

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 546 OF 2021
(Subject – Transfer)**

DISTRICT : AHMEDNAGAR

Dipak S/o Vitthal Rohakale,)
Age : 44 years, Occu. : Service)
As Sub Registrar Grade-I at)
Rahuri, Dist. Ahmednagar.)
R/o Flat No. 4, Sai Prasad Apartment,)
Agarkar Mala, Station Road, Smruti)
Colony, Ahmednagar. (Cell No. 9822410081)) **.. APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through: The Secretary,)
Revenue and Forest Department,)
Chamber No. M-7A, Maznine Floor,)
Madam Kama Road, Hutatma)
Chowk, Mumbai – 32.)
- 2) **The Inspector General of**)
Registration and Stamps,)
New Administrative Building,)
Ground Floor, Opp. Council Hall,)
Pune-1, Maharashtra State, Pune.)
- 3) **The Joint District Registrar**)
Class-I & Collector of Stamps,)
Collector Office Campus,)
Ahmednagar.)
- 4) **Shri Tukaram S/o Haribhau Palve,**)
Age : Major, Occupation : Service)
As Sub Registrar Grade-I at)
Shrigonda, Dist. Ahmednagar.) **.. RESPONDENTS**

APPEARANCE : Shri S.D. Joshi, Advocate for the Applicant.

: Smt. Deepali S. Deshpande, Presenting Officer
for Respondents.

CORAM : **SHRI BIJAY KUMAR, MEMBER (A).**
DATE : **26.10.2021.**

ORDER

1. This Original Application No. 546 of 2021 has been filed by one Shri Dipak S/o Vitthal Rohakale on 15.09.2021 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned transfer order bearing outward No. Transfer 2021/C.N./M-1, dated 30.08.2021 issued by the Secretary, Revenue and Forest Department, Government of Maharashtra, thereby transferring the original applicant from the post of Sub-Registrar Grade-I, Rahuri to the post of Sub-Registrar Grade-I, Shrigonda, Dist. Ahmednagar. By the same transfer order bearing the same outward number, one Shri Tukaram S/o Haribhau Palve has been posted in place of the original applicant.

2. The four respondents had been duly served notices. Service affidavit has been filed on 30.09.2021. Affidavit in reply has been filed on behalf of respondent Nos. 1 and 2 on 08.10.2021. In addition, the minutes of the meeting of Civil Services Board (1) held on 27.08.2021 and related documents have been submitted

by the respondents which have been marked collectively as 'X' for identification and taken on record. The respondent Nos. 3 & 4 have not filed affidavit in reply.

3. Brief Facts of the Case:-

(a) The applicant had initially joined the service in the office of Sub-Registrar, Grade-1 as a Clerk. In due course, he got promotion on the post of Sr. Clerk followed by promotion on the post of Sub-Registrar Grade-I on seniority cum merit basis. After getting promoted as Sub-Registrar Grade-I, the applicant worked at following places from the date of posting as mentioned below:-

- (i) Sub Registrar Grade-I,
Ralegaon, Tq. Ralegaon,
Dist. -Yeotmal. from 20.05.20217
- (ii) As Valuation Sub-Registrar
in the Office of
Jt. District Registrar Class-I,
Ahmednagar. from 01.11.2018
- (ii) Additional charge of the post of
Sub Registrar Grade-I,
Rahuri from 28.02.2020
- (iii) Regular Charge of
Sub-Registrar Grade-I,
Rahuri at Rahuri from 10.08.2020
- (iv) Transferred to Shrigonda
by impugned order from 13.09.2021

4. Relief Prayed for – Following reliefs have been prayed for by the applicant vide para 8 of this Original Application, which are reproduced as follows:-

- “A) *This Original Application may kindly be allowed.*
- B) *By issue of an appropriate order or direction, the impugned transfer order bearing outward No. Transfer 2021/C.N./M-1 dated 30.08.2021 issued by respondent No. 1, thereby, transferring the applicant from the post of Sub-Registrar Grade-I, Rahuri to the post of Sub-Registrar Grade-I, Shrigonda may kindly be quashed and set aside.*
- (C) *By issue of an appropriate order or direction, the respondent No. 1 to 3 may kindly be directed to retain the applicant on the present post and station till August 2023.”*

5. Interim relief sought – Following interim reliefs have been sought by the applicant as mentioned in para 9 of the Original Application :-

- “a) *Pending the hearing and final disposal of this Original Application, the execution, implementation and the operation of the transfer order dated 30.08.2021 thereby transferring the applicant from the post of Sub-Registrar Grade-I, Rahuri to the post*

of Sub-Registrar Grade-I, Shrigonda may kindly be stayed.

- c) *Pending the hearing and final disposal of this Original Application, the respondent No. 1 to 3 may kindly be restrained from relieving the applicant and in the event of relieving, may kindly be directed to repost the applicant on the post of Sub-Registrar Grade-I, Rahuri.*
- c) *Any other relief to which the applicant is deemed entitled in the interest of justice may kindly be granted.”*

6. However, interim relief was not granted taking into consideration of the fact that it is possible to grant effective relief in terms of prayer after having full details of background facts including the process followed and giving the respondents opportunity to present their say.

7. Grounds for praying for relief: - The original applicant has given following grounds for grant of relief:-

“I) That, considering the date of joining of the applicant on the present post regularly in the month of August 2020 and w.e.f. February 2020 by way of additional charge, the applicant was not due for transfer.

II) That, the order of transfer has not been officially served upon the applicant. The applicant has secured the

same from the social media (WhatsApp). This by itself does not absolve the respondents from complying with the mandatory rules under General Conditions of Service framed under proviso to Article 309 of the Constitution of India.

III) That, the order of transfer is stated to have been issued on administrative grounds. However, the compliance of Section 4(4) (ii) and 4(5) is also spelt in the text of transfer order issued by government. Both these eventualities cannot go together since the consequences flowing from both these eventualities differ to a greater extent, because in respect of administrative transfer, the employee is entitled to avail the joining time whereas in case of request transfer no joining time is allowed as per the rules and therefore, the order of transfer deserves to be set aside at the threshold.

IV) That, the applicant has never made request for his transfer out of Rahuri. Therefore, there is no question of issuing the transfer order on his request. It however appears that, the respondent No. 4 was interested in coming to Rahuri and he appears to have made a request. However, the authorities could have rejected the request of respondent No. 4 on the strength of the fact that, the applicant has not completed his tenure nor his post was vacant.

V) That, the order of transfer has been issued by showing undue favor to accommodate respondent No. 4.

The respondents have not complied with the provisions of Section 4(4) and 4(5) of the transfers act.

VI) That, the applicant is entitled to be retained on the present post and station till August 2023 when he will complete his normal tenure on one post.

VII) That, even otherwise the order of transfer is bad in law and the same deserves to be quashed and set aside.”

8. The respondent Nos. 1 and 2 have submitted as follows, through affidavit in reply :-

(a) The applicant has already been relieved from the post of Sub-Registrar Grade-I, Rahuri in pursuance of the transfer order dated 30.08.2021 and the respondent No. 4 has joined in his place. Therefore, the matter (the present O.A.) becomes infructuous; hence, the O.A. filed by the applicant is required to be rejected.

(b) *The name of the applicant is already in request consideration list of Civil Services Board. (Emphasis supplied)*

(c) As per the provisions of Transfer Act, 2005, the Hon'ble Minister has power to transfer the employees working in the office of respondent No. 1, therefore, considering the administrative workload and necessity, the

Hon'ble Minister has recommended the applicant for transfer from Rahuri to Shrigonda.

(d) As per the regulation of Transfer Act, 2005, as a head of department, the Minister can transfer the employees considering the necessity of the workload and smooth administration of the department.

9. In order to examine the process followed by the respondents in issuing the impugned order of transfer, photocopy of the minutes of meeting of the Civil Services Board (1) held on 27.08.2021 and related file notings had been called for. On examination of the minutes of meeting of the Civil Service Board (1) dated 27.08.2021 and file notings following facts come to our notice:-

(a) It is noticed that the name of the original applicant has been mentioned at Sr. No. 6 of the list of 48 names of Sub-Registrar Class-I put up for consideration by the Civil Services Board for transfer under 10% special category (Request Transfer). The applicant contends that he never applied for request transfer.

(b) After examining the proposal submitted before it, the Civil Services Board proposed names of only 23 Sub-

Registrars Class-I for approval by the Minister (Revenue) from the list of 48 names. It is noteworthy that the Civil Service Board neither recommended name of the applicant nor recommended the name of respondent No. 4 for transfer.

(c) It is also noticed that the name of the applicant and respondent No. 4 were added by the Hon'ble Minister (Revenue). Accordingly, the Additional Chief Secretary (Revenue) and subordinate officers of the department caused transfer order to be issued incorporating names of the original applicant and the respondent No. 4.

10. The matter was argued by the learned Advocate for the applicant and learned Presenting Officer for the respondent Nos. 1 to 3. Respondent No. 4 did not participate at any stage of proceedings before the Tribunal, though duly served with notice. Learned advocate for the applicant took the Tribunal through provisions of s 4 (4) (ii) and s. 4 (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short, Transfers Act, 2005) and mentioned that the respondents have not clarified following critical issues:-

- a) Whether there is any documentary evidence on record to show that the applicant had requested for transfer to Shrigonda based on which his transfer has been shown by respondent No. 2 as “*Request Transfer*”?
- b) Provisions of s. 4 (4) (ii) and s. 4 (5) had been explicitly mentioned in the agenda note submitted by the concerned Officer to the Civil Services Board in order to bring the legal provisions to the notice of the Civil Services Board as well as the competent transferring authority. In spite of that, no reasons in writing have been recorded by the Civil Services Board while proposing mid-tenure transfer followed by issue of impugned transfer orders by the competent transferring authority. Therefore, the impugned transfer orders have been issued in violation of mandatory provisions under the Transfers Act, 2005 with *mala-fide* intention and as such, are bad in law.
- c) Respondents have stated in affidavit in reply filed by them that as per the regulation of Transfer Act, 2005, as a head of department, the Minister can transfer the employees considering the necessity of the workload and smooth administration of the department. However, the

respondents have not mentioned the provisions of the said act under which the Minister of the Department have unfettered powers to transfer government servants mid-tenure and mid-term without recording reasons in writing and without recommendations of the Civil Services Board.

- d) The respondents have stated in affidavit in reply that the applicant has already been relieved and respondent no. 4 has already joined in his place therefore, the original application has become infructuous. This statement of respondents is without any legal basis and therefore, is misconceived. The impugned order is bad in law and therefore, deserves to be quashed and set aside.

11. Learned Presenting Officer was provided opportunity to cite provisions of law in the Transfers Act, 2005 or to cite case laws to substantiate the submissions made on behalf of respondent Nos. 1 and 2, by granting time keeping the final hearing part-heard on 08.10.2021. Despite this, on resuming the final hearing on 13.10.2021, the learned Presenting Officer expressed inability to respond to above issues for want of any instructions from the respondents and also could not cite provisions of law to substantiate the submissions made by the respondents in

affidavit in reply. Instead, the learned Presenting Officer limited her arguments to reiterating the contents of the affidavit in reply filed on behalf of respondent Nos. 1 and 2.

12. For ready reference, the provisions of Section 4 (4) (ii) and Section 4(5) of the Transfers Act, 2005 are being reproduced as follows:-

“4. Tenure of Transfer.

4 (4) *The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May: Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:-*

(i)

(ii) *where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority;*

(5) *Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior [approval of the immediately superior] Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post.”*

13. Conclusions: The impugned transfer orders have been issued by office of respondent No. 1 vide order No. बदली २०२१/ प्र.क. १३७/म १, मंत्रालय मुंबई , दिनांक ३० ऑगस्ट, २०२१ as transfer under provisions of Section 4 (4) (ii), which deals with *mid-term transfer in exceptional circumstances or special reasons* and, also under provisions of Section 4 (5) of the Transfers Act, 2005, which deals with mid-tenure transfers in special cases. Mid-term transfers have been allowed by the state government in exceptional circumstances of prevalence of second wave of COVID-19 pandemic, by passing government resolution stating detailed reasons. However, the competent transferring authority has passed impugned transfer orders not only without having recommendations from the Civil Services Board but also without recording any reasons in writing for passing impugned transfer order which is a mid-tenure transfer under s. 4 (5) of the Transfers Act, 2005. On the other hand, the respondent No. 2 has communicated transfer order vide his letter No. का ९/आस्था ४/ वर्ग-२ बदल्या/का.मु./२०२१/२१, दिनांक ०७.०९.२०२१ mentioning the transfer of the applicant as a 'request transfer'; however, the basis on which the impugned transfer order has been categorized as "request transfer" by the respondent No. 2 has gone without any clarification / justification. Therefore, in my considered opinion,

the impugned transfer order not only violates the provisions of Section 4 (5) of the Transfers Act, 2005, but the respondents have also evaded to respond to the claim of the applicant that his transfer had been classified as “On Request Transfer” without any request from him for such transfer. In view of it, it is necessary to examine this issue further in order to ensure sanctity of process run by senior administrative officers. Therefore, I proceed to pass following order:-

ORDER

The Original Application No. 546 of 2021 is hereby allowed in following terms:-

- (A) The impugned transfer orders of the original applicant and respondent No. 4 issued by the respondent No. 1 bearing outward No. Transfer 2021/C.N./M-1 dated 30.08.2021 are, hereby, quashed and set aside.
- (B) The respondents are directed to pass suitable orders restoring posting of the original applicant as Sub-Registrar Grade-1, Rahuri, at Rahuri within a period of 15 days of receipt of this order.

(C) The respondent No. 2 is, hereby, directed to file a short affidavit within a period of three weeks from receipt of this order, stating the basis of classification of transfer of the original applicant as a “Request Transfer”.

(D) No order as to costs.

PLACE : AURANGABAD.

DATE : 26.10.2021.

(BIJAY KUMAR)

MEMBER (A)

KPB S.B. O.A. No. 546 of 2021 BK 2021 Transfer