

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

**ORIGINAL APPLICATION NO. 565 OF 2021
(Subject – Transfer)**

DISTRICT : AURANGABAD

Anil Vithalrao Chatlawar,)
Age : 56 years, Occu. : Service as)
Joint Sub-Registrar, Grade-2,)
R/o. Flat No. 11, 3rd Floor, Hari Om Tower,)
Near Govt. Engineering College, Osmanpura,)
Aurangabad. Mob. No. 9850858699.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through: The Principal Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai - 32.)
2. **The Inspector General of Registration)
& Stamp Controller,** Maharashtra State,)
New Administrative Building, Pune-1.)
3. **The Joint District Registrar,**)
Class-1 & Collector of Stamps,)
Aurangabad.)

... **RESPONDENTS**

APPEARANCE : Shri K.B. Jadhav, Advocate for the Applicant.

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

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **04.03.2022.**

ORDER

1. Challenge in this Original Application is made to the impugned order of transfer of the applicant dated 09.08.2021 (Annexure A-4) issued by the respondent No. 1 i.e. the State of Maharashtra, thereby transferring him from the post of Joint Sub-Registrar, Grade-2, Sillod, Dist. Aurangabad to the post of Joint Sub-Registrar, Grade-2, Bhandara No. 1 on vacant post.

2. The facts giving rise to this Original Application can be stated in brief as follows:-

(a) The applicant was initially appointed on the post of probationary Sub-Registrar, Grade-1 in the office of District Joint Registrar, Class-1 and Collector of Stamps, Aurangabad on 22.06.1993. Thereafter, he was posted at different places on equivalent posts. He was promoted by the order dated 01.04.2006 on the post of Joint Sub-Registrar, Grade-2 and was posted in the office of Sub-Registrar, Grade-2, Haveli No. 2. Thereafter, he worked at different places till he was transferred by the order dated 27.11.2017 (part of Annexure A-1 collectively) on the post of Joint Sub-Registrar, Grade-2, Sillod, Dist. Aurangabad. He joined the said post at Sillod on 01.01.2018 being

relieved by the order dated 31.12.2017 (Part of Annexure A-1 collectively) from his earlier posting at Pune.

(b) During his posting at Sillod, he submitted application dated 13.07.2020 (part of Annexure A-2 collectively), thereby he requested his transfer at Aurangabad on the post of Joint Sub-Registrar, Grade-2, Aurangabad No. 6 on the ground that his old aged mother is suffering from paralysis and he could take her care, if he is accommodated at Aurangabad.

(c) The applicant was due for transfer in April/May 2021 being completed his tenure of more than three years at Sillod. The options were called for the General Transfers of the year 2021. Pursuant to that, the applicant submitted his options in pro-forma on 05.04.2021 (Annexure A-3) giving one option in the office of Joint Sub-Registrar, Grade-2, Jalna and two options in different offices at Joint Sub-Registrar, Grade-2, Aurangabad.

(d) It is further contended that thereafter the applicant came to be transferred by the impugned transfer order dated 09.08.2021 (Annexure A-4) issued by the respondent No. 1. The said order shows that it is issued on

administrative ground. Immediately thereafter, the applicant made representation dated 10.08.2021 (Annexure A-5) to the respondent No. 2, thereby requesting to modify the said order and to accommodate him at Aurangabad in any of two offices mentioned in his option form. He made that request on the ground of his personal ill health that he is Diabetic patient and his family is residing at Aurangabad. His said representation, however, is not considered by the respondents.

(e) It is further submitted that out of stress due to transfer at long distance place, the applicant submitted application dated 25.08.2021 (part of Annexure A-6 collectively) with the respondent No. 2 and sought voluntary retirement through the respondent No. 3. The office of respondent No. 3 forwarded the said application to the office of respondent No. 2 i.e. forwarding letter dated 31.08.2021 (part of Annexure A-6 collectively).

(f) Meanwhile, the respondent No. 3 relieved the applicant from his present post at Sillod, vide relieving order dated 06.09.2021 (Annexure A-7). Thereafter, the applicant vide his application dated 07.09.2021 (Annexure

A-8) withdraw his application seeking voluntary retirement stating that he had given applicant for voluntary retirement under stress of his transfer at Bhandara, which is about at the distance of 550 kms away from Aurangabad. Thereafter, again as per the direction of respondent No. 3, the applicant submitted application dated 17.09.2021 (Annexure A-10) to the respondent No. 2 seeking withdrawal of voluntary retirement. The respondent No. 2 has not accepted the application for voluntary retirement. The applicant is still in service.

(g) It is further submitted that his representation seeking cancellation of transfer order is not yet decided by the respondents. Moreover, subsequent to passing of impugned transfer order of the applicant and other officers, some orders are passed accommodating three of such officers in the cadre of the applicant as per their request at their nearby places. Those officers are Shri Dhananjay Ramchandra Joshi, Smt. Ankita Tandale and Shri R.S. Deshkar. Those orders are separate orders dated 06.09.2021 (Annexure A-14 collectively). Those orders would show that they have been accommodated on their request. However, the applicant's request is not considered

by the respondents and thereby, he has been discriminated. In the circumstances, the impugned order of transfer of the applicant is not in accordance with law and requires modification in favour of the applicant. Hence, the present Original Application.

3. The affidavit in reply on behalf of respondent Nos. 1 to 3 is filed by one Shri Soham S/o Panjabrao Wayal, working as the Deputy Inspector General of Registration and Deputy Controller of Stamps, Aurangabad Division, Aurangabad, thereby he denied the adverse contentions raised in the present Original Application. It is specifically contended that the impugned transfer order of the applicant is the general transfer order and it is passed by seeking appropriate options from the officers in the cadre of Joint Sub-Registrar, Grade-2, who were working in different parts of the Maharashtra and by seeking recommendation of the requisite Civil Services Board as per the provisions of Section 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "the Transfer Act 2005"). The general transfers are effected by striking balance of options given by the officers and administrative exigency of the vacancies. The applicant has been transferred at Bhandara by taking into

consideration the public purpose and the post lying vacant there and it does not suffer from any contravention of provisions of the Transfer Act, 2005. It is issued in accordance with the provisions of the Transfer Act, 2005. There is no response in the said affidavit in reply as regards the subsequent modified orders in respect of three officers falling in the cadre of the applicant. In order to substantiate the contentions raised in the affidavit in reply, the respondents have annexed the copies of the requisite record of proposal placed before the Civil Services Board, minutes of Civil Services Board and its recommendation for transfer.

4. The affidavit in rejoinder is filed by the applicant denying the contentions raised in the affidavit in reply filed on behalf of the respondents and reiterated the contentions raised in the Original Application. In the said rejoinder affidavit, he has demonstrated as to how three officers as contended in the Original Application in the cadre of the applicant are recommended on their request discriminating the applicant by keeping his representation aside and not deciding the same.

5. Further the applicant has filed on record short affidavit and annexed the subsequent proposal dated 25.08.2021 (Annexure-

A, page No. 119 of the paper book), dealing with the various request applications received by the office of respondent No. 2. He has also produced on record two orders of transfer dated 06.09.2021 (Annexure-B, page No. 122 of the paper book) of two more officers i.e. Ramhari Girirav Jankar, who is accommodated on his request before completion of his normal tenure of three years and Shri S.R. Thakre, who is accommodated for his transfer, though he was not due for transfer.

6. I have heard the arguments advanced by Shri K.B. Jadhav, learned Advocate for the applicant on one hand and Smt. Deepali S. Deshpande, learned Presenting Officer on the other hand.

7. Learned Advocate for the applicant by assailing the impugned order of the transfer has lead stress more particularly on discriminating treatment to the applicant as against allegedly accommodating such other officers, some of whom who were due for transfer like the applicant and even some others who were not due for transfer.

8. On the other hand, learned Presenting Officer submitted that all the orders referred by the applicant are issued by following the requisite procedure in certain cases under the provisions of Section 4 of the Transfer Act, 2005 and in some

cases by following the procedure under Section 4(4) and 4(5) of the Transfer Act, 2005.

9. Undisputedly, the impugned transfer order dated 09.08.2021 (Annexure A-4) of the applicant is the general transfer order. In terms of parameters laid down in the G.R. dated 29.07.2021 (page No. 40 of the paper book), the date of general transfer of the year 2021 was extended up to 09.08.2021. As per the said G.R., the transfers for special reasons were to be effected only on vacant posts during the period of 10.08.2021 to 30.08.2021.

10. In view of above, when the impugned transfer order of the applicant dated 09.08.2021 (Annexure A-4), which is issued on the last date specified in the said G.R. dated 29.07.2021, there is no illegality on that count.

11. However, it is to be seen as to whether the said General transfer is effected in accordance with the existing parameters laid down in the G.R. dated 09.04.2018 (page No. 43 of the paper book) laid down in that regard. The said G.R. speaks with preparing the list of eligible officers, who were due for transfer for the particular year seeking their options and obtaining the recommendation of the requisite Civil Services Board. In this

regard, the respondents have placed on record copy of the proposal of transfer of 16 officers in the cadre of Joint Sub-Registrar, Grade-2, who were due for transfer and the minutes of Civil Services Board dated 05.08.2021 (page No. 94 of the paper book) along with its recommendation and the proposal being sanctioned by the concerned Minister i.e. the Minister in charge in consultation with Secretaries of the concerned Departments.

12. The abovesaid scenario would show that the proper requisite procedure is adopted by the respondent No. 2 before issuing the impugned transfer order of the applicant, who was due for transfer. The procedure as contemplated under Section 4 of the Transfer Act, 2005 is duly followed.

13. However, the applicant has challenged the said order particularly alleging that he has been given discriminatory treatment by not considering the options given by him and thereafter, by not considering his representation dated 10.08.2021 (Annexure A-5) as against the fact that requests of five other officers were considered favorably. Thereby, three of them were considered from the persons who were due for transfer and remaining two were considered, though they were not due for transfer.

14. In this regard, the applicant has placed on record three different transfer orders dated 06.09.2021 (Annexure A-14 collectively) of Shri R.S. Deshkar, Shri Dhananjay Ramchandra Joshi and Smt. Ankita Tandale.

15. It is a matter of record that the names of said Shri R.S. Deshkar, Shri Dhananjay Ramchandra Joshi and Smt. Ankita Tandale are at Sr. Nos. 15, 2 and 10 respectively in the recommendations of the Civil Services Board as reflected on page Nos. 98 and 99 of the paper book. As per the said recommendations, (i) Shri R.S. Deshkar was transferred from the post of Joint Sub-Registrar, Grade-2, JDR (2), Nagpur City to the post of Joint Sub-Registrar, Grade-2, Amravati Rural, (ii) Shri Dhananjay Ramchandra Joshi, was transferred from the post of Joint Sub-Registrar, Grade-2, Miraj No. 3 to the post of Joint Sub-Registrar, Grade-2, Chandrapur No. 1 and (iii) Smt. Ankita Tandale, was transferred from the post of Joint Sub-Registrar, Grade-2, Andheri No. 3 to the post of Joint Sub-Registrar, Grade-2, Haveli No. 1.

16. The applicant through his short affidavit placed on record two more transfer orders dated 06.09.2021 (page Nos. 122 and 123) in respect of Shri Ramhari Girirao Jankar and Shri S.R.

Thakre. Both these orders are issued under the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005, transferring Shri Ramhari Girirao Jankar from the post of Joint Sub-Registrar, Grade-2, Parbhani to the post of Joint Sub-Registrar, Grade-2, Osmanabad and Shri S.R. Thakre from the post of Joint Sub-Registrar, Grade-2, Nashik to the post of Joint Sub-Registrar, Grade-2, Jalgaon-1. In introductory part of both these orders, there is mention of provisions of Section 4(4) and 4(5) of the Transfer Act, 2005, whereas in para No. 2, there is mention of request.

17. The applicant has also produced on record along with the said short affidavit, the proposal dated 25.08.2021 (page Nos. 119 to 121 of the paper book) submitted by the respondent No. 2 to the respondent No. 1 amongst others the names of Shri R.G. Jankar, Shri Dhananjay Ramchandra Joshi, Shri S.R. Thakre and Smt. Ankita Tandale are reflected in the said proposal. As per the said proposal transfer of Smt. Ankita Tandale, is shown as mid-term transfer and she was transferred at Haveli-1 by general transfer order dated 09.08.2021. The request is to accommodate her on vacant place in Mumbai / Mumbai Suburban District by transferring her from Haveli. Request of

Shri Dhananjay Ramchandra Joshi is to accommodate him at Miraj by transferring him from Chandrapur.

18. As stated earlier, the applicant has referred to transfer orders dated 06.09.2021 each of Shri R.S. Deshkar, Shri Dhananjay Ramchandra Joshi and Smt. Ankita Tandale, which are part of Annexure A-14 collectively. In those orders also in introductory part, there is mention of Section 4(4) and 4(5) of the Transfer Act, 2005, whereas, in para No. 2, there is mention of request.

19. In the background as above, I have to analyze the orders twice passed in respect of Shri Dhananjay Ramchandra Joshi, Smt. Ankita Tandale and Shri R.S. Deshkar, when the applicant has come out with the specific contention that he has been discriminated by not considering his request application.

20. In the recommendation of Civil Services Board as reflected at page Nos. 98 and 99 of the paper book, the names of the said Shri Dhananjay Ramchandra Joshi, Smt. Ankita Tandale and Shri R.S. Deshkar are at Sr. Nos. 2,10 & 15 respectively. They are recommended to be transferred at Chandrapur No. 1, Haveli No. 1 and Amravati Rural respectively. However, within a period of one month, their alleged requests said to have been considered

by the respondent No. 1 being proposal dated 25.08.2021 placed by the respondent No. 2 to the respondent No. 1. Said document is produced at Annexure-A, page No. 119 of the paper book by the applicant. This is list of 13 officers. The names of Shri Dhananjay Ramchandra Joshi and Smt. Ankita Tandale appeared at Sr. Nos. 4 and 12 respectively. The name of Shri R.S. Deshkar however, does not reflect in this document. The subject of this document is about request transfer.

21. The applicant has produced on record their subsequent transfer orders at Annexure A-14 collectively. Those three orders are dated 06.09.2021. As per the said orders, Shri Dhananjay Ramchandra Joshi is transferred to Karvir No. 2 by modifying earlier general transfer order by which he was transferred to Chandrapur. Smt. Ankita Tandale, is transferred to Thane, by modifying earlier general transfer order whereby she was transferred to Haveli No. 1. Shri R.S. Deshkar is accommodated at Nagpur City No. 4, by modifying earlier general transfer order he was transferred at Amravati Rural.

22. Record shows that before general transfer, Shri D.R. Joshi was working at Miraj No. 3. By subsequent transfer he is accommodated at Karvir-2. He had sought four options before

general transfer at (i) Miraj-1, (ii) Valva, (iii) Islampur and (iv) Sangli. He is accommodated in adjoining district.

23. Smt. Ankita Tandale, had given 10 options of various offices at Mumbai only. As per the General transfer order, she was transferred to Haveli No. 1. In modified transfer order dated 06.09.2021, she was accommodated at Thane, which is adjoining district of her earlier posting of Andheri (Mumbai).

24. As per the general transfer order, Shri R.S. Deshkar was transferred to Amravati Rural. Before transfer order, he sought extension at his earlier post i.e. at Nagpur City No. 4. In the document dated 25.08.2021 (page Nos. 119 to 121), there is no mention of name of Shri R.S. Deshkar for request transfer. As per the modified transfer order dated 06.09.2021, he has been retained at Nagpur City No. 4.

25. Abovesaid scenario would show that after general transfer order dated 09.08.2021 (Annexure A-4), the applicant made representation / application dated 10.08.2021 (Annexure A-5) seeking modification in the transfer order to accommodate him at Aurangabad due to his personal illness and he was due to retire within a period of two years and three months. However, it is evident that his said request application is not considered by the

office of respondent No. 2 in their document dated 25.08.2021 (page No. 119 of the paper book). No other document is produced on record by the respondent Nos. 1 and 2 that the said application / representation dated 10.08.2021 was considered.

26. Perusal of modified transfer orders of Shri Dhananjay Ramchandra Joshi, Smt. Ankita Tandale and Shri R.S. Deshkar (Annexure A-14 collectively) would show that purportedly those orders are passed by observing the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005 and also considering their request.

27. The applicant has also placed on record the evidence to show that by other two orders dated 06.09.2021 (page Nos. 122 and 123 of the paper book), Shri Ramhari Girirao Jankar was transferred as per his request and under the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005 from the post of Joint Sub-Registrar, Grade-2, Parbhani to the post of Joint Sub-Registrar, Grade-2, Osmanabad on the vacant post. Similarly, Shri S.R. Thakre was transferred as per his request and under the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005 from the post of Joint Sub-Registrar, Grade-2, Nahsik to the post of Joint Sub-Registrar, Grade-2, Jalgaon-1 on the vacant post.

28. In the circumstances, it is evident that the respondent Nos. 1 and 2 have considered the request applications for filling up vacant posts. Three of the officers are from the category, who were due for transfer earlier like the applicant and remaining two were in the category, who were not due for transfer.

29. It is surprising to note here that when the specific contention of the applicant of discrimination is raised in the present Original Application mentioning names of three persons who were accommodated subsequently, there is no whisper in the affidavit in reply about those three officers. There is no response from the respondent Nos. 1 and 2 also in respect of two more officers being transferred, though they were not due for transfer on their request on vacant post.

30. In such circumstances, it is glaring that the case of the applicant is not considered and as such, it can be said that that discriminating treated is given to the applicant for the reasons best known to the respondent Nos. 1 and 2. It appears that after issuance of General transfer order dated 09.08.2021, pick and choose policy is adopted by the respondents and the transfer orders dated 06.09.2021 came to be passed in respect of three officers, who were in the list of due for transfer and were earlier

transferred by the general transfer order dated 09.08.2021 and two other officers, who were not due for transfer. It does not seem from the documents that under what circumstances the name of the applicant could not be taken for consideration in the category of request transfer like others. In these circumstances, I find substance in the grievance raised by the applicant. It is evident that the principles of nature justice are not being followed in case of the applicant. No doubt, the applicant by request application dated 10.08.2021 (Annexure A-5) is seeking accommodation at Aurangabad itself.

31. Record shows that during pendency of the present Original Application, the applicant has joined on his transferred place at Bhandara No. 1. In this regard, learned Advocate for the applicant has placed on record joining report and CTC at document 'X Collectively'. In view of the same, the impugned order of transfer is executed.

32. I have already observed that the impugned transfer order of the applicant is assailed on the ground of discriminatory treatment given to the applicant subsequent to passing of impugned order of transfer stating that other such officers are accommodated by issuing modified orders. In the circumstances, in my considered opinion, the present Original Application can

be disposed of appropriately by giving directions to the respondent Nos. 1 and 2 to consider the request application of the applicant dated 10.08.2021 (Annexure A-5) in accordance with law and to consider his transfer at any of the vacant places of his choice as per the options given by him for the earlier General Transfers of the year 2020 or on any of the vacant posts in adjoining districts of district Aurangabad, as he is due to retire within two years. Hence, I proceed to pass following order :-

ORDER

The Original Application is disposed of in following terms :-

- (A) The respondent Nos. 1 and 2 are directed to consider the request application of the applicant dated 10.08.2021 (Annexure A-5) in accordance with law and to consider his transfer at any of the vacant place of his choice as per the options given by him for the earlier General Transfers of the year 2020-21 or on any of the vacant post in adjoining districts of district Aurangabad, as he is due to retire within two years. This exercise be completed by the respondents within a period of one month from the date of this order.
- (B) There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 04.03.2022.

KPB S.B. O.A. No. 565 of 2021 VDD Transfer

(V.D. DONGRE)

MEMBER (J)