IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.733 OF 2023

DISTRICT : SOLAPUR
SUBJECT : TRANSFER

Shri. Vijaykumar Jangappa Mane)
Age: 52 yrs, Working as Awal Karkoon)
Office of the Tahsil, South Solapur,)
Dist. Solapur)
R/a 69 Sai Homes, Vijapur Road,)
Solapur – 413004)... **Applicant**

Versus

1) The Collector,)
Collector Compound,)
First Floor Main Building,)
Sidheshwar Peth,)
Solapur – 413004)

2) Ratnakar Arjun Kamble)
Circle Officer, Manjrewadi,)
Uttar Solapur,)
Solapur)

3) D.L. Swami)
Circle Officer, Kondi-Uttar Solapur,)
Solapur)... **Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : DEBASHISH CHAKRABARTY, MEMBER (A)

DATE : 08.05.2024.

JUDGMENT

1. The Applicant has invoked provisions of 'Section 19' of 'Administrative Tribunals Act 1985' to challenge 'Transfer Order' dated 17.06.2023 of 'District Collector, Solapur' to transfer Applicant from post of 'Treasury, Awal Karkun, Tahsil Office; South Solapur' to post of 'Awal Karkun, Tahsil Office, North Solapur'.

2. The learned Advocate for Applicant stated that 'District Collector, Solapur' had published on 10.05.2023 the 'Seniority List' of 'Awal Karkuns' who were eligible for 'General Transfers: 2023'; wherein Applicant was shown at 'Sr. No. 41'. The 'District Collector, Solapur' had alongwith published list of probable 'Vacant Posts' of 'Awal Karkuns'.

3. The learned Advocate for Applicant mentioned that it was pertinent to note that 'Option No. 4' out of '10 Options' submitted by Applicant; had remained available after 'General Transfers: 2023'; so Applicant could have been accommodated on this 'Vacant Post' of 'Circle Officer, Tirhe'.

4. The learned Advocate for Applicant contended that both 'Respondent No.2' and 'Respondent No.3' were junior to Applicant but yet they have been transferred to posts of 'Circle Officer' in newly established 'Revenue Circles' which had seen sought by Applicant as 'Option No. 2' and 'Option No. 6'. The Applicant was not transferred to post of 'Circle Officer' but instead was posted as 'Awal Karkun, Tahsil Office; North Solapur'.

5. The learned Advocate for Applicant further stated that 'Caste Tribe Revenue Employees Organization; District Solapur' had also submitted representation to 'District Collector, Solapur' on 19.06.2023 to point out that during 'General Transfer: 2023' injustice had been done towards employees belonging to 'Schedule Castes'.

6. The learned Advocate for Applicant thereupon stated that Applicant had made representation to 'District Collector, Solapur' on 21.06.2023 to request for transfer to 'Vacant Post' of 'Circle Officer, Tirhe' which was his 'Option No. 4'.

7. The learned Advocate to Applicant proceeded to cite some instances to highlight that 'District Collector, Solapur' had acted in partisan manner to favour Shri. S.A. Patil, who was subsequently proposed to be transferred to post of 'Circle Officer, Tirhe' on grounds of 'Personal Hardships'; although this was 'Option No.4' given by of Applicant. The post of 'Circle Officer, Shelgi' where Shri. S.A. Patil was serving is hardly at distance of 9 km whereas the post of 'Circle Officer, Tirhe' sought by him was located at distance of 20 km from place of his residence. Thus though such reason of 'Personal Hardships' was hard to believe; yet it was given precedence by 'District Collector, Solapur' over request made by Applicant. Shri S.A. Patil also belongs to cadre of 'Awal Karkun' yet he was considered for transfer to post of 'Circle Officer, Tirhe'; whereas Applicant has never been posted to as 'Circle Officer', which was contrary to policy guidelines in Revenue & Forest Department GR dated 21.11.1995 read with 'Revenue & Forest Department' GR dated 29.10.2020 which mentions that 'Awal Karkun' can be transferred

to posts of 'Circle Officer' so that they get wider experience required for next promotion to cadre of 'Naib Tahsildar'.

8. The learned Advocate for Applicant then emphasized that next 'Superior Transferring Authority' for granting approval to 'Mid Term Transfers' of 'Awal Karkuns' and 'Circle Officers' was 'Hon'ble Minister in Charge of Revenue Department' as per provision of 'Section 6' of the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' and not 'Divisional Commissioner, Pune' who had approved all proposals of 'Mid Term Transfers' submitted by incharge 'District Collector, Solapur' on 19.06.2023.

9. The learned Advocate for Applicant emphasized that 'C.S.B.' had acted in non-transparent manner as no reasons were recorded as to why Applicant was not recommended for transfer to post of 'Circle Officer, Tirhe' though it had been kept vacant by 'District Collector, Solapur' at time of 'Transfer Order' dated 17.06.2023. The 'District Collector, Solapur' therefore had acted in discriminatory and prejudicial manner against Applicant as he had not been considered for any of the '10 Options' submitted on 16.05.2023 as per GAD GR dated 09.04.2018.

10. The Applicant in M.A. No. 483/2023 had contended that as letter dated 04.07.2023 of 'Divisional commissioner, Pune' had conveyed approval to all proposals of 'Mid Tern Transfer' submitted by 'District Collector, Solapur' on 19.06.2023 as per provisions of 'Section 4(4)(ii)' and 'Section 4(5)' of the 'Maharashtra Government Servants Regulation of transfer and Prevention of Delay in Discharge of Official Duties Act,

2005' therefore he had been appointed on 'Vacant Post' of 'Circle Officer, Tirhe'. Hence it was necessary to implead him as 'Respondent No.4'.

11. The Applicant in M.A. No. 483/2023 was accorded an opportunity of being heard in 'Interest of Justice'; though not as 'Respondent No.4' since 'Transfer Order' of Applicant in M.A. No. 483/2023 had not been issued by 'District Collector, Solapur' necessitating that he be impleaded as 'Respondent No. 4'.

12. The learned PO relied on 'Affidavit-in-Reply' dated 19.07.2023 filed on behalf of 'District Collector, Solapur' to mention that prior to recommending transfer of Applicant to post of 'Awal Karkun, Tahsil Office, North Solapur' the entire 'Service History' of Applicant as well as '10 Options' submitted by Applicant were duly considered by 'CSB'.

13. The learned PO then mentioned that as per 'CSB' recommendation; Applicant was transferred by 'District Collector, Solapur' as 'Competent Transferring Authority' to post of 'Awal Karkun, Tahsil Office, North Solapur'.

14. The learned PO contended that Applicant was seeking to interpret GAD GR dated 09.04.2018 as per his own convenience. She emphasized that as per GAD GR dated 09.04.2018 even if Government Servants have given '10 Options' the 'Competent Transferring Authority' still has authority to transfer them on any suitable post on grounds of 'Administrative Exigency' or 'Public Interest'.

15. The learned PO thereupon mentioned that subsequently proposal to fill up some posts including of 'Circle Officer; Tirhe' had been

submitted by 'District Collector, Solapur' to 'Divisional Commissioner, Pune Division' on 19.06.2023. The 'Divisional Commissioner, Pune Division' by letter dated 04.07.2023 had approved all proposals submitted by 'District Collector, Solapur'.

16. The learned PO concluded by emphasizing that in pursuance of approval given by Divisional Commissioner, Pune Division, on 04.07.2023 the 'Vacant Post' of 'Circle Officer, Tirhe' was not available for Applicant.

17. The Applicant originally belongs to cadre of 'Awal Karkun' and thus does not enjoy any precedence over those who originally belong to cadre of 'Circle Officer' as per extant guidelines in Revenue and Forest Department GR dated 21.11.1995 & Revenue & Forest Department GR dated 29.10.2020 which only provides the framework of an 'Administrative Arrangement' for employees of both cadres of 'Circle Officers' and 'Awal Karkun' to gain wider experience for next promotion to cadre of 'Naib Tahsildar'.

18. The Applicant had undoubtedly completed 'Normal Tenure' of 3 Years as 'Treasury, Awal Karkun, Tahsil Office; South Solapur'. Thus, if Applicant was not to be recommended by 'C.S.B' for any of the '10 Options' then he could have even been allowed to serve upto 6 Years on incumbent post of 'Treasury Awal Karkun, Tahsil Office , South Solapur' as per first 'Proviso Clause' of 'Section 3(1)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

19. The Applicant has claimed discrimination on grounds that many others in cadre of 'Awal Karkuns' including those who were junior had been given more than one opportunity to serve on various posts of 'Circle Officer' by citing instances of 'Respondent No.2' and 'Respondent No.3'. Further, contention of Applicant is that decision to post him as 'Awal Karkun, Tahsil Office, North Solapur' in office of District Collector, Solapur' was in contravention of policy guidelines in GAD GR dated 09.04.2018.

20. The case of Applicant is therefore required to be examined from perspective of whether there were any shades of 'Arbitrary Exercise' of 'Statutory Powers' by 'District Collector , Solapur' and whether 'General Transfers: 2023' were done with 'Application of Mind'. Further if the decision taken in respect of Applicant was free from 'Malice' or 'Prejudice' as expected from 'Competent Transferring Authority' acting under provision of under 'Section 3(1)' and 'Section 6' of the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' and if implementation of policy guidelines in GAD GR dated 09.04.2023 had been implemented in both letter and spirit by 'District Collector, Solapur'.

21. The Applicant originally belongs to cadre of 'Awal Karkun'. So, he does not enjoy higher entitlement as compared to those originally from cadre of 'Circle Officers' to be considered only for post as 'Circle Officer' especially those which require prior experience of working on posts of 'Talathi' and have been classified as 'Field Posts' on account having

independent territorial charges such as 'Option No.1' to 'Option No.8' of Applicant. The Applicant nonetheless could have been considered on comparative seniority and experience to be posted as 'Awal Karkun' in office of 'Sub Divisional Officer No.1; Solapur' which was 'Option No.9' or 'Awal Karkun' in 'Mining Branch' of office of 'District Collector, Solapur' which was 'Option No.10'. The choices given by Applicant as 'Option No.9' and 'Option No.10' were evidently overlooked without sufficient justification by 'CSB'.

22. The post of 'Circle Officer, Tirhe' which was 'Option No.4' of Applicant was therefore directed to be kept vacant by way of 'Interim Relief' granted on 11.07.2023 because 'prima-facie' it was observed to be an instance of 'Arbitrary Exercise' of 'Statutory Powers' under 'Section 3(1)' read with 'Section 6' of the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' and non-observance of policy guidelines in GAD GR dated 09.04.2018 by 'District Collector, Solapur'.

23. The germane fact to note about 'General Transfers : 2023' for both cadres of 'Awal Karkun' and 'Circle Officer' is that the entire exercise had been undertaken and completed during the brief period from 04.05.2023 to 22.06.2023 when 'Additional Collector, Solapur' was holding 'Additional Charge' of post of 'District Collector, Solapur'. The 'Additional Charge' of post of 'District Collector, Solapur' was expected to have been held with deep sense of restrain by 'Additional Collector, Solapur'. The 'Additional Collector, Solapur' in fact should not have

issued Transfer Orders dated 17.06.2023 in undue haste when it was known to him that incumbent 'District Collector, Solapur' was to resume back duties on 23.06.2023. The case of Applicant thus highlights issues relating to ethico-legal competence of 'Government Servants' who while briefly holding 'Additional Charge' of 'Competent Transferring Authority' or next 'Superior Transferring Authority' choose nonetheless to exercise 'Statutory Powers' in the interregnum under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

24. The 'Additional Collector, Solapur' while holding 'Additional Charge' of post of 'District Collector, Solapur' soon after issuing 'Transfer Orders' dated 17.06.2023 of 'Awal Karkuns' and 'Circle Officers' acted in greater haste when on 19.06.2023 he submitted proposals to 'Divisional Commissioner, Pune' for transfer some 'Awal Karkuns' and 'Circle Officers' based on their requests and it included posts of 'Circle Officers' or 'Awal Karkuns' which had been sought by Applicant including the post of 'Circle Officer, Tirhe'.

25. The 'Additional Collector, Solapur' who was well aware that he was holding 'Additional Charge' of post of 'District Collector, Solapur' only for limited period of time upto 23.06.2023 should have displayed circumspection by not issuing 'Transfer Order' dated 17.06.2023 of 'Awal Karkuns' and 'Circle Officers' and thereafter brazenly submitting proposal on 19.06.2023 for 'Mid-Term Transfers' based on requests to 'Divisional Commissioner, Pune' of few 'Awal Karkuns' and 'Circle

Officers' to posts which had earlier been denied to those who were more eligible like Applicant having completed 'Normal Tenure' of 3 Years and submitted '10 Options' as per policy guidelines GAD GR dated 09.04.2018.

26. The provisions of 'Rule 7' of the 'Maharashtra Land Revenue Code 1966' distinctly brings out the superior role and wider responsibilities of 'District Collector' as incharge of 'Revenue Administration' and emphasizes that 'Additional Collector' is just one of the many 'Revenue Officers' appointed to assist 'District Collector'. The 'District Collector' as per provisions of Rule 7 is specifically required to make appointments to posts of 'Circle Officers'. The provisions of 'Rule 7' of 'Maharashtra Land Revenue Code 1966' which are pertinent are as follows :-

> "**7.**(1) The State Government shall appoint a Collector for the City of Bombay Revenue officers in and for each district, who shall be in charge of the revenue administration thereof; district. and a Tahsildar for each taluka who shall be the chief officer entrusted with the local revenue administration of a taluka.
>
> (2) The State Government may appoint one or more Additional Collectors in the City of Bombay and if each district and so many Assistant Collectors and Deputy Collectors (with such designations such as "First", "Second", "Super", etc. Assistants as may be expressed in the order of their appointment), one or more Naib-Tahsildars in a taluka, and one or more Additional Tahsildars or Naib- Tahsildars therein and such other persons (having such designations) to assist the revenue officers as it may deem expedient.

(3) Subject to the general orders of the State Government, the Collector may place any Assistant or Deputy Collector in charge of one or more sub-divisions of a district, or may himself retain charge thereof. Such Assistant or Deputy Collector may also be called a Sub-Divisional Officer.

(4) The Collector may appoint to each district as many persons as he thinks fit to be Circle Officers and Circle Inspectors to be in charge of a Circle, and one or more Talathis for a saza, and one or more Kotwals or other village servants for each village or group of villages, as he may deem fit."

27. The 'Additional Collector, Solapur' while holding the 'Additional Charge' of post of 'District Collector, Solapur' by such acts of commission and omission all done in celerity has thus failed to demonstrate non-partisan attitude and sense of fairplay while acting as 'Competent Transferring Authority' for cadres of 'Awal Karkuns' and 'Circle Officers'. The case of Applicant highlights another classic instance of what must be understood as 'Arbitrary Exercise' of 'Statutory Powers' under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' because it stands magnified on one hand by perceptible 'Malice' or 'Prejudice' against some 'Awal Karkuns' and 'Circle Officers' and enlarged on other hand by noticeable 'Benevolence' & 'Favour' towards some other 'Awal Karkuns' and 'Circle Officers'.

28. The 'Divisional Commissioner, Pune' was well aware of the fact that 'District Collector, Solapur' was to join back on 23.06.2023. Thus

'Divisional Commissioner, Pune' was expected to display much greater restraint instead of forthwith granting approval on 04.07.2023 to all proposals of 'Mid-Term Transfers' submitted in undue haste by 'Additional Collector, Solapur' on 19.06.2023.

29. The 'Divisional Commissioner, Pune' should have referred back the proposal for reconsideration of 'District Collector, Solapur' after he had joined back on 23.06.2023 Instead the 'Divisional Commissioner, Pune' chose not only to approve lackadaisically all proposals but even unabashedly conveyed that the 'Mid Term Transfers' of 'Awal Karkuns' and 'Circle Officers' were being approved subject to final decisions in cases like those of Applicant.

30. The utter brazenness displayed by 'Additional Collector, Solapur' while holding 'Additional Charge' of post of 'District Collector, Solapur' and cavalier approach of 'Divisional Commissioner, Pune' in granting approval to 'Mid Term Transfers' of 'Awal Karkuns' and 'Circle Officers' are not just discreditable but reason enough to justify grant relief to Applicant as both 'Competent Transferring Authority' and next 'Superior Transferring Authority' have acted with cohesive intent to promote subjectivity and arbitrariness while exercising 'Statutory Powers' under provisions of 'Section 3(1)' and 'Section 6' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act 2005'.

31. The Hon'ble Supreme Court of India in the case of ***East Coast Railway & Another Vs. Mahadev Appa Rao & Ors. (2010) 7 SCC 678***

has unequivocally emphasized on 'Application of Mind' and recording of reasons by 'Public Authority'; so that there is no scope left for arbitrariness in taking decisions. The Hon'ble Supreme Court of India has observed the following :-

> *"There is no precise statutory or other definition of the term "arbitrary". Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making an order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable."*

32. The Hon'ble Bombay High Court in ***Seshrao Nagarao Umap Vs. State of Maharashtra, (1985)II LL J 73(Bom)*** has summarized the law on the aspect of 'Colourable Exercise' of 'Statutory Powers' with intent to accommodate other Government Servants by observing that :-

> *"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilize the services of its employees.*

However this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colorable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair."

33. The Hon'ble Supreme Court of India and Hon'ble High Courts have observed in several Judgments including in ***UOI v HN Kirtania, 1989 (4) Serv LR 9 (SC) : (1989) 3 SCC 445 : JT 1989 (3) SC 131 : AIR 1989 SC 1774; Abani Kanta Ray v State of Orissa JT 1995 (7) SC 467 : 1995 Supp (4) SCC 169; State of Punjab v Joginder Singh Dhatt, AIR 1993 Sc 2486 : 1994 SCC (Cri) 46; State of MP v Shri Arjun Singh, AIR 1993 SC 1239 : (1993) 1 SCC 51*** have observed that an order of transfer should not normally be interfered with unless there are strong and pressing grounds like Malafides, Arbitrariness etc. rendering the transfer order illegal. However, these are general principles to be examined as the order of transfer may be silent but the operative reasons which are often kept hidden. In such circumstances, 'Courts of Law' are not expected to fold its hands merely because the Appropriate Government asserts that the transfer

was bona fide. The Appropriate Government should place full materials before the 'Courts of Law', so that it could determine for itself whether the transfer was bona fide or not as has been observed in ***Prem Parveen v UOI, 1973 (2) Serv LR 659 (Del).*** Further it has been observed that in exercising its jurisdiction, if necessary, it is open to 'Courts of Law' to crack the shell of innocuousness which might wrap the order of transfer and by piercing the veil to find the operative reason behind the order of transfer as was observed in ***C. Ramanathan V Acting Zonal Manager, Food Corp of India, 1980 (1) Serv LR 309 (Mad-DB); see also Sri Krishna Kanto Roy v The Director of Primary Education 1990 (1) Cal LJ 310.***

34. The Hon'ble Supreme Court of India in ***B Varadha Rao v State of Karnataka, 1986 (3) Serv LR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287*** has observed that transfer is an ordinary incident of service and therefore does not result in any alteration of any condition of service to disadvantage of Government Servants. The Hon'ble Supreme Court of India has also emphasized that an employee cannot as a matter of right, seek transfer to a place of his choice as in ***K. Sivankutty Nair v. Managing Director, Syndicate Bank, 1984 (2) Serv LR 13 (Kant); Chief General Manager (Telecom) v. Rajendra Ch. Bhattacharjee, (1995) 2 SCC 532 : SC 813 : (1995) 2 Serv LR 1***.

35. The Hon'ble Supreme Court of India in ***B Varadha Rao v State of Karnataka, 1986 (3) Serv LR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287*** has further observed that continued posting at one station or in

one department not conducive to good administration as such continued posting creates vested interest. The Hon'ble Supreme Court of India in ***UOI v NP Thomas, AIR 1993 SC 1605 : (1993) Supp (1) SCC 704*** has also observed that since posts in public employment are generally transferable post, it follows that an employee has no vested right to remain at the post of his posting. The Hon'ble Supreme Court of India in ***UOI v SL Abbas, AIR 1993 SC 2444 : (1993) 4 SCC 357*** has even observed that who is to be transferred where, is a matter for the appropriate authority to decide.

36. The 'District Collector, Solapur' upon relying on an enhanced vision of law by referring to the wide canvas of judgments of Hon'ble Supreme Court of India and Hon'ble High Courts enumerated above and by taking into due consideration specific observations & findings about case of Applicant must undertake an exercise of remediation by holding 'Special Meeting' of 'CSB' to belatedly consider request of Applicant made on 16.05.2023 to be transferred to vacant post 'Circle Officer, Tirhe' which was his 'Option No. 4' at time of 'General Transfers: 2023'. The 'District Collector, Solapur' based on recommendation of 'CSB' to thereafter pass 'Reasoned Order' within 'Two Weeks'. Hence the following order:-

ORDER

A) The Original Application is Partly Allowed.

B) No Order as to Costs.

Sd/
(Debashish Chakrabarty)
Member (A)

Place: Mumbai
Date: 08.05.2024
Dictation taken by: A.G. Rajeshirke.

Uploaded on:_____

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