

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

**ORIGINAL APPLICATION NO.347 OF 2018**

**(Subject :- Transfer)**

**DISTRICT : Parbhani**

Shri Anil s/o. Yadavrao Thombre, )  
Age:48 years, Occu: Circle Officer, )  
T/o. Flat No.15, Sairaj Apartment, )  
Sandesh Nagar, CADA , Aurangabad, )  
Dist. Aurangabad. )...**Applicant**

**V E R S U S**

1. The District Collector, Aurangabad. )  
Dist. Aurangabad. )
2. The Additional Collector/The Chairman )  
Of Civil Services Board-3 and its )  
Residential Deputy Collector/ )  
Member Secretary, Aurangabad, )  
Dist. Aurangabad. )...**Respondents**

**Shri Vishwas B. Wagh, learned Advocate for the Applicant.**

**Smt. Sanjivani K. Deshmukh-Ghate, the learned Presenting  
Officer for the Respondents.**

**CORAM : B.P. Patil, Member (J)**

**Date : 04.02.2019.**

**ORAL ORDER**

1. The Applicant has challenged the impugned order dated 31.05.2018 issued by the Respondent No.1 transferring him from the post of Circle Officer, Mahalgaon, Tahsil Office, Vaijapur, Dist. Aurangabad to Awwal Karkoon, Soygaon, District Aurangabad by filing the present Original Application and prayed to quash and set aside the said order. He has also prayed to direct the Respondents to implement the order dated 27.03.2018 by which he has been promoted and posted as Circle Officer, Mahalgaon, Tahsil Office, Vaijapur, Dist. Aurangabad.

2. The Applicant was appointed as Talathi by order dated 24.06.1991 and thereafter he has served at various places. By order dated 27.03.2018 he has been promoted as Circle Officer and posted at Mahalgaon, Tahsil Office, Vaijapur but he was not allowed to join at promotional post. Thereafter, he has been abruptly transferred by the impugned order dated 31.05.2018 and posted as Awwal Karkoon on the basis of G.R. dated 21.11.1995. It is contention of the Applicant that as per paragraph no.3 of the G.R. dated 21.11.1995, the person working on the post of Circle Officer or Awwal Karkoon cannot be transferred upto two years. It is his contention that the condition

mentioned in para no.3 has been struck down by this Tribunal in O.A.No.300/2017 on 04.04.2019. It is contention of the Applicant that the Respondents had not followed the directions given by this Tribunal in the said decision. It is his contention that he was not allowed to join at the promotion post i.e. on the post of circle Officer and thereafter, he has been abruptly transferred by impugned order on the post of Awwal Karkoon in violation of the G.R. dated 21.11.1995. The impugned order is illegal and in violation of the above said G.R. Therefore, he has approached this Tribunal and prayed to quash and set aside the impugned order dated 31.05.2018 by filing the O.A. and also prayed to direct the Respondents to implement his promotion order dated 27.03.2018 transferring him on the post Circle Officer, Mahalgaon, Tahsil Office, Vaijapur.

3. Respondent Nos.1 and 2 have resisted the contention of the Applicant by filing their affidavit-in-reply. They have not disputed the fact that the Applicant was appointed As Talathi w.e.f. 24.06.1991. It is their contention that the Departmental Promotional Committee, in its meeting dated 17.03.2018 recommended for the promotion of the applicant on the post of Circle Officer. Accordingly, the Respondent No.1 issued the order dated 27.03.2018 promoting the Applicant on the post of Circle

Officer, Mahalgaon, Tahsil Office, Vaijapur. The Applicant has not joined the promotional post as per the order dated 27.03.2018. He avoided to join the promotional post as Circle Officer, Mahalgaon, Tahsil Office, Vaijapur and he proceeded on leave on the ground that he was suffering from Hyper Tension and Urinary Tract Infection. He was on medical leave during the period from 01.04.2018 to 30.05.2018. Thereafter, he joined his duties as Talathi. He has been relieved from the said post on 31.05.2018 with a direction to join his promotional post but he has not joined the promotional post. It is contention of the Respondents that the Government had taken policy decision regarding Inter Changeable Transfers of the Circle Officer to the post of Awal Karkoon and vice versa with an intention that the employee working in both the cadres can gain experience of the both the post which would be useful while discharging the duties of promotional post of Naib Tahasildar and accordingly, issued G.R. dated 21.11.1995. It is their contention that as per the condition in para no.3 of the said G.R., the tenure of such Inter Changeable Transfer was upto 2 years but it was challenged before this Tribunal by Aurangabad District Talathi Sangh, Aurangabad by filing the Original Application No.300 of 2017 and this Tribunal had modified the tenure of 2 years prescribed in

para 3 of the G.R. dated 21.11.1995 and also held that the tenure of the Awwal Karkoon and Circle Officers will be governed by the provision of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfer Act, 2005").

4. It is their contention that the office of Divisional Commissioner and District Collector, Aurangabad have maintained the seniority list of the employees serving in the cadre of Awwal Karkoon and Circle Officer. On the basis of seniority list maintained by them, the Public Service Board No.3 considered the cases of the eligible employees for transfer and decided to transfer the Applicant from the post of Circle Officer to Awwal Karkun. Accordingly the Respondent No.1 issued the impugned order dated 31.05.2018 by which the Applicant has been transferred from the post of Circle Officer to the post of Awwal Karkoon on the basis of G.R. dated 21.11.1995.

5. It is their contention that the Applicant has joined his duties as the Awwal Karkoon in the office of the Tahsildar, Soygaon as per the impugned transfer order dated 31.05.2018 and 07.06.2018. It is their contention that there is no illegality

in the impugned order and therefore they prayed to dismiss the Original Application.

6. The Applicant has filed affidavit-in-rejoinder to the affidavit-in-reply of the Respondent Nos.1 & 2 and contended that by order dated 27.03.2018, he has been promoted and posted to the post of Circle Officer, Mahalgaon, Tahsil Office, Vaijapur where one Shri S.V. Ambure was serving. Shri Ambure was reverted and posted as Talathi in the office of Sub Divisional Officer, Sillod, Dist. Aurangabad. It is his contention that the Respondent No.1 had not allowed him to join on the post of Circle Officer at Mahalgaon in view of the reversion of Shri S.V. Ambure. Therefore, he proceeded on leave w.e.f. 01.04.2018. It is his contention that the Tahsildar, Gangapur relieved him from the post of Talathi as per telephonic message in view of order dated 27.03.2018. It is his contention that he was not allowed to join on the post of Circle Officer and before implementing the earlier order dated 27.03.2018, he has been transferred on the post of Awwal Karkoon and therefore, he prayed to allow the Original Application.

7. I have heard Shri V.B. Wagh, learned Advocate for the Applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned

Presenting Officer for the Respondents. I have perused the documents on record.

8. Admittedly, the Applicant joined the services as Talathi by order dated 24.06.1991. There is no dispute about the fact that in the month of March, 2018 the Applicant was serving as Talathi at saza-Ranjangaon Pol, Tahsil Office, Gangapur. Admittedly, he has been promoted on the post of Circle Officer and posted at Mahalgaon, Tahsil Office, Vaijapur in place of Shri S.V. Ambure in view of the order dated 27.03.2018. The Applicant has not joined the promotional post on the basis of order dated 27.03.2018 and he proceeded on leave w.e.f. 01.04.2018 on medical ground. He was on medical leave till 30.05.2018. Meanwhile, the Applicant has been transferred from the post of Circle Officer to the post of Awwal karkoon by order dated 31.05.2018 issued by the Respondent No.1. There is no dispute about the fact that after enjoying medical leave, the Applicant joined his duty as Talathi on 30.05.2018 and thereafter he has been relieved from the post of Talathi, Ranjangaon Pol, Tahsil Office, Gangapur w.e.f. 31.05.2018 by order dated 06.06.2018. The Applicant has not joined his promotional post as Circle Officer but he joined the post of Awwal Karkoon in the

office of Tahsildar, Soygaon as per the impugned transfer order dated 31.05.2018.

9. Learned Advocate for the Applicant has submitted that the cadre of Circle Officer and Awwal Karkoon are different cadres. He has submitted that for promotion on the post of Circle Officer one must serve as Talathi and must pass Sub-Service Departmental Examination prescribed for Talathis as per the ***Maharashtra Revenue Qualifying Examination for promotion to the post of Circle Officer (from the cadre of Talathis) Rules, 1998***. He has submitted that as the Applicant was eligible for promotion to the post of Circle Officer, he has been promoted as Circle Officer by order dated 27.03.2018. He has submitted that the order dated 27.03.2018 has not been implemented. He was not permitted to join as Circle Officer by Tahsildar, Vaijapur and before implementing that order, he has been transferred as Awwal Karkoon by impugned order dated 31.05.2018. He has submitted that it is in violation of G.R. dated 21.11.1995. He has submitted that as per provision of said G.R., the tenure of the employee working on the post of Circle Officer or Awwal karkoon is two years, but the said condition has been struck down by this Tribunal in O.A.No.300 of 2017 on



04.04.2018. He has submitted that the Applicant never worked as Circle Officer. But he has been transferred on the basis of G.R. dated 21.11.1995 by the impugned order which is not legal. Therefore, he prayed to quash and set aside the impugned order dated 31.05.2018 by allowing the Original Application and also prayed to direct the Respondents to implement the order dated 27.03.2018 by which he has been promoted and posted as Circle Officer, Mahalgaon, Tahsil Office, Vaijapur.

10. Learned P.O. for the Respondents has submitted that the Applicant has been promoted as Circle Officer by order dated 27.03.2018 and posted at Mahalgaon, Tahsil Office, Vaijapur, but the Applicant had not joined the said post and he proceeded on leave from 01.04.2018 to 30.05.2018. She has submitted that the Applicant was not willing to join his new promotional post and he never approached the Tahsildar, Vaijapur for joining and therefore, no question of not allowing him to join arises. She has submitted that after joining his duties as Talathi on 30.05.2018, after enjoining the medical leave, Tahsildar, Gangapur relieved the Applicant on 31.05.2018 (afternoon). The Applicant ought to have joined his new post as Circle Officer, Mahalgaon under the Tahsil Office, Vaijapur thereafter but he has not joined on that post.

11. She has further submitted that as per the provision of G.R. dated 21.11.1995, seniority list of employees, serving in the cadre of Awwal Karkoon and Circle Officer in Aurangabad District have been maintained by the Divisional Commissioner and District Collector respectively. On the basis of said seniority list, Inter Changeable Transfer of the employees of these two cadres have been considered by the Civil Services Board No.3. The Civil Services Board in its meeting dated 17.03.2018 decided to transfer the Applicant from the post of Circle Officer to Awwal Karkoon and accordingly, impugned order dated 31.05.2018 has been issued. She has submitted that the Applicant has been transferred from the post of Circle Officer and there is no violation of provision of G.R. dated 21.11.1995. She has submitted that the Applicant has avoided to join his new promotional post as Circle Officer and therefore, the Applicant cannot blame the Respondents. He has submitted that there is no illegality in the impugned order and therefore, she prayed to dismiss the Original Application.

12. On perusal of the record, it reveals that the Applicant was eligible and qualified for the post of Circle Officer in view of the rules provided in the Maharashtra Revenue Qualifying

Examination for promotion to the post of Circle Officer (from the cadre of Talathis) Rules, 1998 and therefore, he was promoted as Circle Officer and accordingly he has been transferred and posted as Circle Officer, Mahalgaon under the Tahsil Office, Vaijapur vide order dated 27.03.2018. Instead of joining his promotional post, the Applicant proceeded on leave w.e.f. 01.04.2018 on medical ground and he was on leave till 30.05.2018. The Applicant had not joined new posting on his own accord and the Respondents cannot be blamed for it. There is nothing on record to show that the Applicant has approached the Respondents or Tahsildar, Vaijapur with the request to allow him to join and Tahsildar had not permitted him to join that post.

13. The page no.43 of the paper book shows that the Applicant has been relieved from the post of Talathi, saza-Ranjangaon Pol, Tahsil Office, Gangapur on 31.05.2018 afternoon. On relieving from the post of Talathi, it was duty of the Applicant to join on the post of Circle Officer, but he had not joined the said post. Instead of it, he has chosen to join his new post as Awwal Karkoon in the office of Tahsildar, Soygaon and accordingly he joined on that post on 06.06.2018. The impugned order dated 31.05.2018 shows that the Applicant has been transferred from the post of Circle Officer to the post of Awwal

Karkoon on the basis of G.R. dated 21.11.1995 on administrative ground. Therefore, in my view, there is no illegality in the impugned order. There is no violation of provision of G.R. dated 21.11.1995 while issuing the order dated 31.05.2018. Therefore, no question of quashing the impugned order dated 31.05.2018 arises.

14. So far as issue of implementation of order dated 27.3.2018 is concerned, it is crystal clear that the Applicant was at fault and he has not joined the promotional post on his own accord. He proceeded on leave immediately after issuance of the order dated 27.03.2018. He was on leave till 30.05.2018. On 31.05.2018, he was relieved to join his promotional post, but thereafter he had not joined his promotional post. There is nothing on record to show that the Respondents had not permitted him to join the promotional post. Therefore, no question of directing the Respondents to implement the order dated 27.3.2018 arises. The Applicant has joined to the post of Awwal Karkoon in view of the order dated 31.05.2018 and therefore, question of issuing direction to the Respondents for implementation of order dated 27.03.2018 does not arise. In these circumstances, in my view, there is no merit in the Original Application and therefore, it deserves to be dismissed.

15. In view of discussion in foregoing paragraph, Original Application stands disposed of with no order as to costs.

**Place:- Aurangabad**

**Date :- 04.02.2019**

Sas. O.A.No.347/2018.Transfer.BPP.

**(B.P. Patil)**

**Member (J)**