

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**Miscellaneous Application No.145 of 2021 in
Transfer Application No.1 of 2021
(Writ Petition No.4908/2021 Aurangabad Bench)
With
Miscellaneous Application No.146 of 2021 in
Transfer Application.No.2 of 2021**

The State of Maharashtra,)
Through the Additional Chief Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai 400 032.)

Applicant (Org. Respd. No.1)

Versus

1. Shivaji Tukaram Shinde,)
Age : 54 Years, Occu. Service as)
Asstt. Commissioner (B.C. Cell),)
In O/o. Div. Commissioner Aurangabad)
R/o. H.No.13, Om-Akanksha Housing)
Society, Plot No.36, Parijat Nagar, Cidco,)
N-4, Aurangabad.)

2. Sunil Vitthalrao Yadav,)
Age : 55 years, Occu. Service as)
Sub-Divisional Officer, Latur,)
R/o. "Sinhgad" Govt. Quarter,)
Oppo. Tahsil Officer, Latur.)

**.....Respondents
(Org. Applicants)**

3. The Additional Chief Secretary,)
General Administration Department,)
Mantralaya, Mumbai 32)

4. Shri Tushar s/o. Eknath Thombre,)
Addl. Collector, Beed,)
C/o. Collector Office, Nagar Road,)
Beed.)

5. Shri Arvind s/o. Rameshrao Lokhande,)
Addl. Collector, Latur,)
C/o. Collector Officer, Latur,)

6. Shri Shankar s/o. Ramchandra Barge,)
Addl. Collector, Hingoli,)
C/o. Collector Office, Hingoli.)
7. Shri Pradeep s/o. Prabhakar Kulkarni)
Residential Deputy Collector, Nanded)
C/o. Collector Office, Nanded.)
8. Shri Pratap s/o. Sugreev Kale)
Deputy Education Officer)
C/o. Collector Office, Osmanabad)
9. Shri Pandurang s/o. Shankarrao Kamble)
Sub Divisional Officer, Kandhar)
Tal. Kandhar, Dist. Nanded.)

**..Formal Respondent
(Org. Respondent Nos.2 to 8)**

WITH

The State of Maharashtra,)
Through the Additional Chief Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai 400 032.)

Applicant (Org. Respd. No.1)

Versus

1. Smt. Samiksha Ramakant Chandrakar,)
Age : 50 years, Occ. Service)
Deputy Commissioner (Revenue) Office)
Aurangabad, R/at. Plot No.363, Section-E)
N-1, CIDCO, Aurangabad 431 003)
2. Pandurang Ramrao Kulkarni,)
Age : 55 years, Occu. Service as)
Deputy Commissioner (Rehabilitation),)
Divisional Commissioner (Revenue) office)
Aurangabad, R/at. Plot No.20,)
Indradhanu, Opp. Kasliwal Corner,)
N-2, CIDCO, Aurangabad 431 003)

**.....Respondents
(Org. Applicants)**

3. The Additional Chief Secretary,)
General Administration Department,)
Mantralaya, Mumbai 32)
4. The Additional Chief Secretary,)
Finance Department,)
Mantralaya, Mumbai 32)
5. The Principal Secretary,)
Law and Judiciary Department,)
Mantralaya, Mumbai 32.)
6. Shri Vijay s/o. Shankarrao Deshmukh,)
Age : Major, Occu. Service as)
Additional Collector, Pune.)
7. Shri Trigun s/o. Shamrao Kulkarni,)
Age : Major, Occ. Service as)
Deputy Commission (Supply))
Divisional Commissioner (Revenue) Office,)
Pune Division, Pune.)
8. Smt. Rupali d/o. Vilas Awale,)
Age : Major, Occu. Service as)
Additional Collector, Osmanabad)
9. Smt. Swati d/o.Laxmanrao Deshmukh,)
Age : Major, Occu Service as)
Deputy Commissioner (Supply),)
Divisional Commissioner (Revenue)'s)
Office, Nashik Division, Nashik)
10. Shri Arvind s/o. Rameshrao Lokhande,)
Age : Major, Occu Service as)
Additional Collector,)
Collectorate, Latur,)
11. Shri Tushar s/o. Eknath Thombre,)
Age : Major, Occu Service as)
Additional Collector, Beed,)
Collectorate, Beed.)

**..Formal Respondent
(Org. Respondent Nos.2 to 10)**

Shri Avinash Deshmukh, learned Counsel for the Respondents (Org. Applicants) in T.A.1/2021.

Shri Ajay Deshpande, learned Counsel for the Respondents (Org. Applicants) in T.A.2/2021.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Applicants (Org. Respondents) in M.A.145/2021 & M.A.146/2021.

Shri Ujwal Patil, learned Advocate with Shri B.A. Shinde, learned Advocate for Respondent No.3 and 4 in T.A.1/2021 and for Respondents No.5 to 10 in T.A.2/2021.

CORAM : JUSTICE MRIDULA BHATKAR, CHAIRPERSON

DATE : 18.05.2021

J U D G M E N T

1. The present Miscellaneous Applications i.e. M.A.No.145 of 2021 and M.A.No.146 of 2021 are filed under Section 25 of the Administrative Tribunals Act 1985 by the State of Maharashtra for the transfer of two applications i.e. T.A.No.1 of 2021 and T.A.No.2 of 2021 from the Aurangabad Bench of this Tribunal to the Principal Bench at Mumbai.

2. The learned C.P.O. for the Applicant has based her submissions on the following grounds :-

- (i) The two Original Applications i.e. O.A.No.236 of 2021 and O.A.No.237 of 2021 are already filed before the Principal Bench at Mumbai and it pertains to the same issue i.e. seniority between the directly appointed promotes in the

cadre of Deputy Collectors in the State of Maharashtra. The seniority list dated 31.12.2020 is challenged in these two Original Applications and the two matters before the Aurangabad Bench of this Tribunal. Hence in order to avoid the multiplicity of the proceedings these two Transfer Applications are to be transferred to the Principal Bench at Mumbai.

- (ii) All the records and proceedings are easily available in the Principal Bench at Mumbai due to the vicinity of Mantralaya.
- (iii) The O.A.No.464/2020 and O.A.No.99/2020 which were filed earlier and decided were about the same issue. The subsequent Original Applications i.e. O.A.No.236/2021 and O.A.No.237/2021 involving the same issue like T.A.No.1/2021 and T.A.No.2/2021 have branched off the earlier O.A.No.464/2020 and O.A.No.99/2020, thus and the Principal Bench is already aware of the facts involved in the matters.
- (iv) There is no Division Bench at present functioning at Aurangabad Bench and the Hon'ble High Court in Writ Petition No.2612/2021 has granted the ex-parte interim relief in T.A.No.2/2021, though not on merit, it needs to be vacated. Hence, hearing of interim application is urgent for the State and the said order cannot be dealt with by the Chairperson while dealing with the application under Section 25 of the Administrative Tribunals Act 1985.

3. The learned C.P.O. in support of her submissions relied on the judgment of ***All India Institute of Medical Sciences Versus Sanjiv Chaturvedi & Ors., Civil Appeal No.1392/2019 dated 01.02.2019*** where the scope of Section 25 of the Administrative Tribunals Act 1985 is discussed by the Hon'ble Supreme Court.

4. Par contra, learned Counsel Shri Avinash Deshmukh and Shri Ajay Deshpande relied on the affidavit-in-reply filed by the respective applicants. The learned Counsel Shri Deshpande argued that it is the fallacy that the earlier Original Applications i.e. O.A.No.464/2020 and O.A.No.99/2020 are still pending before this Tribunal. They were decided and no other application is pending which is filed prior in time of T.A.No.1/2021 and T.A.No.2/2021. Mr. Deshpande submitted the matters filed at Aurangabad are filed earlier in time and therefore Section 10 of the Civil Procedure Code, 1908 which states that the suit filed earlier is to be heard first and the suit filed later is to be stayed is attracted. The learned Counsel further submitted that earlier Original Applications the seniority list of 31.12.2020 was not challenged as it was not ready when those Original Applications were filed. Thus the issue before the Tribunal in those earlier Original Applications was different. Those Original Applications are the history and there is no pendency of any such matter involving the same issue before the Tribunal. He further submitted that the proximity of Mantralaya and the availability of record to the Principal

Bench cannot be argued because the record can be made available in the same manner at Aurangabad or Nagpur Bench. The purpose of the establishment of the Benches is to bring justice at the door step of the litigants and therefore all the records are to be in fact transferred from Mumbai to Aurangabad. On the point of multiplicity of the proceedings, the learned Advocate argued that this is not the valid ground to transfer the matters from Aurangabad to Mumbai. In support of his submissions on this point he relied on the judgment of Hon'ble Supreme Court in case of ***K. Ajit Babu and others Versus Union of India and Others, reported in (1997) 6 SCC 473.***

5. The learned Advocate Shri Deshmukh adopted all the submissions made by learned Advocate Shri Deshpande. He further added that one Hon'ble Member Judicial is available at Aurangabad Bench. Hence, the matter can be taken up for hearing at Aurangabad Bench. He further states that another Hon'ble Member (Admin) will be soon available at Aurangabad Bench, then Division Bench will also start functioning at Aurangabad Bench. He further submitted that this issue is related to all the District Collectors in the State of Maharashtra and there is possibility of conflicting verdict of Aurangabad and Mumbai and it will create anomalous and serious situation which will drive the litigants to further litigations.

6. The learned Advocate Shri Ujwal Patil, with Shri B.A. Shinde, appearing for Respondent No.3 and 4 in T.A.No.1/2021 and for

Respondents No.5 to 10 in T.A.No.2/2021 has submitted that Respondents are not only from Aurangabad, but they are posted at various place i.e. Pune, Beed, Latur and Osmanabad. Therefore, the matters can be heard rather at Principal Bench at Mumbai and he supported the prayer of transferring the matters from Aurangabad to Mumbai made by the State. He submitted that it is convenient for them to come to Mumbai and attend the matters. There is no issue of convenience of the learned Counsel or the litigants at Aurangabad because some applicants had challenged certain issues earlier before this Tribunal at Mumbai Bench and thereafter at High Court Bombay.

7. The learned Advocate Mr. Deshpande submits that the law laid down in the case of **Sanjiv Chaturvedi (supra)** is not applicable to the present set of facts and the issue was regarding the powers of the Chairperson of the Central Administrative Tribunal (CAT). These two Transfer Applications are made under Section 25 of the Administrative Tribunals Act 1985. In the case **Sanjiv Chaturvedi (supra)** it is held that the Chairperson of CAT sitting singly has no power to stay the proceedings pending before the D.B.

8. The Section 25 of the Act essentially gives the administrative powers to the Chairperson of the Tribunal to transfer the cases from one place to another. It is useful to reproduce Section 25 of the Act as follows :-

Power of Chairman to transfer cases from one Bench to another.—On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.

9. Thus Section 25 is totally silent on laying any criterion, guideline or condition precedent as under what circumstances the matters are to be transferred from one Bench to another. Thus, the Chairperson on her / his own motion or on application of any of the parties and after hearing them may transfer pending matters before one bench to another. Thus though no guideline or yardstick is mentioned for a transfer, the basic principle that the power to transfer the pending matters from one Bench to another is to be used judiciously and not arbitrarily, needs to be followed. There should be some valid ground and good reason for passing administrative order. In the case of **Sanjiv Chaturvedi (supra)** and also in case of **K. Ajit Babu (supra)**, the relevant point is applicable to present case, wherein Hon'ble Supreme Court has considered that there should be consistency, continuity and uniformity in the judicial decision and therefore all the Benches and the Tribunal are bound by law of precedent while exercising Administrative powers under Section 25 of the Act. Therefore, it is rightly held in the case of **Sanjiv Chaturvedi (supra)**, the Chairperson has no power to stay or pass any judicial order interfering with any earlier judicial order passed by either of the benches. In the present case, there is no such prayer made by the

State and no order of interfering the earlier judicial order is asked for. Rather, the State has moved the application for transfer to enable the Principal Bench of Mumbai to pass and decide the matter judicially as no D.B. is available at Aurangabad.

10. Section 22 of the Administrative Tribunals Act, 1985 lays down the procedure and powers of the Tribunal, wherein the Tribunal is not bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and subject to the other provisions of the said Act and so also the rules made by the Government. Similarly, the Tribunal has power to regulate its own procedure. Thus, Section 22 of Administrative Tribunals Act, 1985 need not deal much with Section 10 of the Code of Civil Procedure, 1908 which is relied by learned Counsel Mr. Deshpande.

11. It is true that at present Aurangabad bench is functioning with one Hon'ble Member (Jud) and other Hon'ble Member (Admin) has taken charge at Mumbai on 12.05.2021. However, Hon'ble Member (Admin) is unable to go to Aurangabad and start functioning due to sudden rise in COVID-19 pandemic. Similarly the logistics are yet to be arranged and to be made available to him at Aurangabad. However, my learned brother Mr. Bijay Kumar, Hon'ble Member (Admin) will join at Aurangabad Bench soon and the D.B. will start functioning at Aurangabad Bench.

12. The main grievance in the submissions of both parties is mainly about the inconvenience to the litigants and learned Counsel due to unprecedented COVID-19 pandemic. The Counsel representing the litigants are not able to travel to and fro Aurangabad to Mumbai and visa versa. Hence it is a matter of time.

13. The two matters are filed before the Tribunal at Aurangabad Bench and the two are pending before the Principal Bench at Mumbai. I agree that the separate benches of the Tribunal are established at Aurangabad and Nagpur to make available the access to justice easily, in all aspects, to the citizens in different areas, especially, to the citizens who are distantly residing from the Principal Bench i.e. Mumbai. The matters are filed in all the Benches to save time and expenses, and wherever the disputes / issues crop up. The matters are argued and decided independently by following the rule of precedent at all the respective Benches. Thus the issue of passing inconsistent or contradictory orders in any matters by two Benches does not arise and that apprehension of the State is baseless.

14. In the present situation, I am of the view that the safety and the life of citizens and the Members of the bar is important and we should limit the movement i.e. transfer from one place to another as far as possible in the present lockdown. I also note that at present

during this lockdown the Government is working with only 15 % of total strength of the staff.

15. In view of this, I am not inclined to allow the transfer, considering the convenience and safety of the litigants and the members of the Bar. Moreover, the records can be made available to the other Benches as well.

16. Hence, M.A.No.145 of 2021 and M.A.No.146 of 2021 for transfer are hereby dismissed.

Sd/-

(Mridula Bhatkar, J.)
Chairperson

prk