the applicant was promoted to the post of Awal Karkoon. He was posted on 01-06-2018 as Awal Karkoon, Puntamba (Circle), Tahsil Office, Kopargaon. Since then he worked on that post till the order dated 10-08-2020. He worked there till earlier transfer order dated 10-08-2020 came to be passed whereby the applicant was transferred and posted as Awal Karkoon, Tahsil Office, Shrirampur. The applicant joined the said post on 24-08-2020.

4. It is further contended that one Smt. Rohini Dnyandev Aghav by filing O.A.No.299/2020 before this Tribunal challenged her transfer order dated 10-08-2020 from Shrirampur to Dahegaon Bodkha, Tahsil Office Kopargaon. This Tribunal by judgment and order dated 17-12-2020 set aside the transfer order of Smt. Rohini Dnyandev Aghav and directed to repost her at Tahsil Office Shrirampur in place of the

applicant as Awal Karkoon. This Applicant was not made a party respondent in the said O.A.NO.299/2020. Thereafter, by order dated 29-12-2020 (Annexure A-1) issued by the respondent i.e. District Collector, Ahmednagar the said Smt. Rohini Dnyandev Aghav was posted in the place of the applicant pursuant to order of this Tribunal dated 17-12-2020.

5. It is further contended that at that time, the applicant was not given any posting. The post of Awal Karkoon (Tenancy) in Tahsil Office, Kopargaon was vacant and it was convenient to the applicant. The applicant, therefore, gave two representations dated 04-01-2021 and 19-01-2021 (Annexure A-2 collectively) to the respondent requesting him to post on any vacant post in Tahsil Office, Kopargaon. The respondent authority, however, kept the applicant on waiting period from 01-01-2021 to 27-01-2021 and by such impugned transfer order dated 27-01-2021 (Annexure A-3) posted the applicant on the post of Awal Karkoon (Revenue) Tahsil Office, Rahata. Pursuant to the said order, the applicant joined the said post at Rahata on 28-01-2021 as per the joining report (Annexure A-4).

6. It is the further contention of the applicant that the order dated 17-12-2020 in O.A.No.299/2020 filed by Smt. Rohini Aghav is passed behind the back of the applicant. Even if the

respondent authority wanted to execute the said order, it should have called the applicant's option for transfer posting. Even in the general transfer the applicant's first option was for posting at Tahsil Office, Kopargaon. Even in general transfers, the said option was not considered and he was transferred at Shrirampur, which was his third option. His subsequent representations dated 04-01-2021 and 19-01-2021 (Annexure A-2 collectively) are not considered by the respondent authority though family difficulties were explained by the applicant therein. Even after joining the post at Rahata, Dist. Ahmednagar, the applicant made representation dated 05-03-2020 (Annexure A-5) requesting for transfer at Tahsil Office, Kopargaon. The same is also not considered. For no fault of the applicant, the applicant has been transferred to Rahata and he has been disturbed. Even, the applicant was kept on waiting period and was not paid salary for the months of January, 2021 and February, 2021. Hence, this O.A.

7. Affidavit in reply has been filed on behalf of respondent by one Smt. Madhuri Sampatrao Andhale, Tahsildar (Revenue) in the office of Collector, Ahmednagar, Tq & Dist. Ahmednagar. She has denied all the adverse contentions raised by the applicant in the O.A. It is contended that the respondent has rightly implemented the order dated 17-12-2020 passed by this

Tribunal in O.A.No.299/2020 and posted Smt. Rohini Aghav as Awal Karkoon (Revenue), Tahsil Office, Shrirampur by order dated 29-12-2020 (Exhibit R-1). Thereafter, the respondent by following instructions consisted in G.R. dated 11-02-2015 (Exhibit R-2) issued by G.A.D., Mantralaya, Mumbai forwarded proposal dated 30-12-2020 (Exhibit R-3) to the Divisional Commissioner, Nashik and sought approval to transfer the present applicant on the post of Awal Karkoon (Revenue), Tahsil Office, Rahata. The said approval was sought as transfer of the applicant was mid-term transfer. The Divisional Commissioner, Nashik accorded approval vide letter dated 27-01-2021 (Exhibit R-4). Pursuant to that, the impugned transfer order of the applicant dated 27-01-2021 came to be issued which is legal and proper.

8. It is further contended that in so far as the waiting period of the applicant from 01-01-2021 to 27-01-2021 is concerned, it has been declared as duty period of the applicant by the respondent under Rule 9(14)(F) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and memorandum dated 04-05-2021 (Exhibit R-5) was accordingly issued by the respondent. Thereafter, the applicant has joined the duty on the post of Awal Karkoon (Revenue), Tahsil Office, Rahata in pursuance to the order dated 27-01-2021.

9. It is further contended that while issuing the transfer order dated 10-08-2020, the options were called from employees including the present applicant in respect of choice transfer. The applicant at the relevant time had given 10 choices. In the said choices, he had opted for the post of Awal Karkoon (Revenue), Tahsil Office at Rahata at Sr. No.2. Therefore, the applicant cannot dispute the said options which were already given by the applicant and further insisting to post him at Tahsil Office, Kopargaon. In view of the same, there is no merit and substance in the O.A. and it is liable to be dismissed.

10. The applicant filed his affidavit in rejoinder and thereby it is stated that it is not denied by the respondent that post of Awal Karkoon (Tenancy and EGS) at Kopargaon is vacant. In view of the same while rejecting his application dated 05-03-2021, the respondent authority should have considered the said request of the applicant. However, while rejecting his representation dated 05-03-2021, the respondent authority has stated that the applicant's proposal was submitted to the competent authority and in view of that transfer order dated 27-01-2021 was issued. At that time, the respondent authority did not consider vacancy at Tahsil Office, Kopargaon. A Copy of rejection letter dated 07-04-2021 is at (Annexure

RR1), which further contends that as per the G.R. dated 09-04-2018, the respondent authority at the time of counseling came to a conclusion that claim can be considered if the post is vacant even if the transfer is premature. The respondent authority, however, failed to consider his representation for modification of order to the extent of his transfer either of two places vacant at Tahsil Office at Kopargaon. The applicant made those representations in view of the medical and family problems faced by him. However, the said reasons are not considered. Though the applicant was not given choice posting as per his choice of Kopargaon, the applicant followed the general transfer order dated 10-08-2020 and joined as Awal Karkoon (Revenue), Tahsil Office, Shrirampur but he has been disturbed from there because of the order of this Tribunal passed in O.A.No.299/2020 and thereby he has been transferred at Rahata.

11. Heard Shri V.B.Wagh, learned Advocate for applicant and Shri M.P.Gude, learned Presenting Officer for Respondent in detail.

12. Learned Advocate for the applicant strenuously urged before me that the impugned transfer order of the applicant dated 27-01-2021 (Annexure A-3) is passed under unusual

circumstances, namely, decision of this Tribunal dated 17-12-2020 and in view of order dated 29-12-2020 of posting of Smt. Rohini Dnyandev Aghav whereby she has been posted in the post held by the applicant as Awal Karkoon (Revenue), Tahsil Office, Shrirampur. Admittedly, she has been reposted in the background of order dated 17-12-2020 passed by this Tribunal in O.A.No.299/2020 filed by her. So according to him this unusual situation ought to have been considered by the respondent more sensitively by giving the applicant an opportunity of hearing and counseling before passing the impugned order and more particularly by taking into account the representations dated 04-01-2021 and 19-01-2021 (Annexure A-2 collectively) made by the applicant in that regard requesting the posting on vacant place at Tahsil Office, Kopargaon.

13. He further submitted that the respondent did not take into consideration the applicant's representations (Annexure A-2 collectively) before issuing the impugned order. The impugned order is passed for no fault of the applicant.

14. On the other hand, learned P.O. submitted that the applicant has been posted by the impugned order at Rahata by taking into account earlier options given by the applicant in

general transfer of 2020. During the course of arguments, learned P.O. submitted communication dated 29-07-2021 on record whereby it is stated that one post in the cadre of Awal Karkoon (Supply) is vacant in Tahsil Office, Shrirampur.

15. Perusal of the facts would show that the applicant by the impugned order of transfer dated 27-01-2021 (Annexure A-3) is transferred to Tahsil Office, Rahata as at that point the applicant was kept waiting for posting as he was already relieved from his post of Awal Karkoon (Revenue), Tahsil Office, Shrirampur, where Smt. Rohini Aghav was reposted by order dated 29-12-2020 (Annexure A-1). The applicant was kept in waiting of further posting from the period of 29-12-2020 to 27-01-2021 and he was not paid his salary for the said period. However, in the affidavit in reply it is stated by the respondent that the applicant has been paid salary for the said waiting period and said position is not disputed by the applicant in his further affidavit filed on record. In view of the same, grievance in that regard can be said to have been satisfied and prayer clauses (C) and (D) made by the applicant would not survive.

16. The present O.A. is filed mainly seeking modification in the impugned order dated 27-01-2021 to the effect that he be given posting as Awal Karkoon (EGS) or Awal Karkoon

(Tenancy), Tahsil Office, Kopargaon, as the said posts are vacant since long.

17. Considering the peculiar facts and circumstances of this case, the impugned order of transfer dated 27-01-2021 is though mid-term and mid-tenure order, the circumstances in which the said order is passed cannot be said to be covered under section 4(4)(ii) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ("Transfer Act" for short), which speak of exceptional circumstances or special reasons. This is so, because the said order is passed in the background of order of this Tribunal passed in the case of Smt. Rohini Dnyandev Aghav. In such circumstances, in my considered opinion, the respondent ought to have taken into consideration the immediate representations dated 04-01-2021 and 19-01-2021 (Annexure A-2 collectively) filed by the applicant.

18. Admittedly, the applicant was due for general transfer in April-May, 2020. As per the general transfer order dated 10-08-2020, the applicant was posted at Shrirampur. In fact, his first option for general transfer was Tahsil Office, Kopargaon, second option was Tahsil Office, Rahata and third option was Tahsil Office, Shrirampur. In general transfer order dated 10-08-2020

he was given posting at Shrirampur which was his 3rd choice. Still he joined at his posting at Shrirampur and worked there for about five months till Smt. Rohini Dnyandev Aghav was posted at his place at Shrirampur as per order dated 29-12-2020 (Annexure A-1).

19. It is a fact that while passing the impugned order of transfer dated 27-01-2021 (Annexure A-3), the applicant has been given posting of Tahsil Office, Rahata, which was his second choice. In fact, his first choice was Tahsil Office, Kopargaon. The applicant has reiterated his said contentions in his representations dated 04-01-2021 and 19-01-2021 (Annexure A-2 collectively).

20. In view of the discussion as above, in my opinion, this Original Applicant can be disposed of by giving directions to the respondents to consider his demand for the posting on the vacant post, if any, at Kopargaon. Said direction can be given by directing the respondents to consider the representations dated 04-01-2021 and 19-01-2021 (Annexure A-2 collectively) already pending before the respondents. Thereby balance would be struck off not causing any administrative inconvenience to the respondent. In fact, by the impugned order the applicant is disturbed and transferred to Tahsil Office,

Rahata, which was second choice for transfer at general transfer though his first choice posting was at Tahsil Office, Kopargaon.

21. Hence, I proceed to pass following order:

ORDER

- (i) Original Application is partly allowed.
- (ii) Impugned order of transfer dated 27-01-2021 is hereby quashed and set aside.
- (iii) Respondents are directed to consider representations filed by the applicant dated 04-01-2021 and 19-01-2021 (Annexure A-2 collectively) for the posting at Tahsil Office, Kopargaon in the equivalent cadre of Awal Karkoon on vacant post as disclosed in letter dated 22-07-2021 issued by the Resident Deputy Collector, Dist. Ahmednagar (part of Exhibit R-4 collectively at paper book page 86 of O.A.).
- (iv) There shall be no order as to costs.

(V.D.DONGRE)
MEMBER (J)

Place : Aurangabad
Date : 13.08.2021.