

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.191 OF 2020

(Subject :- Absorption/Transfer)

DISTRICT : AURANGABAD

Shri Sunil Kashinath Tangde)
Age-32 years, Occu. Service,)
(as Senior Clerk, Sub-Divisional Agriculture)
Officer, Sillod),)
R/o: Ganesh Nagar, Bhokardan,)
Tq: Bhokardan Dist. Jalna.)...**Applicant**

V E R S U S

1. **State of Maharashtra** ,)
Through its Chief Secretary,)
Agriculture Department, Secretariat,)
Mantralaya, Mumbai – 01.)
2. Agriculture Commissioner,)
Agriculture Commissionerate, Pune,)
Central Building, 3rd Floor, Pune -01.)
3. The Joint Director (Administration),)
Agriculture Department,)
Agriculture Commissionerate, Pune,)
Central Building, 3rd Floor, Pune-01.) Deleted as per
order dt.30.06.2020
4. The Joint Director (Administration),)
Agriculture Department,)
Agriculture Commissionerate, Pune,)
Central Building, 3rd Floor, Pune -01.)

5. The Divisional Agriculture Joint Director,))
 Aurangabad Division, Kranti Chowk,))
 Aurangabad.))
6. The Sub-Divisional Agriculture Officer,))
 Sillod, District: Aurangabad,))
 At Aurangabad.)Respondents.

Shri D.S. Kulkarni, learned Advocate for the Applicant.

Smt. M.S. Patni, learned Presenting Officer for the Respondents.

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

DATE : 16.02.2020

ORDER

1. The Applicant has challenged the communication dated 25.06.2020, whereby the Respondent No.4 directed the Respondent No.5 to relieve the Applicant so as to enable him to join on his earlier post in the Pune Division on the ground that he has not completed five years service on the post of Senior Clerk while transferring him inter-division.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant was appointed on the post of Junior Clerk by order dated 19.05.2012 and posted in the office of Joint Director, Agriculture commissionerate, Pune. Accordingly, he joined the post.

Thereafter, from time to time, he made representations for inter-division transfer in Aurangabad Division. His last representation dated 04.06.2019 was made on the ground that he is suffering from acute infarct in right fronto-parietal lobe and was taking treatment from Neurologist at Aurangabad. He also mentioned that there is no one to look after his old mother who is staying in Aurangabad division. Therefore, he requested to transfer him at Sillod or Jafrabad by way of inter division transfer. He had also executed bond agreeing to the terms and conditions stipulated in the G.R. dated 15.05.2019. In the meantime, the Respondent No.1-Government by letter dated 24.05.2019 directed Joint Director, Agriculture to consider the request of the employees working under their jurisdiction for inter divisional transfer and pass appropriate order in terms of G.R. dated 15.5.2019. The name of the Applicant was also figured in the Annexure 'A', letter dated 24.05.2019. It is on the basis of said communication, Divisional Joint Director, Agriculture, Aurangabad by order dated 16.11.2019 absorbed the Applicant on the post of Senior Clerk on which he was promoted in the year 2018 and he was posted in the office of Sub-Divisional Agriculture Office, Sillod. Accordingly, he joined there on 02.12.2019.

3. However, later on, abruptly, the Respondent No.4, Joint Director, Agriculture, Pune by order dated 25.06.2020 directed his counterpart i.e. the Joint Director, Agriculture, Aurangabad that the Applicant has not completed five years tenure on the post of Senior Clerk before his absorption / transfer in Aurangabad Division as required and issued impugned order. This, communication dated 25.06.2015 is under challenge in the present O.A.

4. Learned Advocate for the Applicant sought to contend that once the application of the Applicant was accepted by the Competent

Authority and he has joined at Sillod on his absorption/ transfer now it cannot be cancelled. He has also submitted that before passing the impugned order no opportunity of hearing was given to the Applicant. He has further pointed out that the Applicant has made various representations even before the issuance of the new G.R. dated 15.05.2019 and therefore, his case was governed by G.R. dated 03.06.2011 and there is no requirement for completing five years service on the same post. Learned Advocate for the Applicant therefore submitted that the impugned communication is arbitrary and unsustainable in law.

5. *Per-contra*, Learned P.O. for the Respondents sought to justify the impugned communication and contended that it is G.R. dated 15.5.2019 which hold the field and if the employee who has not completed five years service in the cadre of Senior Clerk was not eligible for inter division absorption/transfer. Learned P.O. for the Respondents, further sought to contend that the illness which the applicant is suffering is not genuine for absorption/transfer.

6. Thus, sole reason for cancelling the absorption/inter division transfer which was already approved by the Joint Director, Agriculture Office, Aurangabad is non compliance of G.R. dated 15.5.2019 which *inter-alia* provides that the employee must complete five years tenure in the same cadre.

7. Material to note that prior to G.R. dated 15.5.2019, the issue of inter-division transfer was governed by G.R. dated 3.06.2011. Admittedly, in G.R. dated 03.06.2011, there was no stipulation that employees must have completed five years in the same cadre. In the said G.R. five years service and in exceptional cases three years service was also considered sufficient for inter-division transfer/absorption.

8. True, in G.R. dated 15.05.2019, there is stipulation that concerned employee must have completed five years tenure in the same cadre. However, even if, the said G.R. was in existence, the Joint Director, Agriculture, commissionerate, Aurangabad by order dated 16.11.2019 accepted the request made by the Applicant and posted him in the office of Sub-Divisional Agriculture Office, Sillod. No explanation forthcoming as to why despite the G.R. dated 15.05.2019 the request of the Applicant was accepted and he was posted at Sillod. On this point specific query was made to the learned P.O. but no explanation was forthcoming.

9. Material to note that as per the direction issued by the Government by communication dated 24.05.2019, power to pass appropriate inter-division absorption, transfer were given to the Divisional Joint Director, Agriculture and in terms of said G.R., the Joint Director, Agriculture, Aurangabad had accepted the request of the Applicant and posted him at Sillod. As such it has effect of relaxation of the said condition. Accordingly, the Applicant had joined at Sillod in 2019 and satisfactorily working there. There are no complaints about his performance at Sillod.

10. Thus, once the Competent Authority i.e. Joint Director, Agriculture, Aurangabad had accepted the request of the Applicant for inter divisional transfer and Applicant has already joined there, it would be impermissible to cancel or revoke the transfer order abruptly without giving opportunity of hearing to the Applicant.

11. The Applicant has already forgone his seniority and shifted to Sillod. His request for inter divisional transfer was accepted considering his ailments and personal difficulties. In such

circumstances, it would be highly iniquitous and unjust to displace and repost him to his earlier division.

12. Admittedly, before passing impugned order no show cause notice or opportunity of hearing was given to the Applicant. As such, there is breach of principle of natural justice. The action for cancellation of absorption/ inter divisional transfer is thus arbitrary and unfair.

13. The totality of aforesaid discussion leads me to conclude that the impugned transfer order is totally unsustainable in law and deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned communication dated 25.06.2020 is hereby quashed and set aside.
- (C) No order as to costs.

(A.P. KURHEKAR)
MEMBER (J)

Place:- Aurangabad

Date :- 16.02.2020

Sas. O.A.No.191 of 2020.Trasnfer. M(J)