

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**COMMON ORDER IN ORIGINAL APPLICATION NOS. 644, 646
AND 648 ALL OF 2018**

(Subject – Transfer)

1. ORIGINAL APPLICATION NO. 644 OF 2018

DISTRICT : AHMEDNAGAR

Shri Ganesh s/o Shivaji Markad,)
Age: 40 years, Occu. : Service as)
Tahsildar at Ahmednagar,)
R/o Ahmednagar, Dist. Ahmednagar.)

.. **APPLICANT**

V E R S U S

1) **The State of Maharashtra,**)
(Through its Principal Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai- 32.)

2) **The Divisional Commissioner,**)
Nashik Division, Nasik Road,)
Dist. Nasik.)

3) **The Collector, Ahmednagar,**)
Dist. Ahmednagar.)

..

RESPONDENTS

W I T H

2. ORIGINAL APPLICATION NO. 646 OF 2018

DISTRICT : AHMEDNAGAR

Shri Umesh s/o Shivajirao Patil,)
Age: 33 years, Occu. : Service as)
Tahsildar at Newasa, Tq. Newasa,)
Dist. Ahmednagar.)

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
(Through its Principal Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai- 32.)
- 2) **The Divisional Commissioner,**)
Nashik Division, Nasik Road,)
Dist. Nasik.)
- 3) **The Collector, Ahmednagar,**)
Dist. Ahmednagar.)
- 4) **Shri Sudhir Patil,**)
Age : Major, Occu. : Service,)
R/o Tahsildar Newasa, Tq. Newasa)
District Ahmednagar.)

.. **RESPONDENTS****W I T H****3. ORIGINAL APPLICATION NO. 648 OF 2018****DISTRICT: PARBHANI****Shri Sakharam s/o Dnyanoba Mandavgade,)**

Age: 40 years, Occu. : Service)
(as Asst. District Supply Officer,)
Collector Office, Parbhani),)
R/o Plot No. 23, Bhagyalaxmi Nagar,)
Vasmat Road, Parbhani.)

.. **APPLICANT****V E R S U S**

- 1) **The State of Maharashtra,**)
(Through its Addl. Chief Secretary)
(Revenue, Registration & Stamp))
Revenue & Forest Department,)
M.S. Madam Cama Road,)
Hutatma Rajguru Chowk,)
Mantralaya, Mumbai- 32.)

- 2) **The Divisional Commissioner,**)
 Aurangabad, Near Delhi Gate,)
 Collector Office Campus,)
 Fazilpura, Aurangabad.)
- 3) **The Collector, Parbhani,**)
 Gandhi Park, Parbhani,)
 Dist. Parbhnai.)

.. **RESPONDENTS**

APPEARANCE : Shri V.B. Wagh, Advocate for the Applicants
 in O.A. Nos. 644/2018 & 646/2018.

: Shri A.S. Deshmukh, Advocate for the
 Applicant in O.A. No. 648/2018.

: Smt. Priya R. Bharaswadkar, Presenting
 Officer for the Respondents in all these O.As.

CORAM : **B.P. PATIL, MEMBER (JUDICIAL).**

DATE : **21.12.2018.**

COMMON - ORDER

1. The facts and issues involved in all these O.As. are similar and identical and, therefore, I am disposing all these Original Applications by this common order.

2. The applicants are challenging their transfers effected by the impugned order dated 23.08.2018 by filing the present Original Applications.

3. Shri Ganesh Shivaji Markad, the applicant in O.A. No. 644/2018 was initially appointed as Naib Tahsildar vide order

dated 29.11.2001. He was promoted on 21.09.2008 and posted as Tahsildar, Parner and thereafter he was served at various places. On 31.05.2016, he was transferred as Tahsildar Pachora and posted in the office of respondent No. 3. He had joined on the post of Tahsildar (Administration) on 01.06.2016 and since then he was working on the said post. He was not due for transfer, as he has not completed his normal tenure of posting on the said post. Therefore, he has not been transferred in the General Transfers of the year 2018.

4. It is his contention that his daughter viz. Aditi is taking education in 12th Std. in Pemraj Sarda College, Ahmednagar and his younger son is taking education in 7th Std. in Takshshila English Medium School, Ahmednagar. It is his contention that he has been transferred from the post of Tahsildar Administration, Collector Office, Ahmednagar to Tahsildar, Parner by the impugned order dated 23.08.2018 in violation of the provisions 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"). It is his contention that his transfer has not been recommended by the Civil Services Board and there is no administrative exigencies for his transfer. It is his contention

that it is mid-term and mid-tenure transfer and therefore, he challenged the said order by filing Original Application No. 644/2018.

5. Shri Sakharam Dnyanoba Mandavgade, the applicant in O.A. No. 648/2018 entered the service of the Government of Maharashtra in its Revenue Department on 06.08.2004 as directly recruited Naib Tahsildar upon his due selection and recommendation by the M.P.S.C. He was promoted to the cadre of Tahsildar on 30.10.2012. On 30.05.2017, he was serving as Tahsildar Partur, Jalna District. He has been transferred from Partur to Parbhani on the post of Asstt. District Supply Officer (DSO), in pursuant to his request. In view of the order issued by the respondent No. 2, he has been relieved from Partur on 06.06.2017. He immediately joined on the post of Asstt. District Supply Officer, Parbhani and started discharging the duties. He was hardly completed 14 months on the said post. He was not due for transfer, but the respondents by the impugned order dated 23.08.2018 transferred him from Parbhani to Georai in Beed District. It is his contention that the impugned transfer is mid-term and mid-tenure transfer and the respondents had not followed the provisions of the Transfer Act 2005 while effecting his transfer. It is his contention that the Civil Services Board

had not recommended his transfer and no prior approval of the Hon'ble Chief Minister had been obtained for his transfer and the impugned transfer order is in contraventions of the provisions of the Transfer Act 2005. It is his further contention that his children viz. Parth and daughter viz. Swara are studding in VI and I Std. respectively at Parbhani and due to the impugned transfer order, loss will be caused to them and therefore, he has filed the O.A. No. 648/2018 challenging the impugned order.

6. Shri Umesh Shivajirao Patil, the applicant in O.A. No. 646/2018 is working as a Tahsildar, Newasa, Dist. Ahmednagar since 29.05.2017. He has not completed his normal tenure of posting on the said post, but the respondents transferred him from the post of Tahsildar, Newasa to Tahsildar (Election), Ahmednagar by issuing the impugned order dated 23.08.2018 and posted the respondent No. 4 in his place. It is his contention that the impugned order is against the provisions of the Transfer Act 2005 and it has been issued by the respondents' mala-fidely to accommodate the respondent No. 4. It is his contention that the Civil Services Board had not recommended his name for transfer. Not only this, but the respondent No. 3 has also not recommended his transfer and therefore, impugned order is in contraventions of the provisions of the Transfer Act 2005.

Therefore, he has challenged the said order by filing the O.A. No. 646/2018.

7. The respondents have resisted the contentions of the applicants by filing their affidavit in reply. It is their contention that the applicants in O.A. Nos. 644/2018 and 648/2018 were serving on the post of non-Assistant Electoral Registration Officer (A.E.R.O.). The Election Commission of India has given instructions to the Government to fill up the post of E.R.Os. and A.E.R.Os. and further placed restrictions on transfers in view of the Summary Revision of Photo Electoral Rolls 2019. On the basis of instruction given by the Election Commission of India, the proposal regarding the transfer of the applicants in O.A. Nos. 644/2018 and 648/2018 had been placed before the Civil Services Board and the Civil Services Board recommended their transfers on the post of A.E.R.Os. from their present post, which are non A.E.R.Os. post. The competent authority accepted the recommendation of the Civil Services Board and thereafter, next higher authority i.e. the Hon'ble Chief Minister approved the proposal and thereafter, the impugned transfer order of the applicants had been issued. It is their contention that the transfers of the applicants have been made as per the recommendation of the Election Commission of India on account

of administrative exigencies. Before issuing the impugned transfer order the approval of the Election Commission has been obtained. There was no illegality in the impugned order transferring the applicants in O.A. Nos. 644/2018 and 648/2018. Their orders had been issued as per the provisions of the Transfer Act 2005 and there is no violation of the provision of the Transfer Act 2005. Therefore, they justified the transfers of the applicants and prayed to reject the O.A. Nos. 644/2018 and 648/2018.

8. In O.A. No. 646/2018 the respondents have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant has been transferred to the post of Tahsildar (Election), Ahmednagar with a prior approval of the Competent Authority i.e. the Hon'ble Chief Minister on account of administrative exigencies. It is their contention that the Election Commission of India had given approval to the transfer proposal of the applicant by its letter dated 23.08.2018 and thereafter, the impugned transfer order has been issued. It is their contention that the impugned transfer order has been issued by following the provisions of the Transfer Act 2005 and there is no violation of the provisions of the Transfer Act 2005.

They justified the impugned transfer order of the applicant in O.A. No. 646/2018 and prayed to dismiss the same.

9. I have heard Shri V.B. Wagh, learned Advocate for the applicants in O.A. Nos. 644/2018 and 646/2018, Shri A.S. Deshmukh, learned Advocate for the applicant in O.A. No. 648/2018 and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the respondents in all these O.As. I have perused the documents placed on record by both the parties.

10. Admittedly, the applicants were serving as Tahsildars at different places. Admittedly, they have transferred in the midst of term before completion of their normal tenure of posting. The transfers of the applicants are mid-term and mid-tenure transfers. Admittedly, the applicants in O.A. No. 644/2018 and 648/2018 viz. Shri Ganesh Shivaji Markad and Shri Sakharam Dnyanoba Mandavgade respectively were serving as non A.E.R.O. There is no dispute about the fact that the Election Commission of India had issued direction to the Government to fill up the post of E.R.Os. and A.E.R.Os. and also put the ban on the transfers of officers and staff engaged with revision of roll 2019. Admittedly, the transfers of the applicants have been made after approval of the Election Commission of India.

11. Learned Advocates for the applicants have submitted that the respondents issued the impugned order dated 23.08.2018 transferring the applicants from their present posting in violation of the provisions of Section 4 (4) (ii) and 4(5) of the Transfer Act 2005. They have submitted that the transfer order of the applicants has been issued without recording the reasons and without approval of the competent authority. They have submitted that neither the department nor the competent transferring authority recorded just reason for transfers of the applicants.

12. Learned Advocates for the applicants have submitted that the transfer order of all the applicants are in violation of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005 and therefore, the same requires to be quashed and set aside by allowing the present Original Applications.

13. Learned Advocate for the applicant in O.A. No. 646/2018 has submitted that the applicant Shri Umesh Shivajirao Patil was serving on the post of Tahsildar, Newasa, which is a post of A.E.R.O., but he has been transferred from that post only to accommodate the respondent No. 4, who was also serving on the post of A.E.R.O. He has submitted that the

department had not proposed the transfer of the applicant, but his transfer has been made by the competent authority without proposal. He has further argued that the proposal regarding the request transfer of respondent No. 4 has been placed before the Civil Services Board and the Civil Services Board had not recommended his transfer, as he has not completed his normal tenure of posting. But the competent authority i.e. the Hon'ble Minister proposed the transfer of the applicant and respondent No. 4 without recording reasons and therefore, the impugned transfer order is in violations of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005.

14. Learned Advocate for the applicants in O.A. No. 644/2018 and 648/2018 has submitted that the impugned order has been issued by the respondents arbitrarily without following the mandatory provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005 and the respondents acted maliciously while issuing the impugned order and therefore, same requires to be quashed and set aside. In support of his submissions, he has placed reliance on the judgment delivered by the Principal Seat of the Tribunal at Mumbai in case of **Shri Ravindra A. Kadampatil Vs. The State of Maharashtra and Anr.** in **O.A. No. 832/2018** decided on 17.10.2018.

15. Learned Advocates for the applicants have submitted that Shri Ganesh Shivaji Markad (applicant in O.A. No. 644/2018) and Shri Sakharam Dnyanoba Mandavgade (applicant in O.A. No. 648/2018) have been transferred at Parner, Dist. Ahmednagar and Georai, Dist. Beed in the place of Smt. Bharati Sagare and Shri Sanjay Pawar respectively. They have submitted that the respondents have not produced on record documents to show that the post at Parner Dist. Ahmednagar and Georai, Dist. Beed were already vacant, when the postings of the applicants have been made there by the impugned order. They have submitted that the transfers of the applicants have been made to accommodate Smt. Bharati Sagare and Shri Sanjay Pawar and therefore, the impugned transfer order of the applicants are arbitrary and with malice and therefore, they prayed to quash and set aside the said order.

16. Learned Presenting Officer has submitted that the Election Commission of India has requested the Government to appoint A.E.R.Os. in view of the Summary Revision of Photo Electoral Rolls 2019 and therefore, the transfers of the applicant has been made. She has submitted that so far as the applicants in O.A. Nos. 644/2018 and 648/2018 are concerned, they were serving on the post of non A.E.R.Os. The posts of A.E.R.Os. at

Parner, Dist. Ahmednagar and Georai, Dist. Beed were vacant and therefore, the applicants have been transferred on the said posts on the basis of proposal submitted by the department. The said proposal was placed before the Civil Services Board on 10.08.2018. The Civil Services Board recommended the transfers of the applicants on the vacant posts. The said recommendation of the Civil Services Board was placed before the Hon'ble Minister concerned and the Hon'ble Minister concerned approved the said proposal and recommended the applicants' transfers. Thereafter, recommendation of the Hon'ble Minister along with the recommendation of the Civil Services Board and the proposal of the department was placed before the Hon'ble Chief Minister, who is the next higher competent authority and the Hon'ble Chief Minister approved the said proposal and thereafter, the impugned order has been issued. She has submitted that thereafter the proposal for transfers of the applicants has been sent to the Election Commission of India and after receiving the approval from the Election Commission of India, the impugned order has been issued. She has submitted there is no illegality in the impugned order, as the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act, 2005 have been followed by the respondents while making the transfers of the

applicants. She has submitted that there was no illegality in the impugned order and she has supported the impugned transfer order of the applicants in O.A. Nos. 644/2018 and 648/2018.

17. Learned Presenting Officer has further submitted that so far as the applicant Shri Umesh Shivajirao Patil in O.A. No. 646/2018 is concerned, the transfer has been made on the basis of recommendation of the competent authority. She has submitted that the respondent No. 4 in O.A. No. 646/2018 has made a request to the concerned department for making his transfer on his personal ground. On the basis of his request the proposal for his transfer was placed before the Civil Services Board. She has submitted that the Civil Services Board in its meeting dated 25.06.2018 considered the proposal, but not recommended the transfer of respondent No. 4 i.e. Shri Sudhir Patil. But the competent authority i.e. the Hon'ble Minister has not accepted the recommendation of Civil Services Board and he proposed the transfer of respondent No. 4 Shri Sudhir Patil by accepting his request in place of Shri Umesh Patil i.e. the applicant and decided to transfer the applicant from the present post. She has submitted that the said recommendation of the competent authority has been approved by the next higher competent authority i.e. the Hon'ble Chief Minister. The transfer

proposal was also approved by the Election Commission of India and thereafter, the impugned order has been issued. She has submitted that the said order has also been issued by the respondents in accordance with the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005 on account of administrative exigencies. There is no violation of any provisions of the Transfer Act 2005 and therefore, she supported the impugned order of the applicant in O.A. No. 646/2018.

18. On perusal of the record, it reveals that the transfers of Shri Ganesh Shivaji Markad (applicant in O.A. No. 644/2018) and Shri Sakharam Dnyanoba Mandavgade (applicant in O.A. No. 648/2018) have been made as per the directions of Election Commission of India to fill up the post of A.E.R.Os., though they were not due for transfer. On perusal of the documents placed on record by the respondents, it reveals that as per the directions given by the Election Commission of India, the department prepared the proposal proposing the transfers of these applicants on the vacant post of Tahsildar, Parner, Dist. Ahmednagar and Tahsildar, Georai, Dist. Beed respectively. Admittedly, the applicants were serving on non A.E.R.Os. The posts at Parner, Dist. Ahmednagar and Georai, Dist. Beed were vacant and therefore, the proposal was prepared by the department

accordingly. The said proposal was placed before the Civil Services Board. The minutes of the meeting of the Civil Services Board shows that the proposal was considered by the Civil Services Board and the Civil Services Board recommended the transfers of the applicants on the vacant posts. Thereafter, the said proposal along with the recommendation of the Civil Services Board was placed before the competent transferring authority i.e. Hon'ble Minister concerned. The Hon'ble Minister concerned approved the same and thereafter, the matter has been placed before the next higher authority i.e. the Hon'ble Chief Minister. The Hon'ble Chief Minister approved the recommendation of the Civil Services Board and on the basis of approval given by the Hon'ble Chief Minister, the proposal was sent to the Election Commission of India for approval. After receiving the approval from Election Commission of India, the impugned transfer order has been issued by the respondents. All these facts show that the mandatory provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005 had been followed and complied by the competent authority while effecting the transfers of the applicants. Because of the directions issued by the Election Commission of India and on account of administrative exigencies the transfers of the applicants have been effected in

the midst of term and tenure. Therefore, in my view, there is no illegality in the impugned order of transfers of Shri Ganesh Shivaji Markad (applicant in O.A. No. 644/2018) and Shri Sakharam Dnyanoba Mandavgade (applicant in O.A. No. 648/2018). There is nothing on record to show that the respondents effected the transfers of the applicants arbitrarily and with malice. Due process of law and provisions of the Transfer Act 2005 have been followed while effecting the transfers of the applicants and therefore, in my view, no interference requires in the impugned transfer orders of Shri Ganesh Shivaji Markad (applicant in O.A. No. 644/2018) and Shri Sakharam Dnyanoba Mandavgade (applicant in O.A. No. 648/2018).

19. In the matter of Shir Umesh Shivajirao Patil (applicant in O.A. No. 646/2018), the record shows that the respondent No. 4 Shri Sudhir Patil, who was serving as Tahsildar, (Election), Ahmednagar made a request to the competent authority for making his transfer, though he was not due for transfer. The department concerned prepared the proposal on the basis of application filed by respondent No. 4. The said proposal was placed before the Civil Services Board in

the meeting held on 25.06.2018. The Civil Services Board considered the proposal regarding transfer of respondent No. 4 i.e. Shri Sudhir Patil and decided not to recommend his transfer, as he was not due for transfer. The said recommendation of the Civil Services Board has been placed before the competent authority. The department had not sent the proposal regarding the transfer of the applicant Shri Umesh Patil. Moreover, the matter regarding transfer of the applicant had not been considered by the Civil Service Board. The proposal of request transfer of the respondent No. 4 Shri Sudhir Patil along with the recommendation of Civil Services Board had been placed before the competent transferring authority i.e. the Hon'ble Minister concerned. The competent authority has suggested the modification in the recommendation of the Civil Services Board and in the modification the competent authority proposed the transfer of the applicant Shri Umesh Patil, as Tahsildar (Election), Ahmednagar and also recommended the transfer of respondent No. 4 Shri Sudhir Patil as Tahsildar, Newasa. On perusal of the said recommendation of the competent transferring authority, it reveals that no special reasons and exceptional circumstances have been recorded for not accepting the recommendation of Civil Services Board and proposing the

transfer of respondent No. 4 Shri Sudhir Patil. Not only this, but the competent authority has not recorded the exceptional circumstances and special reasons for transfer of the applicant Shri Umesh Patil before completion of his normal tenure at the present positing and that too in the midst of term. No special reasons have been recorded by the competent authority while making the transfer of the applicant Shri Umesh Patil, as required under Section 4(4)(ii) and 4(5) of the Transfer Act 2005. Not only this, but the recommendation of the competent authority had been approved by the next higher authority i.e. the Hon'ble Chief Minister without recording the reasons. The next higher authority has also not considered the said aspect while approving the recommendation of the competent authority.

20. It is also material to note here that both the posts at Tahsildar, Nevasa and Tahsildar (Election), Ahmednagar are A.E.R.Os. posts, there is no vacancy on both the places. Therefore, recommendation of the Election Commission of India is not attracted in the matter of the transfers of the applicant and respondent No. 4 in this matter.

21. On perusal of the record, it reveals that the transfer of the present applicant has been effected in order to accommodate

the respondent No. 4 Shri Sudhir Patil only. The impugned transfer order has been issued without following the mandatory provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005. The facts and circumstances placed on record shows that the respondents have made transfer of the applicant arbitrarily with malice in order to accommodate the respondent No. 4 Shri Sudhir Patil. Therefore, in my view, it is in violation of the provisions of Transfer Act 2005 and therefore, it is not sustainable in the eye of law.

22. The respondent No. 1 i.e. the competent authority is empowered to make mid-tern and mid-tenure transfers of the Government servants by following the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005. But the respondent No. 1 has not followed the said provisions scrupulously. Therefore, the impugned transfer order transferring the Applicant Shri Umesh Patil from the post of Tahsildar, Newas to Tasildar (Election) Ahmednagar is not legal one and therefore, same requires to be quashed and set aside by allowing the O.A. No. 646/2018.

23. In view of the discussions in the foregoing paragraphs, the O.A. No. 646/2018 is allowed with no order as to

costs. The impugned order dated 23.08.2018 transferring the applicant Shri Umesh Patil from the post of Tahsildar, Newasa to Tahsildar (Election) Ahmednagar is hereby quashed and set aside. The respondents are directed to repost the applicant Shri Umesh Patil at his earlier place of posting immediately.

24. The O.A. Nos. 644/2018 and 648/2018 are dismissed with no order as to costs.

**PLACE : AURANGABAD.
DATE : 21.12.2018.**

**(B.P. PATIL)
MEMBER (J)**

KPB/S.B. O.A. No. 644, 646 & 648 all of 2018 BPP 2018 Transfers