

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 691 OF 2023**

**DISTRICT : PUNE**

Shri Ajit Vasant Kurhade )  
Working as Tahsildar, (Revenue) )  
In the office of the District Collector, )  
Pune. R/o: Pushkaraj Apt, )  
2<sup>nd</sup> floor, Room no. 205, Somwar Peth) )  
Pune. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through Addl. Chief Secretary )  
Revenue & Forest Department,) )  
[Revenue], Mantralaya, )  
Mumbai 400 032. )  
2. Rajendra Najan, )  
Waiting for Posting. )...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicant.  
Ms Archana B.K, learned Presenting Officer for the Respondents.  
Shri M.D Lonkar, learned counsel for Respondent no. 2.

**CORAM : Justice Mridula Bhatkar (Chairperson)**

**DATE : 04.08.2023**

## **J U D G M E N T**

1. The applicant working as Tahsildar, Revenue, in the office of the Collector, Pune prays that the Tribunal be pleased to quash and set aside the impugned order dated 16.6.2023 passed by Respondent no. 1, under which he is ousted from the post of Tahsildar (Revenue), Pune, that too without issuing the order of his posting transferring Respondent no. 2, in his place.

2. Learned counsel for the applicant has submitted that the applicant was transferred to Pune by order dated 9.12.2020 and joined on 10.12.2020. Thus, he will complete his normal tenure of 3 years on 10.12.2023. Learned counsel further submitted that the applicant is going to retire on 30.6.2024.

3. Learned counsel for the applicant has submitted that the applicant is now transferred from Pune by order dated 16.6.2023, however, he is not given any posting. He is ousted as Respondent no. 2 is given posting in place of the applicant. Learned counsel further submitted that till today the applicant is not given any posting and Respondent no.2, joined on 19.6.2023. Learned counsel has submitted that the applicant neither handed over the charge, nor was relieved from his post till 16.6.2023, but when he was before the Tribunal on 19.6.2023, Respondent no. 2, unilaterally took charge of the said post, which the applicant was holding. Learned counsel has further submitted that the transfer order, thus is mid-term and mid-tenure. The order is not issued in the month of April and May 2003 as per Section 4(4) of the Maharashtra Government Servants Regulation Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the said Act). The Respondent-State has not followed the provisions of Section 4(5) of the said Act. Learned

counsel for the applicant submitted that while considering the case of the Respondent no. 2 and the proposal of posting of Respondent no. 2 in place of the applicant, the Civil Services Board has opined not to transfer the Respondent no. 2 in the place of the applicant. On the contrary, Respondent no. 2, should have been posted to S.R.A, Pune, on deputation. This was the recommendation of the Civil Services Board. Further, it was necessary on the part of the Respondents to consider the facts that the applicant is going to retire on 30.6.2024. Learned counsel further submitted that political pressure is exerted by Respondent no. 2, so Respondent no. 2 is accommodated in place of the applicant. The recommendations of the Civil Services Board were ignored by the Hon'ble Revenue Minister and the Hon'ble Chief Minister. The prior approval of transfer of the applicant should have been obtained, but he is in fact ousted from his posting by transferring Respondent no. 2 in his place. Learned counsel for the applicant relied on the judgment of this Tribunal dated 23.3.2023 in O.A 174/2023, Rajendrakumar A. Jadhav Vs. The State of Maharashtra & Ors.

4. Learned P.O relied on the affidavit in reply dated 24.7.2023 filed by Ajit Sopanrao Deshmukh, Deputy Secretary in the office of Additional Chief Secretary, (Revenue), Revenue and Forest Department, Mantralaya, Mumbai, and defended the transfer order. Learned P.O justified the order of Respondent no. 2 posting him in place of the applicant without considering the proposal of transfer of the applicant. Learned P.O further submitted that the in column 3 it is stated that the orders of transfer of Sunil Sharekhan and the applicant would be separately issued. While transferring Respondent no. 2, the Government has followed the proper process and procedure and the approval of the Hon'ble The Chief Minister is taken.

5. Learned counsel for Respondent no. 2, while opposing the Original Application has defended the order of transfer of Respondent no. 2 in place of the applicant and relied on paras 16, 17, 21 & 22 of the order of the Hon'ble High Court dated 26.6.2023 in W.P 7677/2023 preferred by Respondent no. 2.

16. It must be borne in mind that Respondent No. 2 has not been transferred to any particular post. Until 16 June 2023, he continued to be posted as Tahsildar (Revenue), Collector Office, Pune. On account of Order dated 16 June 2023 posting Petitioner on that post, Respondent No. 2 has been rendered without any post. Though in ordinary course of things, such a course of action in keeping an officer without posting ought to have been avoided by the State Government, this is something which need not be gone into at this stage. Suffice it to observe that Respondent No. 2 has not been transferred out of Pune. He is now without posting, but will be entitled to draw salary and allowances. At this juncture atleast, he is not required to move out of Pune causing any inconvenience to himself or to his family members. Since Respondent No. 2 has not been transferred to any post or station, there would ideally not be any reason for him feel aggrieved.

17. However Respondent No. 2 is aggrieved by posting of Petitioner on his post. This essentially means that Respondent No. 2 wishes hold the post of Tahsildar (Revenue), Collector Office, Pune. He also challenges Petitioner's transfer contending that Petitioner was not due for being transferred or posted as Tahsildar (Revenue), Collector Office, Pune. It is well settled law that a Government Official cannot demand posting against a particular post. True it is that under the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act), a tenure of 3 years on a post is ordinarily provided to State Government Officers. There are however exceptions under which the normal tenure can be curtailed. Whether reasons existed for curtailment of tenure of Respondent No. 2 and whether curtailment of his tenure by just about 6 months (having completed tenure two and half years) are the issues which the Tribunal would consider at the time of final disposal of the OA.

20. Therefore the 'direction' issued by the Tribunal to Respondent No. 2 to 'work from tomorrow' as an interim order would clearly be in excess of its jurisdiction.

21. We are conscious of the fact that by unilateral and *ex parte* taking over charge of the post by a transferred officer, the remedy of previously posted officer to seek interim order from Court/Tribunal can get hampered. Mr. Bandiwadekar has sought to rely on provisions of the Rules prescribing the procedure by which an officer can be relieved on transfer. It is his contention that Petitioner has taken over charge of the post in an illegal manner, to prevent Respondent No. 2 from seeking his remedy against the posting order. He has submitted that merely because charge of the post is taken over *ex parte* in an illegal manner, the same cannot stand in the way of the Tribunal in granting interim relief of status quo ante. The fact that Petitioner took over charge of the post *ex parte* may have weighed with the Tribunal for granting the interim order of status quo ante. However, the Tribunal was not faced with an irreversible situation. While granting final relief, it can always set the clock back. In the interregnum, Respondent No. 2 can wait for posting by remaining at Pune and draw full salary and allowances till decision of his OA.

22. We also do not propose to lay down an absolute proposition that in every case where charge of the post is taken over by transferred officer, the Courts or Tribunals are rendered powerless to grant any interim relief. It would depend on facts and circumstances of each case. In the present case however, Respondent No. 2 has not yet been directed to move to another station and will be paid full salary and allowances while waiting for posting during pendency of his OA. Therefore, the Tribunal could have avoided grant of interim directions which are impugned in the present petition."

6. In this matter, the applicant was posted at his present place of posting on 9.12.2020 and thus he will be completing 3 years on 10.12.2023. Thus, the transfer order is admittedly mid-tenure. No-doubt the Respondents can transfer any civil servant by invoking the powers under Section 4(4) and 4(5) of the ROT Act, 2005. However, for invoking such powers under the said sections, it is necessary on the part of the Respondents to make out a special case and after recording the reasons in writing of making

out such case and with the approval of the immediate superior, further procedure is required to be followed for such mid-term and mid-tenure transfer. The relevant sections of the ROT Act, 2005 are reproduced below:-

“Section 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the ‘Transfer Act’).

“4. (1) *No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.*

(2) *The competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year.*

(3) *Transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in the entries (a) and (b) of the table under section 6 shall be finalized by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be:*

*Provided that, any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.*

(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 of 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.*

*5. (1) The tenure of posting of a Government servant or employee laid down in section 3 may be extended in exceptional cases as specified below, namely:-*

*(a) the employee due for transfer after completion of tenure at a station of posting or post has less than one year for retirement.*

7. When, the applicant was not due for transfer now December, 2023, the burden is on the Respondents to show a special case with reasons for transferring the applicant is made out. There was no request on behalf of the applicant for his transfer. Thus, he was not relieved on his request. On perusal of the notings of the Civil Services Board which has taken place on 3.5.2023, for considering the case of Respondent no. 2, who is transferred in the place of the applicant, does not disclose that any proposal was mooted for the transfer of the applicant in the month of January, 2023 or in the month of April or May, 2023. The notings of the Civil Services Board reveal that the transfer of Respondent no. 2, was considered and on the contrary it was specifically mentioned that the name of the applicant for transfer is not recommended.

8. Perused the noting of the file of the Civil Services Board dated 3.5.2023. The notings are found in two files. The first file discloses that the meeting of the Civil Services Board was conducted on 3.5.2023 pertaining to the transfer of Respondent no. 2, whose name is shown at Sr. No. 30. The Respondent no. 2 was shown as working at Tahsildar (Revenue) Division, Nasik from 23.5.2020 till the other officer is appointed in his place and he is waiting for his posting. Respondent no. 2, has completed his three

years tenure on 23.5.2020 and he has requested a choice posting at the office of Tahsildar, Pune. Column no. 7 of the Civil Services Board further discloses as under:-

श्री.राजेंद्र मारुतराव नजन हे दि.२३.०५.२०२० पासून तहसिलदार (महसूल) जि.का.नाशिक या पदावर कार्यरत होते. सदर पदावर अन्य अधिका-याची नियुक्ती झाल्यामुळे सदरस्थितीत ते नियुक्तीच्या प्रतिक्षेत आहेत. तसेच त्यांची नाशिक विभागातील अनिवार्य सेवा दि.२३.०५.२०२० रोजी पूर्ण होत असून त्यांनी तहसिलदार (महसूल), जि.का.पुणे या पदावर पदस्थापना देण्याची विनंती केली आहे. सदर पदावर श्री.अजित कु-हाडे हे दि.११.१०.२०२० पासून कार्यरत असून ते बदलीपात्र नसल्यामुळे त्यांची विनंती अमान्य करून त्यांना झोपडपट्टी पुनर्वसन प्राधिकरण, पुणे येथे प्रतिनियुक्तीने पदस्थापना देण्याची शिफारस यापूर्वी नागरी सेवा मंडळाने केली होती. तथापि, सक्षम प्राधिकारी यांनी श्री.नजन यांना तहसिलदार (महसूल) जि.का.पुणे या पदावर पदस्थापना देण्याची निर्देश सक्षम प्राधिकारी यांनी दिले आहेत. तथापि, सदर पदावर श्री.अजित कु-हाडे हे दि.११.१०.२०२० पासून कार्यरत असून ते बदलीपात्र नाहीत. त्यामुळे श्री.नजन यांना सदर पदावर पदस्थापना देता येणार नाही. यास्तव, यापूर्वी नागरी सेवा मंडळाने केलेल्या शिफारशीनुसार गृहनिर्माण विभागाची संमती मिळण्याच्या अधीन राहून महाराष्ट्र बदली अधिनियम २००५ च्या कलम ४(४) मधील तरतुदीनुसार प्रशासकीय कारणास्तव व म. ना.से (पदग्रहण अवधी, स्वीयेत्तर सेवा आणि निलंबन, बडतर्फी सेवेतून काढून टाकणे) नियम, १९८१ च्या नियम ४० मधील परिशिष्ट २मधील विहित अटी व शर्तींना अधीन राहून श्री.राजेंद्र नजन, तहसिलदार यांची झोपडपट्टी पुनर्वसन प्राधिकरण, पुणे येथे प्रतिनियुक्तीने पदस्थापना करण्याबाबत शिफारस करण्यात यावी. (emphasis placed).

9. The applicant is working as Tahsildar at Pune since 11.10.2020 and hence he is not due for transfer. Therefore, the request of Respondent no. 2, was rejected and his posting at Zopadpati Punarvasan Pradhikaran, Pune on deputation was recommended by the Civil Services Board. However, the Hon'ble Revenue Minister has directed to post Respondent no. 2 in place of the applicant. The Committee has specifically mentioned that though such directions are given, Respondent no. 2, cannot be posted in place of the applicant. Therefore, again Respondent no. 2 was recommended to be posted on deputation to Zopadpati Punarvasan Pradhikaran, Pune. The case of the applicant was put up before the Hon'ble Revenue Minister along with the report of the Civil Services Board. Though, the Civil Services Board

recommended that the Respondent no. 2, should be posted on deputation to Zopadpati Punarvasan Pradhikaran, (S.R.A), Pune, he was given a modified posting as Tahsildar, Pune. The Hon'ble Minister has authority not to accept the recommendations of the Civil Services Board but with reasons in writing. Nothing such is found in the file. Hence the order is arbitrary and unfair. The signature of the Hon'ble Revenue Minister is seen and so also surprisingly carbon copy signature of the Hon'ble Chief Minister is appearing. A question has raised in my mind as to how the carbon copy signature of the Hon'ble Chief Minister is put on the original noting file of the Civil Services Board dated 3.5.2023. I am of the view that it is a serious matter and Hon'ble Chief Minister may not be aware of this factual situation.

10. Thus, it is explicitly clear that the case of the applicant was not at any stage proposed for mid-term or mid-tenure transfer before the Civil Services Board and the Civil Services Board has not considered his case for transfer. The applicant was not due for transfer and his proposal was not considered and he cannot be ousted from the said post in such an illegal manner.

11. In the case of T.S.R Subramanian & Ors Vs. Union of India & Ors, W.P (Civil) No. 82/2011, where the issue of stability of the tenure of a particular post, malafide and arbitrariness in transfers was taken up before the Hon'ble Supreme Court and the Hon'ble Supreme Court held as under:-

“29. We, therefore, direct the Centre, State Governments and the Union Territories to constitute such Boards with high ranking serving officers, who are specialists in their respective fields, within a period of three months, if not already constituted, till the Parliament brings in a proper legislation in setting up CSB.

30. We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. The necessity of minimum tenure has been endorsed and implemented by the Union Government. In fact, we notice, almost 13 States have accepted the necessity of a minimum tenure for civil servants. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of the society.”

Before the decision in the case of T.S.R Subramanian, stability in the tenure of the civil servants at a particular place has remained always a matter of concern for the civil servants and also the Government. The civil servants who work as Bureaucrats they directly are required to work under the elected representatives of the people. The M.L.As or the concerned local representatives undoubtedly have to take interest in the local functioning of the various bodies, administrative work and they are very much obviously concern with the efficient administration. They being the representatives of the People, their say in the administration is always a word required to be respected. However, the Hon'ble Supreme Court and the High Court by various pronouncement have discouraged the Politicians of any kind by involving the bureaucrats in the administration, which compelled the bureaucrats to take decision deviating from the rules of law, rules of business and the administrative procedure.

12. In Sureshkumar Awasti Vs. U.P Jalnigam, (2003) XI SCC 740, the Supreme Court observed as under:-

“Transfer of an officer at the behest of politicians without following any guidelines provided thereof, an arbitrary or malafide transfer of an efficient and independent officer is not in favour of good administration. Transfer of officers is required to be effected on the basis of set norms or guidelines without allowing any political interference in regard thereto.”

13. It is true that transfer is an incidence of service and it is the duty of the Government servant to comply with the order of transfer. Not to report at the place of posting and staying away from the transferred place is undoubtedly a bad practice may lead to a misconduct. However, the order of transfer should not be arbitrary and as per the whims of the politicians. Generally the Courts are very slow in interfering with the orders of transfer as number of issues like administrative exigency, efficiency of the administration, the character of the civil servant, his suitability are the main factors weighing on the mind at the time of transfer. The Government servant has no legal right to insist for being posted at a particular place. It is expected that the administration should adhere to the usual procedure fairly. The arbitrary, malafide and subjective transfer orders are bound to create unrest, discontent in the minds of the civil servants. The complete adherence to the statutory provisions and the procedure laid down by the legislature in the transfer Act of 2005 is expected in the good governance. Maharashtra State is the only State where the law under the Transfer Act is enacted. Hence, much is expected when the procedure is required to be followed in a particular manner and then it is to be done so as laid down in the relevant sections of the Transfer Act.

14. This Tribunal by order dated 4.10.2007 in O.A Nos 376 & 377/2007, Shri Murlidhar C. Patil Vs. Government of Maharashtra has considered various aspects of the transfer and especially about the competent authority who have entrusted the power of the

transfers of different group of Government servants, i.e, 'A', 'B' , 'C' and 'D' as per the Transfer Act. It is specifically held that though the scope of judicial review is limited, however, when the power delegated to the competent authority or by the competent authority cannot travel beyond that authority, and if it does, then that action is undoubtedly without jurisdiction and any authority. In the said judgment, the Tribunal has discussed the law on transfer and also commented on some relevant terminology in respect of transfer. It had held that the transfers can be vitiated by non-application of mind and so also the orders of the private Respondents which are issued at the behest of the intervention of the Political leaders having no connection with the administration and the transfer orders are vitiated by arbitrariness and issued not on administrative exigencies, but on the recommendations of the Hon'ble Minister. Thus, the transfers are covered under the statute, i.e, the transfer act, unconnected to the political interference and the arbitrariness in the orders appears to be continued and i.e., **Hon'ble Bombay High Court in W.P 8987/20128 in Balasaheb V. Tidke Vs. The State of Maharashtra & Ors**, while dealing with the transfer of Government servant held that it was influenced by the recommendations made by the Hon'ble Chief Minister of Government of Maharashtra and Member of the Legislative Assembly and the then Chief Minister modified the said proposal submitted by the department for transfer. The Division Bench of the Hon'ble Bombay High Court in the same matter has recorded the undertaking given by D.K Jain, the Chief Secretary, Government of Maharashtra as follows:-

2. In the order dated 3<sup>rd</sup> December, 2018, we have recorded the assurance of the State that it will be ensured that the process of transfers will not be influenced by the recommendations made by elected representatives of people

and the Hon'ble Ministers who are not concerned with the process of transfers. In terms of the said statement, Mr Dinesh Kumar Jain, the Chief Secretary of the Government of Maharashtra has filed an affidavit. The affidavit dated 12<sup>th</sup> December, 2018, is taken on record and marked 'A' for identification. Paras 1 and 2 of the said affidavit reads thus:-

*1. I submit that I am filing the present affidavit for the limited purpose of stating that the process of transfer at the level of the Government will not be influenced by any recommendations made by any political leaders, members of political parties or any Hon'ble Ministers who are not part of the process of transfers.*

*2. I submit that all authorities who are competent to effect the transfers will be advised to strictly follow the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 while issuing transfer order."*

15. The rule of law is required to be followed and the procedure laid down as it is a mandate in the cases of transfer. In the present case surprisingly Shri M.D Lonkar, learned counsel for Respondent no. 2, has pointed out the order dated 12.4.2023 by which the Respondent no. 2, who was working as Tahsildar, Nasik, was displaced by transferring one Mr P.A Kasule, Tahsildar, Igatpuri, to Nasik. Learned counsel for Respondent no. 2, submitted that from 12.4.2023 till 16.6.2023, he is kept without posting and without any work. Now after two months, Respondent no. 2 is posted in place of the applicant. The order dated 12.4.2023 and order dated 16.6.2023, shock the conscience of any common man. The Hon'ble High Court in its order dated 26.7.2023 in W.P 7677/2023 has graciously considered and was kind enough to take care of the applicant by specifically mentioning that he should

be paid his salary and he should not be sent out of Pune. However, it appears that the fact that unfortunately the Respondent no. 2 has undergone the same plight of remaining without posting and without work for two months, is not brought to the notice of the Hon'ble High Court and I am informed that Respondent no. 2 is not yet paid his salary for two months from April to June, 2023. All the Government servants are expected to utilize their all working hours and render their service. It is also well known recognized proposition in law 'No Work No Pay'. However, when the mighty Respondent compels by its official and sit ideal without posting them those Government servants who are not working and just sitting ideal, are required to be paid their salary and the said payment is made by the Tax payers or public money. I fail to understand as to how this wasted man power which is wasted for two months can be compensated in what terms by the Respondent-State. It is a matter of good governance.

16. The case of the applicant as stated above, was never considered by the Civil Services Board for transfer and till today he is kept without posting and without work for last 1 ½ months. When there is a clear violation of the statute, then judicial interference is required. A person cannot be shifted or displaced from his posting in order to accommodate some other person.

17. Thus, I am of the view that there is a gross deviation from the statute, the practice and the procedure of law. In view of the above discussion, I am of the view that the applicant has made out a case to interfere with the order and it is a fit case to pass mandatory order.

18. In view of the above, following order is passed:-

(a) The Original Application is allowed.

(b) The impugned transfer order dated 16.6.2023 passed by Respondent no. 1, transferring the applicant from the post of Tahsildar (Revenue) Pune without transferring him at any other place and posting Respondent no. 2, in his place is quashed and set aside.

(c) By way of necessary corollary, the applicant is hereby allowed to start working at his original place of posting as Tahsildar (Revenue), Pune.

19. Learned counsel for the Respondent no. 2, prayed that the order of this Tribunal be stayed for two weeks so as to enable him to file appeal before the Hon'ble Bombay High Court. However, learned counsel for the applicant has opposed for grant of such stay.

20. As it is a complete illegal order and the applicant was ousted from his present place of posting without approval from the Civil Services Board, the prayer made by learned counsel for the Respondent no.2, to stay the order for a period of two weeks to approach the Hon'ble Bombay High Court is rejected.

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**

**Place : Mumbai**  
**Date : 04.08.2023**  
**Dictation taken by : A.K. Nair.**