

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.260/2020  
WITH  
MISCELLANEOUS APPLICATION NO.213/2020**

**DISTRICT: AHMEDNAGAR**

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Rajendra Popatrao Andhale,  
Age : 37 years, Occu. : Circle Officer,  
Nalegaon, Ahmednagar,  
R/o. Pipeline Road, Shriram Chowk,  
Savedi, Ahmednagar, Dist. Ahmednagar. ...APPLICANT

**V E R S U S**

1. The District Collector, Ahmednagar,  
G.P.O. Road, Hatampura, Collector Office,  
Ahmednagar, Dist. Ahmednagar.
2. Rajendra Balkrishna Bakare,  
Age : 47 years, Occu. : Circle Officer,  
Nalegaon Tahsil Office, Ahmednagar,  
R/o. Flat No.11, Suman Apartment,  
Phase-8, Dharmadhikari Mala, Savedi,  
Ahmednagar, Dist. Ahmednagar.
3. The Divisional Commissioner, Nasik,  
Government Colony, Nasik Road,  
Nasik Division, District Nasik-422101.
4. The Sub Divisional Officer,  
Nagar Division, Ahmednagar,  
Collector Office Campus, Ahmednagar-422101.
5. The Tahasildar, Ahmednagar,  
Nagar Division, Collector Office Campus,  
G.P. Road, Hatampura, Ahmednagar,  
Dist. Ahmednagar-414001. ...RESPONDENTS

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APPEARANCE :Shri V.B.Wagh, Advocate for the  
Applicant.

:Shri M.P.Gude, Presenting Officer for the  
respondent nos.1, 3, 4 & 5.

Shri A.S.Deshmukh, Advocate for the  
respondent no.2 (Misc. Applicant in M.A.).

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CORAM : B. P. Patil, Vice-Chairman  
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Decided on : 14-09-2020  
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**ORAL ORDER**

1. By filing the present O.A. the applicant has challenged the transfer order dated 10-08-2020 issued by the respondent no.1 transferring the applicant from the post of Circle Officer, Nalegaon, Tahsil Office, Ahmednagar, Dist. Ahmednagar to Awwal Karkoon, Tahsil Office, Newasa, Dist. Ahmednagar and prayed for quashing and setting aside the said order.

2. The applicant was initially appointed as Clerk by order dated 03-02-2007. Thereafter, he served at various places under the respondents. On 27-05-2014, he was promoted to the post of Awwal Karkoon. Thereafter, he was transferred from the post of Awwal Karkoon to the post of Circle Officer at Nalegaon, Tahsil Office, Ahmednagar in view of G.R. dated 21-11-1995 by which the services of the Awwal Karkoon are made interchangeable. Accordingly, the

applicant joined the said post and since then he was working there in view of the said transfer order.

3. It is contention of the applicant that Aurangabad District Talathi Sangh, Aurangabad challenged the conditions of G.R. dated 21-11-1995 before this Tribunal by filing O.A.No.300/2017. The Division Bench of the Tribunal by order dated 04-04-2018 partly allowed the O.A. and declared that tenure of 2 years prescribed in para 3 of the Government decision dated 21-11-1995 stands impliedly repealed/modified and the tenure of Awwal Karkoons and Circle Officers will be governed by provisions of Transfer Act, 2005.

4. It is contention of the applicant that because of the pandemic condition, the Government issued G.R. dated 07-07-2020 and decided that there will be no general transfers and transfers will be effected to the extent of 15% up to 31-07-2020. It is contention of the applicant that respondent no.1 has prepared list of the candidates due for transfer and called options from them. The applicant was not due for transfer but his name was included in the list therefore he had given options for transfer by obeying the orders of the higher authorities. It is his contention that by

order dated 10-08-2020 respondent no.1 issued the transfer orders and transferred the applicant from the post of Circle Officer, Nalegaon to the post of Awwal Karkoon, Newasa, Dist. Ahmednagar.

5. It is contention of the applicant that the impugned order of transfer is against the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ("Transfer Act, 2005" for short). The applicant has not completed his normal tenure of posting at Nalegaon, Dist. Ahmednagar. He has been transferred before completion of the normal tenure in violation of the provisions of the Transfer Act. Therefore, he has prayed to quash the impugned order by allowing the present O.A.

6. Respondent no.1 has filed affidavit in reply and resisted the contentions of the applicant. He has not denied the fact regarding appointment and promotion of the applicant and his posting at Nalegaon as Circle Officer. It is his contention that the applicant was initially appointed as Clerk and joined his duties at Home Branch, Collector Office, Ahmednagar vide order dated 03-12-2007. Thereafter, he was transferred to the District Supply Officer

vide order dated 29-08-2009. By order dated 26-05-2014, he came to be promoted on the post of Awwal Karkoon and transferred to Tahsil Office Shrirampur. Thereafter, within a short span of 3 months the applicant came to be transferred at Tahasil Office Parner as Awwal Karkoon (Indira Gandhi Scheme) by order dated 19-08-2014. Thereafter, again he came to be transferred mutually at Grampanchayat Branch, Collector Office, Ahmednagar on the post of Awwal Karkoon by order dated 28-11-2014. Thereafter, by order dated 23-05-2018, he came to be transferred as Circle Officer, Nalegaon, Tq. & Dist. Ahmednagar.

7. It is his further contention that the applicant has enjoyed his maximum period of service at Headquarters i.e. at Ahmednagar and this shows that he seems to be reluctant to join the post given outside of the Headquarter. It is his contention that the posts of Awwal Karkoon and Circle Officer are interchangeable as per the provisions of the G.R. dated 21-11-1995. It is his contention that as per Clause 3 of the G.R. dated 21-11-1995, Government servants working on the post of Circle Officer and Awwal Karkoon are interchangeable and the Government servants

working on the said posts can be transferred and the tenure of the Government servants working on such posts is 2 years. He has not disputed the fact regarding the decision of the Tribunal in O.A.No.300/2017. It is his contention that in view of the G.R. dated 07-07-2020 and 23-07-2020, respondents had called options from the concerned employees including the applicant. In response thereto the applicant had given as many as 10 places of his choice for posting on transfer. The respondent authorities considered these choices and thereafter made his transfer by the impugned order in view of the provisions of the G.R. dated 21-11-1995 and G.Rs. dated 07-07-2020 & 23-07-2020.

8. It is his contention that the applicant had not objected the list of employees due for transfer though he had an opportunity to do so. It is his contention that one Shri R.B. Bakare, respondent no.2 has been transferred and posted as Circle Officer, Nalegaon, Tq. & Dist. Ahmednagar by the same transfer order. Accordingly, the respondent no.2 has been relieved on 10-08-2020 from the post of Awwal Karkoon (Revenue), Ahmednagar. On 11-08-2020 immediately after relieving, the respondent

no.2 furnished the joining report dated 11-08-2020 to the Tahsildar Ahmednagar on 12-08-2020 in order to join the duties on the post of Circle Officer, Nalegaon, Tq. & Dist. Ahmednagar. On 12-08-2020, the Tahsildar Ahmednagar permitted the respondent no.2 to join on the said post and accordingly respondent no.2 started discharging duties as Circle Officer, Nalegaon, Tq. & Dist. Ahmednagar.

9. It is the contention of the respondent no.1 that the respondent no.2 has joined the post of Circle Officer, Nalegaon. It is his further contention that the applicant has not accepted the transfer order and relieving memo issued by the Tahsildar through Shri M.V.Kasar, Clerk who approached him for serving the said order. It is his contention that the applicant obtained the interim relief by suppressing the said fact and therefore he prayed to reject the O.A. It is his contention that the impugned order is in accordance with the provisions of the law and there is no illegality in it. Therefore, he has justified the impugned order.

10. Respondent nos.2 to 5 have adopted the affidavit in reply filed by the respondent no.1.

11. Learned Advocate for the applicant has filed affidavit in rejoinder. He has submitted that respondent no.2 was also not due for transfer but he has been posted at the place of applicant by separate order on very day in violation of the provisions of the Transfer Act. He has submitted that as the impugned order is against the provisions of the Transfer Act, it requires to be quashed and set aside by allowing the O.A.

12. I have heard Shri V.B.Wagh, Advocate for the Applicant, Shri M.P.Gude, Presenting Officer for the respondent nos.1, 3, 4 & 5 and Shri A.S.Deshmukh, Advocate for the respondent no.2 (Misc. Applicant in M.A.). I have perused the documents placed on record by the parties.

13. Learned Advocate for the applicant has submitted that the applicant has been appointed as Circle Officer, Nalegaon by order dated 23-05-2018 and accordingly he joined the said post. He has submitted that the applicant has hardly completed 2 years and 3 months on the said post. He has not completed his normal tenure of posting on the said post. He has submitted that in view of the G.R. dated 21-11-1995, post of Awwal Karkoon and Circle



Officer are made interchangeable and for interchanging the post tenure of 2 years was prescribed by the said G.R. He has submitted that the Aurangabad District Talathi Sangh, Aurangabad challenged the said G.R. by filing O.A.No.300/2017 before this Tribunal. Division Bench of this Tribunal has allowed the O.A. partly and declared that tenure of 2 years prescribed in para 3 of the Government decision dated 21-11-1995 stands impliedly repealed/modified and the tenure of Awwal Karkoons and Circle Officers will be governed by provisions of Transfer Act, 2005. He has submitted that the said decision has not been challenged by the Government before the appropriate forum. He has submitted that as per Section 3 of the Transfer Act, 2005 normal tenure of posting is 3 years and for Group-C employees it is 6 years. He has submitted that the applicant has not completed his normal tenure on the post of Circle Officer, Nalegaon but the respondent no.1 has prepared the list of the employees due for transfer in the month of July, 2020 showing the applicant's name in the list as due for transfer and called options from the applicant. He has submitted that though the applicant was not due for transfer, he has submitted his options by obeying the orders of the superiors. He has submitted that

by order dated 10-08-2020 the applicant has been transferred at the time of general transfers though he was not due for transfer. He has submitted that the impugned order is in violation of the provisions of Section 3(1) of the Transfer Act, 2005 and therefore he has prayed to quash the impugned order.

14. Learned P.O. and learned Advocate for respondent no.2 have submitted that the respondent no.1 has prepared the list of the Government employees due for transfer at the time of general transfers of 2020 in view of the G.R. dated 07-07-2020. The name of the applicant was enlisted therein. Thereafter, options for the places of choice were called by the respondent no.1. In response to the said communication, applicant submitted 10 places of his choice where he intends to be posted by transfer.

15. Learned P.O. and learned Advocate for respondent no.2 submits that the applicant had given options for one of the place for transfer in the Tahsil Office on the post of Awwal Karkoon (Revenue) Newasa. They have submitted that as per the G.R. dated 21-11-1995, on completion of 2 years tenure, the employee working on the post Awwal Karkoon or Circle Officer can be transferred as the posts

are interchangeable. They have submitted that in view of the said G.R., the applicant was due for transfer and therefore he has been transferred and posted at Newasa considering the options exercised by him. They have submitted that the respondent no.2 has been posted at the place of the applicant as respondent no.2 had also completed 2 years' tenure on the post of his earlier posting. They have submitted that the impugned order has been issued in view of the G.Rs. and there is no illegality in the same. Therefore, they have justified the impugned order and prayed to dismiss the O.A.

16. Learned Advocate for the respondent no.2 has submitted that the applicant has not objected to the list prepared by the respondent no.1 regarding employees due for transfer at the time of general transfers of 2020. He had given options regarding the places of his choice where to be posted on transfer. Therefore, the applicant is estopped from challenging the impugned order. He has submitted that the applicant has not approached the Tribunal with clean hands and suppressed the material facts regarding posting of respondent no.2 at his place and obtained

interim order. Therefore, he is not entitled to get the relief as claimed. Therefore, he has prayed to dismiss the O.A.

17. Admittedly, the applicant is serving as Circle Officer, Nalegaon, Tq. & Dist. Ahmednagar from 23-05-2018. He has hardly completed 2 years and 3 months' tenure on the said post. Section 3 of the Transfer Act, 2005 provides tenure of posting. The posts of Awwal Karkoon and Circle Officer are Group-C posts. The normal tenure of posting shall be 3 years as per Section 3(1) of the Transfer Act. It also further provides that when such employee is from non-secretariat services Group-C, such employee shall be transferred from the post held on completion of 2 full tenures at that office or department. It means that normal tenure is of 6 years for the applicant who is a Group-C employee. The applicant has not completed his normal tenure of posting on the said post. Before completion of the tenure, the applicant has been transferred by the impugned order dated 10-08-2020 in view of the G.R. dated 21-11-1995, 07-07-2020 and 23-07-2020. The impugned transfer order is mid-term and mid-tenure transfer order.

18. It is material to note here that by the G.R. dated 21-11-1995, the posts of Awwal Karkoon and Circle

Officer are made interchangeable and the tenure of the employees working on such post has been decided by the said G.R. and it has been decided that no employee shall work on the said post for more than 2 years. Said G.R. was challenged by the Aurangabad District Talathi Sangh, Aurangabad by filing O.A.No.300/2017. The said O.A. was partly allowed by the Division Bench of the Tribunal on 04-04-2018 and it is declared that tenure of 2 years prescribed in para 3 of the Government decision dated 21-11-1995 stands impliedly repealed/modified and the tenure of Awwal Karkoons and Circle Officers will be governed by provisions of Transfer Act, 2005. Admittedly, the said decision has not been challenged by the Government before the appropriate forum.

19. There is no dispute about the fact that the transfers of Government employees are governed by the provisions of the Transfer Act, 2005 and G.Rs. and Circulars will not prevail over the provisions of Transfer Act. Therefore, I have to scrutinize the impugned order issued by the respondent no.1 in the light of the provisions of the Transfer Act and to verify whether the impugned order has been issued in view of the provisions of the Transfer Act.

20. As discussed above, the applicant as well as the respondent no.2 were not due for transfer as they have not completed normal tenure of posting as contemplated in Section 3 of the Transfer Act. The impugned order is said to be a general transfer order but the documents produced on record show that neither Civil Services Board nor the Competent Transferring Authority has followed the provisions of the Transfer Act while effecting transfers of the applicant and the respondent no.2. No doubt, the competent transferring authority is empowered to transfer the Government employee before completion of tenure by following mandatory provisions of the Transfer Act in exceptional circumstances showing special reasons and by recording the same in writing but it has not been done.

21. On going through the record, it reveals that neither the Civil Services Board nor the competent transferring authority i.e. respondent no.1 followed the provisions of Section 3 and 4 of the Transfer Act before effecting the transfers. Therefore, in my view, transfer of the applicant from the post of Circle Officer, Nalegaon, Tahsil Office, Ahmednagar to the post of Awwal Karkoon, Tahsil Office, Newasa, Dist. Ahmednagar is illegal and against the

provisions of the Transfer Act, 2005. The respondents have effected the transfer on the basis of G.R. dated 21-11-1995 only. They have not considered the fact that the paragraph no.3 of the G.R., on which they have placed reliance, has been quashed/repealed by the Division Bench of this Tribunal in O.A.No.300/2017. In fact, respondents ought to have considered the provisions of Transfer Act which regulate the transfers of the Government servants but the respondent no.1 has not considered the said provisions and effected transfer of the applicant and respondent no.2. Therefore, in my view, the said orders transferring the applicant and respondent no.2 are illegal and in violation of the provisions of the Transfer Act. Hence, the same require to be quashed and set aside.

22. The applicant has challenged his transfer order by filing the O.A. He has specifically contended that the transfer order has not been served on him and he has not been relieved. Therefore, question of suppression of facts does not arise. Hence, I find no substance in the submissions of the learned Advocate for the respondent no.2 as well as the learned P.O. so far as question of suppression of material facts is concerned. Since the

impugned order is illegal and in violation of the provisions of the Transfer Act, it requires to be quashed and set aside by allowing the present O.A.

23. In view of the discussion in the foregoing paragraphs, O.A. is allowed. Impugned order of transfer dated 10-08-2020 thereby transferring the applicant from the post of Circle Officer, Nalegaon, Tahsil Office, Dist. Ahmednagar to Awwal Karkoon, Tahsil Office, Newasa, Dist. Ahmednagar is hereby quashed and set aside. Respondent no.1 is directed to repost the applicant on the said post at Nalegaon immediately. In view thereof M.A.No.213/2020 stands disposed. There shall be no order as to costs.

**(B. P. PATIL)**  
**VICE CHAIRMAN**

**Place : Aurangabad**  
**Date : 14-09-2020.**