

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**COMMON ORDER IN O.A. NOS. 299 AND 313 BOTH OF 2020**

**1. ORIGINAL APPLICATION NO. 299 OF 2020**

**DISTRICT: AHMEDNAGAR**

**Smt. Rohini D/o Dnyandeo Aghav,** )  
Age:42 years, Occu. : Service as Clerk, )  
(Revenue), R/o :Flat No. 3, Pandurang )  
Apartment, Shrirampur, Tq. Shrirampur)  
Dist. Ahmednagar. ) .. **APPLICANT**

**V E R S U S**

- 1) **The State of Maharashtra,** )  
Through its Secretary, )  
Revenue Department, )  
6<sup>th</sup> Floor, Mantralaya, )  
Mumbai - 400001. )
- 2) **The Collector Ahmednagar,** )  
Tq. & Dist. Ahmednagar. ) .. **RESPONDENTS**

**W I T H**

**2. ORIGINAL APPLICATION NO. 313 OF 2020**

**DISTRICT: AHMEDNAGAR**

**Shri Mohsin s/o Yusuf Shaikh,** )  
Age: 33 years, Occu. : Service as a )  
Revenue Officer, Tahsil Office Karjat, )  
Dist. Ahmednagar. )  
R/o. Karjat, Tq. Karjat, Dist. Ahmednagar) .. **APPLICANT**

**V E R S U S**

- 1) **The State of Maharashtra,** )  
Through its Principal Secretary, )  
Revenue and Forest Department, )  
Mantralaya, Mumbai - 32. )

- 2) **The Collector,** )  
Collector Office Ahmednagar, )  
Dist. Ahmednagar. )
- 3) **The Deputy Collector/Special Land)**  
**Acquisition office No. 7,** office at 2<sup>nd</sup> )  
Floor, Vyapari Sankul, Savedi )  
Ahmednagar, Dist. Ahmednagar -414003)
- 4) **The Tahsildar,** )  
Tahsil Office Karjat, Tq. Karjat, )  
Dist. Ahmednagar - 414402 )
- 5) **Shri S.P. Anarse,** )  
Age : 55 years, Occu. Service as )  
Awal Karkoon, Tahsil Office Karjat)  
Dist. Ahmednagar-414402. )

**.. RESPONDENTS**

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**APPEARANCE** :- Shri Amol Gandhi, learned Advocate for  
the applicant in O.A. no. 299/2020.

:- Shri M.S. Choudhary, learned Advocate for  
the applicant in O.A. no. 313/2020.

: Shri M.S. Mahajan, learned Chief  
Presenting Officer for the respondents in  
O.A. No. 299/2020.

: Shri M.P. Gude, learned Presenting Officer  
for respondent in O.A. no. 313/2020.

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**Coram** : **Hon'ble Shri A.D. Karanjkar, Member (J)**

**Reserved on** : **16.12.2020**

**Pronounced on** : **17.12.2020**

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**ORDER**

1. Both the Original Applications involve same questions of facts and law, therefore, both the Original Applications are heard together and being decided by this common order.

2. In O.A. no. 299/2020 the applicant - Shri Rohini D/o Dnyandeo Aghav - was posted at Tahsil Office at Shrirampur as a Awal Karkun since 6.4.2018 and she was not due for transfer. This applicant is challenging the impugned order dated 10.8.2020 (Annex. A. 4 of O.A. no. 299/2020) mainly on the ground that the respondent no. 2 transferred her before completion of the normal period without following the due procedure laid down u/s 4 sub sections 4 & 5 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005). The second ground of attack is that though her options were called by the respondent no. 2 and her choice places of posting were vacant, but she was not posted there and she was transferred at Dahegaon Bolka, Tahsil Kopergaon. Third ground of her attack is that the respondent no. 2 did not comply the directions given in the G.R. dated 9.4.2018 and the counseling procedure was totally skipped by the respondent no.2. According to this applicant for

the above reasons her transfer is illegal and it be quashed and set aside.

3. In O.A. no. 313/2020 the applicant – Shri Mohsin s/o Yusuf Shaikh – was posted as a Awal Karkun at Karjat vide order dated 6.4.2018 and he was not due for transfer. The respondent no. 2 vide order dtd. 10.8.2020 (Exh. C of O.A. no. 313/2020) transferred this applicant to the Land Acquisition Office, Ahmednagar. It is contended by this applicant that his transfer was issued before completion of the normal tenure, without following the due procedure laid down u/s 4 sub sections 4 & 5 of the Transfer Act, 2005. This applicant is also contending that though options were called from him and the option posting places were vacant, but he was not given the posting there, there is non-compliance of the G.R. dated 9.4.2018 and the counseling procedure was totally skipped by the respondent no.2. On the basis of the above grounds this applicant is contending that the impugned transfer order is bad in law and it is liable to be quashed.

4. The respondent no. 2 has filed affidavit in reply in both the cases and justified the impugned transfers. It is the contention of the respondent no. 2 that both the applicants were transferred

after complying the procedure laid down u/s 4 sub sections 4 & 5 of the Transfer Act, 2005 as there was administrative exigency. It is submitted by the respondent no. 2 that the G.R. dated 9.4.2018 is directive in nature and it is not mandatory and therefore the impugned transfers cannot be quashed on this ground.

5. In O.A. no. 313/2020 the respondent no. 2 has raised the contention that in view of clause 5 of the G.R. dated 21.11.1995, the Government of Maharashtra has framed the Maharashtra Revenue Department Awal Karkun (Recruitment) Rules, 1996, which came into force on 27.11.1996. Similarly the Government of Maharashtra also framed the Maharashtra Revenue Department Circle Officer (Recruitment) Rules, 1996 and which came in force on 27.11.1996. It is the contention of the respondent no. 2 that as per the G.R. dated 21.11.1995 there was direction that the Circle Officers and the Awal Karkuns should be transferred after a duration of 2 years and they should be given assignment after transposing them as Awal Karkun or Circle Officer or vice-versa. It is submitted that for implementing the policy laid down by the Government in G.R. dated 21.11.1995, as both the applicants had completed the tenure of 2 years, they were considered for transfers and therefore it does not lie in the mouth of the applicants that they were not due for transfer and

their transfers are before completion of normal period. So far as the contention of the applicants that in O.A. no. 300/2017 it was held by the Single Bench that clause no. 3 of G.R. dtd. 21.11.1995 was quashed by the D.B. of this Tribunal is concerned, this respondent has stated that this respondent was not a party to said O.A. 300/2017. It is contended by the respondent no. 2 that when O.A. no. 300/2017 was heard by the M.A.T., Aurangabad Bench, the Recruitment Rules framed in the year 1996 were not brought to the notice of the Tribunal. Therefore, the applicants cannot take the benefit of the judgment delivered by this Tribunal in O.A. no. 300/2017. According to the respondent no.2 there is no fallacy or illegality in both the transfer orders, consequently both the transfer orders are legal and therefore the O.As. are liable to dismissed with costs.

6. I have heard the oral submissions advanced by the learned Advocates for the applicants in respective cases and the learned C.P.O. and P.O. for the respondents in respective cases.

7. The substantial questions arise for my consideration are :-

- (i) whether after coming into force of the Transfer Act, 2005 the normal tenure of the applicants was 3 years' or 2 years'.

- (ii) whether the respondent no. 2 has followed the procedure laid down u/s 4 sub sections (4) & (5) of the Transfer Act, 2005
- (iii) whether there was administrative exigency for the transfers of both the applicants.

8. So far as the first question is concerned, I would like to point out that the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005) was approved and received assent of His Excellency Hon'ble the Governor on 12.5.2006 and it came into force w.e.f. 1.7.2006. Now the important legal issue is what was the fate of G.R. dated 21.11.1995 after coming into force of the Transfer Act, 2005. It is important to note that as per section 3 sub section (1) of the Transfer Act, 2005 the normal tenure of posting for All India Service Officers and all Group A, B and C State Government servants or employees is 3 years. Therefore, the provision in the G.R. dated 21.11.1995 that the Awal Karkuns and the Circle Officers be transferred after completion of 2 years' is actually contradictory to the statutory provision. This issue was raised in O.A. no. 300/2017 decided by the Division Bench of the Tribunal

on 4.4.2018 and the Division Bench of this Tribunal held that para 3 of the G.R. dtd. 21.11.1995 was impliedly repealed / modified or ceased to operate after coming into force of the Transfer Act, 2005 as it was contradictory to the statutory provision. There cannot be the dispute about the legal proposition that the rules, notifications and the G.Rs. framed or issued by the Government cannot override the statute, if they are contradictory with the statutory provision. In the present applications though 1996 rules i.e. the Maharashtra Revenue Department Awal Karkun (Recruitment) Rules, 1996 and the Maharashtra Revenue Department Circle Officer (Recruitment) Rules, 1996 were not brought to the notice of the Division Bench of the Tribunal while deciding O.A. no. 300/2017, it does not vitiate that judgment. All such contentions were raised by the respondents in O.A. no. 260/2020 decided by this Bench of the Tribunal on 14.9.2020 and considering the judgment delivered in O.A. no. 300/2017, again it was held that para 3 of the G.R. dated 21.11.1995 was impliedly repealed and was not in force. Learned C.P.O. and P.O. both were unable to point out that both the decisions delivered by this Tribunal in O.A. nos. 300/2017 and 260/2020 are set aside by the Hon'ble High Court or Hon'ble the Supreme Court. In view of this I am compelled to say that the respondent no. 2 proceeded



in wrong assumption that the normal tenure of the applicants was of 2 years' and not of 3 years' and therefore error in law is committed by the respondent no. 2. Once it is decided that the normal tenure of posting is 3 years' then it become incumbent on the part of the respondent no. 2 to follow the procedure laid down u/s 4 sub sections (4) and (5) of the Transfer Act, 2005.

9. In order to justify the transfers the respondent no. 2 has placed reliance on the meeting of the Civil Services Board. The minutes of the meeting, which was held on 10.8.2020, is placed on record and it is at paper book page 60 of O.A. no. 299/2020. In para 5 the Civil Services Board has observed that as per the letter dated 11.12.1995 issued by the Divisional Commissioner, Nashik, it was necessary to interchange the Awal Karkuns and the Circle Officers after completion of their tenure of 2 years' and for giving effect to this policy, both the applicants were considered for transfer as they had completed tenure of 2 years'.

10. I have already discussed that after coming into force of the Transfer Act, 2005 the clause no. 3 of the G.R. dated 21.11.1995 stood impliedly repealed and consequently the letter of the Divisional Commissioner, Nashik dated 11.12.1995 for giving directions to transfer Awal Karkun and Circle Officer after

completion of 2 years' tenure has no meaning at all. It seems that the Collector, Ahmednagar was the respondent no. 1 in O.A. no. 260/2020 and he was aware of this position. The Government or its Officers cannot say that they had no knowledge of the judgment of the Tribunal delivered in O.A. no. 300/2017, which was delivered on 4.4.2018. Thus, the respondent no.2 had judicial notice of the findings recorded by the Tribunal in O.A. no. 300/2017 that para 3 of the G.R. dated 21.11.1995 was impliedly repealed, and with his knowledge the respondent no. 2 issued the impugned transfer orders, consequently I am compelled to say that the entire approach of the respondent no. 2 was disregarding the judicial verdict and therefore it was illegal.

11. In the minutes of the meeting of the Civil Services Board (paper book page 60 of O.A. no. 299/2020) it is observed that :-

*“उपरोक्त तक्त्यातील अ.क्रं. ५ मध्ये नमुद केलेनुसार अव्वल कारकून संवर्गातील ०४ कर्मचा-यांना पुरवठा निरिक्षक पदावर ३ वर्ष पूर्ण झाले असुन ते बदलीस पात्र आहेत. तथापी, १५ % एवढ्या मर्यादित ४ कर्मचा-यांपैकी केवळ २ कर्मचारी सद्यपदावरील रुजू दिनांकाच्या ज्येष्ठतेनुसार बदलीस पात्र ठरत असुन उर्वरित २ कर्मचारी हे बदलीस पात्र असुनही त्यांची बदली करता येणार नाही.”*

12. The above fact recorded in the meeting of the Civil Services Board is very important. It seems that 2 Awal Karkuns were due

for transfer, but they were not considered. The names of 2 employees are nowhere mentioned, their tenure is also not mentioned and it is also not mentioned as to which were the compelling circumstances for retaining them at the same station when they were due for transfer. Under these circumstances, the contention of the applicants that undue favour was shown to some Awal Karkuns has somewhat basis.

13. Learned Advocate for the applicant in O.A. no. 299/2020 has placed on record the copy of G.R. dated 29.10.2020. In this G.R. a policy decision is taken by the Government to interchange the Awal Karkuns and the Circle Officers and for this purpose the Government issued the directions to continue the scheme, which was made under the G.R. dated 21.11.1995, but directed that while implementing this scheme the procedure laid down under the Transfer Act, 2005 shall be followed.

14. Even in G.R. dated 7.7.2020, which gave permission to transfer 15% of the Government servants, there was specific direction to follow the procedure laid down in Transfer Act, 2005. In this regard I would like to point out that O.A. nos. 388, 389, 390, 391, 392, 393, 394, 395, 396, 397 and 398 all of 2020 decided by Nagpur Bench of this Tribunal on 20.10.2020 the

clause 2 in G.R. dated 21.11.1995 to the effect that Awal Karkuns and Circle Officers could be interchanged by transfer was challenged on the ground that the permission was granted to do so only till approval of the Staffing Pattern. It was the contention of all these applicants that the Collector, Gadchiroli without considering the fact that after approval of the staffing pattern the said G.R. dated 21.11.1995 ceases to operate and there was no authority to transfer those applicants interchanging their cadets and after hearing it was held that (para 2 of the G.R. dated 21.11.1995 which reads as under :-

“दोन भिन्न महसूल विभागामध्ये वरील पद संख्येत बदल करावयाचे असतील तर त्यासंबंधीचे अधिकार शासनास राहिल. मात्र संपूर्ण राज्यामध्ये या २ संवर्गातील परस्पर अदलाबदलीने भरावयाच्या पदांची संख्या ही प्रत्येक संवर्गासाठी ६०० इतकीच कायम राहिल व २ संवर्गांपैकी कोणत्याही संवर्गातील एकूण तात्पुरत्या पदांची संख्या कमी अथवा जास्त झाली तरी परस्पर अदला बदलीने भरावयाच्या पदांच्या संख्येत बदल होणार नाही. मंडळ अधिकारी संवर्गातील पदांबाबत व कर्मचारीवृंद रचने बाबत अंतिम निर्णय होईपर्यंत ही पध्दती चालू राहिल. या दोन्ही संवर्गातील पदे परस्पर अदलाबदलीने भरण्याची क्रिया ही दोन्ही संवर्गाच्या बाबतीत एकाच वेळी अंमलात आणण्यात यावी.”)

became inoperative after approval to the staffing pattern. It was also observed that as per para 2 of the G.R. permission was given to interchange the Awal Karkoons and circle officers only till approval of the Staffing pattern. It was also observed that as per

the G.R. dated 20.3.2006 so far as the Revenue Department was concerned staffing pattern was approved, consequently the para 2 of the G.R. dated 21.11.1995 ceases to operate after approval of the staffing pattern and it was not permissible to interchange Awal Karkun as Circle Officer or vice-versa. It is to be noted that after this judgment in the O.As. on 20.10.2020, the Government of Maharashtra was pleased to issue next G.R. dated 29.10.2020 and permitted to interchange Awal Karkun and Circle Officer and for that purpose the decision was taken to continue the said scheme, which was mentioned in the G.R. dated 21.11.1995. In the present applications, both the applicants are transferred vide order dated 10.8.2020 passed by the respondent no. 2. At that time, para 2 of the G.R. dated 21.11.1995 was not in operation as staffing pattern was already approved by the Government in the year 2006 and for that reason also the respondent no. 2 had no authority in law to transpose the Awal Karkuns and Circle Officers by transfers.

15. It is the contention of the respondent no. 2 that both the applicants were transferred for administrative exigency. It is submitted that the applicant in O.A. no. 299/2020 is posted at Dahegaon Bolka, Tahsil Kopergaon and it is specifically mentioned in the transfer order that this post was vacant due to retirement of

Circle Officer Shri R.A. Rakshe. Similarly it is contended that the applicant in O.A. no. 313/2020 is transferred to Ahmednagar as the post was vacant as Smt. R.V. Sasne (Panchal) was promoted. Reliance is placed by the learned C.P.O. and P.O. on the section 4 sub section 4(i) of the Transfer Act, 2005. It is submitted that as it was necessary to fill in the vacant posts, which became vacant due to retirement and promotion, it was not necessary to comply the provision under sub section 5 of the section 4 of the Transfer Act, 2005. In this regard the first thing is that both the applicants were not due for transfer, but they were considered and were called upon to give their options. In the chart prepared by the Civil Services Board it is very much observed that some of the options were given by both the applicants were vacant, but they were posted without considering their options. It is very much important to note that before issuing the transfer orders the respondent no. 2 did not comply the provisions mentioned in the G.R. dated 9.4.2018 and the counseling procedure is totally skipped. It is the contention of the respondent no. 2 that counseling procedure is directive and not mandatory. In this regard I would like to point out that the G.R. dated 21.11.1995 is partly mandatory and partly directive. Mandatory part is that holding of counseling procedure and directive part is that it is not

incumbent on the competent authority to give posting to the Government servants as per his option. Here it must be kept in mind that the competent authority shall give cogent reasons, when the options given by the Government servant are available then why it was not suitable to post the applicants as per their options. In the present case the respondent no. 2 skipped this entire procedure. It was mandatory on the part of the respondent no. 2 to comply the directions given in the G.R. dated 9.4.2018 for holding the counseling process. The respondent no. 2 could have recorded the reasons why it was not suitable or possible to give posting to the applicants as per their options. In the present matters it happened that the respondent no. 2 has totally disregarded the G.R. dated 9.4.2018. Therefore, it is not possible to accept the explanation given by the respondent no. 2 for not following the procedure mentioned in the said G.R.

16. It is important to note that by the same order the respondent no. 2 has given posting to Shri Kulthe in place of the applicant in O.A. no. 299/2020 and Shri S.P. Anarase was given posting in place of the applicant in O.A. no. 313/2020. Here, I would like to point out that in the first place both the applicants were not due for transfer. Secondly para 2 of the G.R. dated 21.11.1995 becomes inoperative after approval to the staffing pattern in the

year 2006. In such situation, the respondent no. 2 would have posted Shri Kulthe to Dahegaon Bolka, Tahsil Kopergaon and Shri S.P. Anarse to Ahmednagar, but it is not done. Under these circumstances, I am unable to justify both the transfers.

17. The important aspect is that both the transfer orders are issued by the R.D.C., Ahmednagar. Learned C.P.O. and learned P.O. were unable to satisfy me that as per section 6 of the Transfer Act, 2005 proviso (ii) the competent transferring authority i.e. the Collector, Ahmednagar has passed any general or special order for delegating his powers to the R.D.C., Ahmednagar to issue the impugned transfer orders. Merely because the minutes of the meeting of the Civil Services Board were kept before the Collector, Ahmednagar cannot tantamount to delegation of powers as recognized by section 6 of the Transfer Act, 2005 by passing general or special order. In the present case it has not been done.

18. In view of above, I am compelled to say that both the impugned transfer orders are bad in law and they cannot be sustained. I, therefore, pass the following order :-



**ORDER**

(1) O.A. Nos. 299 and 313 both of 2020 are hereby allowed and the impugned orders dated 10.8.2020 issued by the respondent no. 2 – the Collector, Ahmednagar are quashed and set aside.

(2) The respondent no. 2 – the Collector, Ahmednagar is directed to give posting to the applicants where they were working before issuance of the impugned transfer orders dated 10.8.2020.

(3) The order shall be complied with by the concerned respondents within a period of 2 weeks from the date of this order.

There shall be no order as to costs.

**(A.D. KARANJKAR)**  
**MEMBER (J)**

**Place : Aurangabad**

**Date :17.12.2020**