

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

**ORIGINAL APPLICATION NO. 598 OF 2016**

DIST. : AURANGABAD

Ramesh s/o Sayanna Mundlod,  
Aged 46 years, Occu. Service,  
Tahsildar, Aurangabad.  
R/o Deccan Saraya . A-5,  
Imralad City Road, Garkheda Parisar,  
Aurangabad, Dist. Aurangabad.

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**APPLICANT**

**VERSUS**

1. The State of Maharashtra,  
Through the Principal Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai.  
(copy to be served on the C.P.O.,  
M.A.T., Aurangabad)
2. The Divisional Commissioner,  
Aurangabad Division, Aurangabad.
3. The Collector, Aurangabad,  
Dist. Aurangabad.
4. The Tahsildar,  
Shri Satish Soni, Aurangabad,  
Dist. Aurangabad.

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**RESPONDENTS**

APPEARANCE : Shri Shamsundar B. Patil, learned Advocate for  
the applicant.

: Shri M.S. Mahajan, learned Presenting Officer  
for respondent nos. 1 to 3.

: Shri R.P. Adgaonkar, learned Advocate for  
respondent no. 4.

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**CORAM : HON'BLE SHRI J. D. KULKARNI,**  
**MEMBER (J)**

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**J U D G M E N T****{Delivered on this 20<sup>th</sup> day of December, 2016}**

1. The applicant Shri Ramesh Sayanna Mundlod has challenged his transfer order dated 21.7.2016 issued by the res. no. 2 thereby transferring the applicant from the post of Tahsildar, Aurangabad Taluka to the post of Additional Tahsildar, Aurangabad. The impugned transfer order is dated 21.7.2016. It is the contention of the applicant that the said order is midterm and mid tenure transfer order against the provisions of Transfer Act, 2005.

2. From the admitted facts on record, it seems that the applicant was promoted as a Tahsildar in February, 2014 and on promotion he was posted as a Tahsildar in the office of the Divisional Commissioner, Aurangabad. In the month of June, 2014, the applicant was transferred as a Tahsildar at Fulambri, Dist. Aurangabad and accordingly he resumed duties at Fulambri. Thereafter within 3 months i. e. on 14.8.2014 the applicant was transferred as a Assistant District Supply Officer, Dist. Jalna. The applicant accordingly joined at Jalna in August, 2014, but within a period of 7 months he was transferred from Jalna to Aurangabad on the post of Tahsildar vide order dated 3.3.2015 by the Govt. of Maharashtra.

3. At the time of impugned order of transfer dated 21.7.2016 the applicant was working as Tahsildar, Aurangabad and he was working

there since March, 2015 and has completed only one year and 4 months, but vide the impugned order dated 21.7.2016, the res. no. 2 the Divisional Commissioner, Aurangabad transferred the applicant as Additional Tahsildar at Aurangabad and, therefore, the applicant is constrained to file this O.A.

4. The res. no. 2 the Divisional Commissioner, Aurangabad has filed affidavit in reply. It is most unfortunate that though the a Divisional Commissioner, Aurangabad is a party res. no. 2, an affidavit in reply has been filed on his behalf by one Shri Mahesh Mukundrao Parandekar, Tahsildar (Revenue) in the office of the Divisional Commissioner, Aurangabad. It has been often observed by this Tribunal in number of matters that the competent higher authorities are reluctant to file affidavit in reply and the work of filing affidavit in replies is assigned to some junior officers. With a hope that the Divisional Commissioner, Aurangabad and other authorities of Government will take note of it in future, the affidavit in reply filed in this matter by the Tahsildar on behalf of the Divisional Commissioner, Aurangabad is being considered.

5. According to the res. no. 2 the powers of transfers of Tahsildars are delegated to the Divisional Commissioner as per the Government Order dated 22.6.2016. It is further stated that the Civil Services Board (Nagri Seva Mandal) has recommended the transfer of the applicant to the newly created post of the Additional Tahsildar for facilitating the transfer

of records, establishment and smooth functioning of the newly created Additional Tahsildar's office at Aurangabad and, therefore, by the impugned order the applicant has been transferred on administrative ground. It is further stated that the applicant was holding the post of Naib Tahsildar (Supply), Collector Office, Aurangabad earlier and he was kept under suspension from 23.12.2010 to 31.7.2011 and a proposal has been submitted to the Government for conducting joint enquiry against the applicant.

6. The res. no. 4 Shri Satish Kishanji Soni has filed affidavit in reply and contended that by virtue of Govt. Order dated 22.6.2016 the Divisional Commissioner, Aurangabad is being empowered to effect the transfers of the Tahsildars and, therefore, the impugned transfer order does not require any interference at the hands of this Tribunal.

7. The applicant has filed rejoinder affidavit and submitted that he has been transferred to accommodate the res. no. 4.

8. Heard Shri Shamsundar B. Patil, learned Advocate for the applicant, Shri M.S. Mahajan, learned Presenting Officer for respondent nos. 1 to 3 and Shri R.P. Adgaonkar, learned Advocate for respondent no. 4. I have perused the application, affidavit, affidavits in replies filed by the respective respondents, rejoinder filed by the applicant and various documents placed on record.

9. The only material point to be considered in this case is whether the impugned transfer order 21.7.2016 of the applicant, whereby he has been from the post of Tahsildar, Aurangabad Taluka to the post of Additional Tahsildar, Aurangabad is against the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short Transfer Act, 2005) ?

10. Admittedly, the applicant was transferred as a Tahsildar in the office of the Divisional Commissioner, Aurangabad vide order dated 24.2.2015 and the impugned order of transfer is dated 21.7.2016 and, therefore, the applicant has not completed his tenure of 3 years as Tahsildar, Aurangabad and has completed just one year and 5 months approximately at Aurangabad and, therefore, he was neither due for transfer nor he has applied for any transfer.

11. The impugned order of transfer is dated 21.7.2016 and, therefore, it is a midterm transfer, since it is neither issued in the month of April or May. Admittedly, as per the provisions of Sec. 4 (4) & 4 (5) of the Transfer Act, 2005, the competent authority is empowered to transfer any employee at any time. The sec. 4 (4) 4 (5) of the Transfer Act, 2005 reads as under :-

**%4. Tenure of transfer.**

- (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) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;
- (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.+

12. According to the respondents, the applicant has been transferred in the newly created post of Additional Tahsildar and the competent

authority can pass such transfer order. It is material to note that at one hand the res. no. 2 is trying to justify the impugned order of transfer of the applicant on the ground that transfer of the applicant was recommended on the newly created post of Additional Tahsildar for facilitating the transfer records, establishment and smooth functioning of the newly created Additional Tahsildar's office at Aurangabad. Thus, the transfer is for a newly created post of Additional Tahsildar.

13. According to the res. no. 2, earlier the Govt. was the competent authority to transfer the applicant, but now said authority has been given to the res. no. 2 as per Govt. Order dated 22.6.2016. From the said notification dated 22.6.2016 it will be thus crystal clear that powers of transfers are delegated to the Divisional Commissioner for transfer of Tahsildar whether it is a general annual transfer order after completion of tenure or whether it is midterm transfer i. e. other than in April or May or before completion of tenure of 3 years on a special ground.

14. Since the res. no. 2 is coming with a case that the Civil Services Board (Nagri Seva Mandal) has recommended the transfer of the applicant, it is necessary to go through the said recommendation. The copy of the minutes of the meeting of the Civil Services Board (Nagri Seva Mandal) dated 21.7.2016 is at Annex. R.3 paper book page 34. It seems that the Civil Services Board has considered as many as 15

Tahsildars and the said Civil Services Board includes the Assistant Commissioner, Deputy Commissioner (Revenue) and the Upper Commissioner, who is also a President of the said Board.

15. While considering the transfer of the applicant reasons have been given in remark column and for the transfer of the applicant following reasons are assigned :-

%अपर तहसिलदार औरंगाबाद हे नवनिर्मात कार्यालय आहे. नवीन कार्यालयाचे कामकाम सुरळित होणे, अभिलेख्यांचे हस्तांतरण व अदयावतीकरण इ. कामासाठी प्रशासकीय दृष्टीकोणातून संबंधितास अपर तहसिलदार औरंगाबाद या रिक्त पदावर पदस्थापना देणे योग्य.+

16. For the transfer of the res. no. 4 in place of the applicant, the reasons mentioned are as under :-

%संबंधितास ऑगस्ट २०१६ मध्ये सदय पदावर वर्ष पूर्ण होत आहेत. त्यांनी वैयक्तिक कारणास्तव औरंगाबाद जिल्यात पदस्थापना देणे बाबत विनंती केली आहे. सन २०१७ मध्ये होणा-या स्थानिक स्वराज्य संस्थांच्या निवडणुका विचारात घेता क्षेत्रीय स्तरावरील पद भरणे आवश्यक असल्याने श्री. मुंडलोड यांचे बदलीने रिक्त होणा-या तहसिलदार औरंगाबाद या पदावर पदस्थापना देणे योग्य.+

17. It is to be noted that the res. no. 4 has been considered for transfer within a span of one year only for his personal reasons and request, whereas the applicant has been transferred on administrative ground in



the newly created post of Additional Tahsildar. It is material to note that the headquarters of the applicant has not been changed. Except the allegation that the res. no. 2 wanted to accommodate the res. no. 4, there is nothing on record to show that there was any malice in the minds of the res. nos. 1 to 3 to transfer the applicant from his present post.

18. Even though it is stated that the applicant was under suspension for the period from 23.12.2010 to 31.7.2011, the possibility that his experience for handling newly created post might have been considered, cannot be ignored. I, therefore, do not find any merits in the O.A. even though the transfer order is midterm and mid tenure. Hence, I pass the following order :-

### **ORDER**

The O.A. stands dismissed. There shall be no order as to costs.

**MEMBER (J)**