

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

ORIGINAL APPLICATION NO. 545 OF 2023

DISTRICT : AHMEDNAGAR

Vaishali Ashok Salve,

Age : 45 Years, Occu. : Service as Circle Officer,)

Rui Chhattisi, Tq. Nagar, Dist. Ahmednagar.)

R/o. Bahar Society, Urban Bank Colony,)

Shila Vihar, Savedi, Ahmednagar,)

District Ahmednagar.)

.... **APPLICANT**

V E R S U S

01. **The District Collector, (Revenue),**)
New Administrative Building,)
Nagar Aurangabad Road, Ahmednagar,)
Dist. Ahmednagar.)

02. **The Tahsildar,**)
Nagar, Collector Office, Nagar Aurangabad)
Road, Ahmednagar, Dist. Ahmednagar.)

... **RESPONDENTS**

APPEARANCE : Shri V.B. Wagh, Counsel for Applicant.

: Shri D.M. Hange, Presenting Officer for
respondent authorities.

CORAM : **Shri A.N. Karmarkar, Member (J)**

RESERVED ON : **04.02.2025**

PRONOUNCED ON : **25.02.2025**

O R D E R

1. By filing present Original Application, this applicant has prayed for quashing and setting aside impugned order of transfer dated 30.06.2023 issued by respondent No. 1, thereby

transferring the applicant from the post of Circle Officer, Rui Chhattisi Tahsil Office, Nagar, Dist. Ahmednagar to Awwal Karkoon (EGS), Tahsil Office, Sangamner, Dist. Ahmednagar.

2. The applicant was initially appointed on the post of Talathi on 19.12.2007. She was promoted to the post of Circle Officer on 19.06.2019. She joined the said post on 20.06.2019 at Rui Chhattisi, Tq. Nagar, Dist. Ahmednagar. The respondent authorities have issued letter in the month of April 2023 directing respondent No. 2 to forward the names of officers, who are due for transfer with their options before 30.04.2023. The applicant has submitted her details along with options for posting after transfer. The transfers were to be effected on or before 30.05.2023 as per the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short "the Transfer Act 2005"). But the respondent authorities have extended the said period till 30.06.2023. That G.R. extending the period of General Transfers will not prevail over the Transfer Act, 2005. The applicant was transferred to the post of Awwal Karkoon (EGS), Tahsil Office, Sangamner, Dist. Ahmednagar as per the order dated 30.06.2023.

The applicant moved representation on 02.07.2023 for accommodation of any of the post opted by her. According to the applicant, her husband is working as Assistant Teacher in New English School, Inamgaon, Tq. Shirur, Dist. Pune. The G.R. dated 09.04.2018 is in respect of counseling. There was no counseling of the applicant as per the options given by her. The applicant has referred the Clause No. 5 of Schedule-1 of said G.R., which is pertaining to couple convenience. The applicant's husband is working in private institution. The applicant's son is taking education in 11th std. It will be inconvenient for the applicant to look after her son. According to the applicant, three posts out of her 10 options are vacant and nobody is posted there. So the applicant can be accommodated. It is also the case of applicant that impugned order of transfer is mid-term transfer. Approval of the immediate superior authority is not obtained. There is total violation of Sections 3, 4(4)(ii) and 4 (5) of the Transfer Act, 2005.

3. Respondent No. 1 has filed his affidavit in reply (page no. 46 of paper book). This respondent has called information from all Tahsildars and other office in charge regarding the employees who are due for transfer. The respondent No. 2 has submitted the names of present applicant along with other

employees in the list of employees, who are due for transfer. According to this respondent, the applicant is trying to misinterpret G.R. dated 30.05.2023. The State Government within its power and jurisdiction has extended the period for effecting the General Transfers for the year 2023-24 up to 30.06.2023. The present applicant had given 10 options. However, the transfer of the applicant is purely due to administrative exigencies and it is based upon the recommendation of Civil Services Board dated 28.06.2023. According to this respondent, the applicant herself has admitted that her husband is working in private educational institution. Therefore, G.R. dated 09.04.2018 is not helpful to the applicant. It is also the contention of respondent that criteria of counseling as per G.R. dated 09.04.2018 is applicable to the employees of Group-D category. There is instruction in the said G.R. that the transfers of employees from Group-C are to be made as per the guidelines of counseling and after recommendation of Civil Services Board. The necessary procedure for transfer is adopted. This respondent has also referred the judgment of Hon'ble Apex Court in case of **Namrata Varma Vs. The State of Uttar Pradesh and Ors. in Special Leave to Appeal No. 36717/2017**, wherein it is

held that it is not for the employee to insist to transfer him/her and / or not to transfer at a particular place.

4. Respondent No. 2 has also filed affidavit in reply. According to this respondent, they have submitted the names of employees, who are due for transfer including the present applicant. According to him, the applicant was relieved vide order dated 04.07.2023 and charge was given to Circle Officer, Chichondi Patil. But the applicant has assailed the order of transfer before this Tribunal and in view of the interim order passed by this Tribunal, the applicant is working on the existing post.

5. The applicant has filed rejoinder affidavit (page No. 83 of paper book). According to her, the respondent authorities should have taken into consideration the intention behind the G.R., as there was no provision regarding couple convenience in the Transfer Act, 2005. Though some of the posts are available for posting, an option of the applicant was not considered for the said post. The applicant has referred to page No. 79 of paper book chart showing postings and particularly employees at Sr. Nos. 12 to 14, who were posted as per their options. The present applicant is not posted as per her options. According to this

applicant, the respondents have stated about transfer of the applicant in view of interchangeable post, which are effected on the basis of seniority. But nowhere stated that the applicant is senior most employee. According to the applicant, she is junior most candidate showing at Sr. No. 494 and Sr. Nos. 486 to 492 are senior most employees as given in Annexure A-2.

Respondent No. 1 has filed sur-rejoinder (page No. 120 of paper book) and reiterated several contentions in earlier affidavit in reply. Representation of the applicant for keeping posts of Circle Officer at Jeur, Nepti, Tq. Nagar and Circle Officer at Parner, Tq. Parner has been rejected. It was communicated to the applicant. It is contended that they have followed the directions in G.R. dated 21.11.1995 regarding interchangeable transfers between Circle Officers and Awwal Karkoons.

6. I have heard Shri V.B. Wagh, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities. Both the parties have submitted as per the respective contentions.

7. Learned counsel for the applicant has submitted that though some of posts were available as per the options given by the applicant, the applicant was not accommodated and other

employees at Sr. No. 12 to 14 (page No. 79 of paper book) were accommodated. According to him there is clear violation of G.R. dated 09.04.2018, as the aspect regarding couple convenience is not considered properly. He has also submitted that no specific ground regarding administrative exigency is shown. Learned counsel has relied on the decision of this Tribunal in **O.A. No. 424/2023 (Shri Lahu Manikrao Chavan Vs. State of Maharashtra and Ors.)**, dated 05.09.2023.

8. On the other hand, learned Presenting Officer has submitted that the G.R. dated 09.04.2018 and particularly aspect pertaining to couple convenience in it is not applicable to the case of the applicant, as admittedly the applicant's husband is serving in private educational institute. He has also invited my attention to page Nos. 74 and 77 of paper book, which shows that two employees could not be accommodated as per their option. It is submitted that it may not be possible for the concerned authority to accommodate each and every employee. Learned Presenting Officer in support of his submissions relied on the decision of Hon'ble High Court of Bombay, Bench at Aurangabad in a case of **Santosh Nandalal Dalal Vs. State of Maharashtra and Ors. in W.P. No. 8813/2014**. According to learned P.O. the contentions of the applicant is not proper that

the employee can be transferred after two full tenures of three years each. He has also submitted that this judgment is also confirmed by the Hon'ble High Court of Bombay in a case of **Mr. Vishwas Laxman Gadade Vs. The State of Maharashtra and Ors. in W.P. No. 269/2023 along with Interim Application No. 8261/2024**, dated 16.01.2025.

9. One of the contentions of the applicant is that it is mid-term transfer, as the order of transfer is dated 30.06.2023. It is true that as per the provisions of Transfer Act, 2005, transfer of the Government servant shall ordinarily be made in the month of April or May. As per G.R. dated 30.05.2023, the period for General Transfers of the year 2023-24 has been extended by the State Government up to 30.06.2023. Order of transfer of the present applicant is dated 30.06.2023. So it is difficult to accept the contention of the applicant that it is mid-term transfer.

10. It is another contention of the applicant in para No. 15 of Original Application that she has not completed her normal tenure of six years on the said post and there is violation of Sections 3, (4)(4)(ii) and 4(5) of the Transfer Act, 2005.

11. Learned P.O. has submitted that normal tenure of the applicant is not six years, but it is three years. It is undisputed

fact that the applicant is working on the post of Circle Officer from 20.06.2019. Learned P.O. has relied on the decision in case of **Santosh Nandalal Dalal Vs. State of Maharashtra and Ors.** (cited supra), wherein the Hon'ble High Court in para No. 12 of the said judgment has held as under :-

“12) The combined reading of provisions of sections 3(1) and 4(1) shows that the normal tenure in a post of a government servant shall be 3 years. The first proviso to section 3(1) of the Act shows that an employee of Group 'C' from non secretariat service may be retained at that office or department for two full tenures (one full tenure consists of 3 years). The proviso does not give right to the employee to get two full tenures at that office or department but it only allows the employer, competent authority, to continue the Group 'C', non secretariat employee to continue at the office or department for six years. The second proviso shows that if the employee of Group 'C' is from secretariat service he cannot be continued in the same post for more than 3 years and he shall not be continued in the same department for more than two consecutive tenures. The plain reading of section 3(1) and both the provisos shows that Group 'C' employee who is not from secretariat service can be kept at that office or department for six years but if he belongs to secretariat service he cannot be kept in the same post for more than three years though he can be kept in the same department for two consecutive tenures. These restrictions are in public interests. These provisions on one hand, show that the State, competent authority can use these provisions for keeping one employee at the same station for two full tenures but the State is not expected to continue him after completion of two full tenures. Thus, the provision of section 3(1) with the two provisos, does not show that any right is conferred on Group 'C' employee from non secretariat service to work at one station for six years.”

12. It is undisputed fact that the applicant is from Group-C employee from non-secretariat service. It is held by the Hon'ble High Court that proviso to Section 3(1) of the Transfer Act, 2005,

does not show that any right is conferred on Group 'C' employee from non-secretariat service to work at one station for six years.

13. Recently, the Hon'ble High Court of Bombay in a case of **Mr. Vishwas Laxman Gadade Vs. The State of Maharashtra and Ors. in W.P. No. 269/2023 along with Interim Application No. 8261/2024, dated 16.01.2025** has held as under :-

“70) The conspectus of the above discussion is that the two provisos to sub-section (1) of Section 3 do not create any right in favour of employees in non-secretariat services in Group-C to claim two full tenures on the same post and the normal tenure of such non secretariat Group-C employees is only 3 years as provided for in Section 3(1) of the Act. It is for the transferring authority to decide whether such Group-C non-secretariat employee is to be transferred from the post held by him on completion of 3 years of service on that post or not. However, the moment such Group-C non-secretariat employee completes posting of 6 years on the same post, or on different posts in same office or department, the transferring authority is under a mandate under the first proviso to Section 3(1) to transfer him to another office or department.”

So it is difficult to accept the contention of applicant that normal tenure of the applicant is six years.

14. One of the grounds which the applicant is transferred is about violation of guidelines of G.R. dated 09.04.2018 and particularly non-consideration of couple convenience. It is

undisputed fact that the information was sought from respondent No. 2- Tahsildar, Ahmednagar in respect of list of employees, who are due for transfer and accordingly Tahsildar, Ahmednagar has forwarded the list including the name of the applicant. The present applicant herself has admitted that she has given options for transfer. Schedule-1 along with Annexure-2 of this G.R. dated 09.04.2018 is pertaining to the priorities to be given to the different aspects such as disability, ailment of employee or family members etc. Clause No. 5 of said Schedule-1 pertains to couple convenience. It is appropriate to reproduce said cause, which is as under :-

“5. पती-पत्नी एकत्रिकरणांतर्गत ज्या शासकीय कर्मचारी यांचे पती किंवा पत्नी, केंद्र किंवा राज्य शासकीय किंवा निमशासकीय कार्यालये, महानगरपालिका, नगरपरिषदा, जिल्हापरिषद किंवा पंचायत समिती अथवा शासकीय शैक्षणिक संस्थेमध्ये (शासकीय अनुदानित खाजगी शिक्षणसंस्था वगळून) कार्यरत आहेत, अशा शासकीय कर्मचार्यांना त्यांच्या पती वा पत्नी यांचे ज्या जिल्ह्यात वा तालुक्यात वास्तव्य आहे, यथास्थिती त्या जिल्ह्यात वा तालुक्यात प्रशासकीय सोयीनुसार व पद उपलब्धतेनुसार बदली करण्यात यावी.”

On minute perusal of this clause would suggest that the husband or wife of any Government servant who is serving in Government or Semi-Government office of Central or State Government, or serving in the office of Municipal Corporation, Municipal Council, Zilla Parishad, Panchayat Samiti or

Government Educational Institute (excluding Govt. aided private educational institute), then the transfer of such Government servant is to be considered and by keeping in mind the administrative convenience. The applicant has admitted that her husband is serving in private educational institute (para No. 11 of Original Application). So clause No. 5 of Schedule-1 of G.R. dated 09.04.2018 is not helpful to the applicant.

15. The applicant has also come with a case that there was no counseling of the applicant before her transfer. Above referred G.R. shows about stages of counseling. It is undisputed fact that the list of employees, who are due for transfer is forwarded by respondent No. 2-Tahsildar, Ahmednagar with details for perusal of Civil Services Board. As per Clause No. 5 of Stage No. 4 of Schedule-1 of above referred G.R. dated 09.04.2018, the Civil Services Board is required to consider the options of employee, earlier posting and preferences. Clause No. 4 in Stage No. 5 also shows that the Civil Services Board is required to consider administrative exigencies also including other aspects referred above, as it is not possible to post every employee as per their option.

16. Minutes of meeting of Civil Services Board shows that it has adopted procedure as per G.R. dated 09.04.2018. The said

G.R. shows that there is procedure for one to one counseling in respect of Class-D employees. As per clause No. 3 of said G.R., the employees in Group-C category is concerned, their transfers are to be effected as per the guidelines in G.R. and recommendations of Civil Services Board. It is discussed that the minutes of Civil Services Board shows about compliance of procedure.

17. Learned counsel for the applicant has invited my attention to list of recommendation regarding transfer of employees and particularly page No. 79 of paper book, where name of the present applicant is at Sr. No. 15 of the same page. According to him, other employees at Sr. Nos. 12 to 14 are given posting as per their option / choice. Learned counsel has tried to submit about different treatment to the applicant.

On the other hand learned Presenting Officer has referred page Nos. 74 and 77 of the same chart and submitted that other employees Shri D.R. Gosavi (page No. 74) and Shri A.G. Shinde (page No. 77) are also could not be accommodated as per their option/ choice. They were also transferred on administrative exigencies. Apart from this, there are also employees viz. Smt. V.R. Sarsar (page No. 76), B.J. Waghmare

(page No. 78 of paper book), Shri S.V. Gore (page No. 73) and Shri S.B. Pote (page No. 72), who also could not be accommodated as per their option/ choice. So it cannot be said that there is substance in submission of learned counsel for the applicant.

18. Learned counsel for the applicant has also contended in her rejoinder affidavit about say of respondent authorities that the transfer of the applicant is effected in view of the interchangeable post of Awwal Karkoon to Circle Officer. But it is the case of respondents that they have transferred the applicant on recommendation of Civil Services Board and administrative exigencies. The applicant has contended by referring seniority list and particularly page No. 108 of paper book which shows that the employees at District Seniority List Nos. 487 to 491 and 492 are senior to the applicant and they are not transferred. Minutes of Civil Services Board (page No. 59 of paper book) shows that one Smt. A.K. Padole, who said to be senior to the present applicant was posted mid-term and she has not completed tenure of three years, so her name is not considered for transfer. So far as other employees viz. Smt. T.R. Salve and Smt. A.B. Padalkar who are said to be senior to the present

applicant is concerned, it seems that they are transferred (see page Nos. 79 and 80 of paper book).

19. Learned counsel for the applicant has relied on the judgment of this Tribunal in **O.A. No. 424/2023 (Shri Lahu Manikrao Chavan Vs. State of Maharashtra and Ors.)**, dated 05.09.2023. It was grievance of the applicant in the said O.A. that after having worked for the period of four years in Tribal area, he had become entitled for his transfer on the post of his choice by virtue of Government Circular dated 11.07.2000 and G.R. dated 06.08.2002. So the facts in that case appear to be different and cannot be made applicable to the case of applicant.

20. The reasons discussed in forgoing paragraphs lead me to say that the applicant has failed to establish that the impugned order was passed in violation of the provisions of Section 3 and 4 of the Transfer Act, 2005. The applicant has also failed to establish that the said transfer order was issued without considering the aspect of couple convenience as given in G.R. dated 09.04.2018. Thus, the present Original Application deserves to be dismissed. Hence, the following order:-

ORDER

(i) The Original Application stands dismissed.

- (ii) Interim relief, if any, granted earlier stands vacated.
- (iii) There shall be no order as to costs.

(A.N. Karmarkar)
Member (J)

21. At this juncture, learned counsel for the applicant has submitted that interim relief was in existence till today and according the applicant is discharging her duties at existing post. So he has submitted for continuation of interim relief for two weeks.

22. Learned Presenting Officer has submitted that interim order was passed on 05.07.2023 and prior to it, the applicant was due for transfer. So learned P.O. has objected for continuation of interim relief.

23. The Original Application is disposed of on merits. Considering this fact, I am not inclined to continue the interim relief as prayed for by the applicant.

(A.N. Karmarkar)
Member (J)

PLACE : Aurangabad
DATE : 25.02.2025

KPB S.B. O.A. No. 545 of 2023 ANK Transfer