

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 388/2020 (S.B.)

Moreshwar Rushiji Bande,
Aged about 53, R/o Bamni, Tq. Sironcha,
Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.
- 2) Collector, Gadchiroli
- 3) A.K. Bondle, Tahsil Office,
Kurkheda, Dist. Gadchiroli.

Respondents.

Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.
Shri P.N. Warjurkar, P.O. for respondent nos.1&2.
None for respondent no.3.

WITH
ORIGINAL APPLICATION No. 389/2020 (S.B.)

Purushottam Tukaram Balapure,
Aged about 52 years,
R/o Kunghade, Tq. Chamorshi,
Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.
- 2) Collector, Gadchiroli
- 3) K.P. Shelke, Tahsil Office,
Chamorshi, Dist. Gadchiroli.

Respondents.

Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.

Shri P.N. Warjurkar, P.O. for respondent nos.1&2.

None for respondent no.3.

WITH

ORIGINAL APPLICATION No. 390/2020 (S.B.)

Raju Parshuram Sidam,
Aged about 46, R/o Gimalgatta, Tq. Aheri,
Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.
- 2) Collector, Gadchiroli
- 3) C.N. Chilamwar, Tahsil Office,
Dhanora, Dist. Gadchiroli.

Respondents.

Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.

Shri P.N. Warjurkar, P.O. for respondent nos.1&2.

None for respondent no.3.

WITH

ORIGINAL APPLICATION No. 391/2020 (S.B.)

Yuoraj Prabhuji Bhandekar,
Aged about 54, R/o Mulchera, Tq. Mulchera,
Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.

- 2) Collector, Gadchiroli
- 3) R.M. Vaidya, Tahsil Office,
Sironcha, Dist. Gadchiroli.

Respondents.

**Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.
Shri P.N. Warjurkar, P.O. for respondent nos.1&2.
None for respondent no.3.**

WITH

ORIGINAL APPLICATION No. 392/2020 (S.B.)

Rammurti Dharmayya Gaddam,
Aged about 56, R/o Tadgaon, Tq. Bhamragad,
Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.
- 2) Collector, Gadchiroli
- 3) T.B. Gudadhe, Tahsil Office,
Gadchiroli, Dist. Gadchiroli.

Respondents.

**Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.
Shri P.N. Warjurkar, P.O. for respondent nos.1&2.
None for respondent no.3.**

WITH

ORIGINAL APPLICATION No. 393/2020 (S.B.)

Giridhar Dhanuji Sonkusre,
Aged about 56, R/o Yeoli, Dist. Sironcha,

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.
- 2) Collector, Sironcha
- 3) V.V. Aurgantiwar, Tahsil Office,
Sironcha, Dist. Sironcha.

Respondents.

**Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.
Shri P.N. Warjurkar, P.O. for respondent nos.1&2.
None for respondent no.3.**

**WITH
ORIGINAL APPLICATION No. 394/2020 (S.B.)**

Someshwar Sukru Barsagde,
Aged about 54, R/o Gadchiroli,
Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.
- 2) Collector, Gadchiroli
- 3) R.S. Fulzele, Tahsil Office,
Gadchiroli, Dist. Gadchiroli.

Respondents.

**Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.
Shri P.N. Warjurkar, P.O. for respondent nos.1&2.
None for respondent no.3.**

WITH

ORIGINAL APPLICATION No. 395/2020 (S.B.)

Santosh Vyankatrao Shrirame,
Aged about 37, R/o Allapalli, Tq. Aheri,
Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.
- 2) Collector, Gadchiroli
- 3) D.K. Walke, Tahsil Office,
Chamorshi, Dist. Gadchiroli.

Respondents.

**Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.
Shri P.N. Warjurkar, P.O. for respondent nos.1&2.
None for respondent no.3.**

WITH

ORIGINAL APPLICATION No. 396/2020 (S.B.)

Kishor Pandurang Thakre,
Aged about 52, R/o Murumgaon, Tq. Dhanora,
Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.
- 2) Collector, Gadchiroli
- 3) Ku. K.D. Hemke, Tahsil Office,
Kurkheda, Dist. Gadchiroli.

Respondents.

Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.

Shri P.N. Warjurkar, P.O. for respondent nos.1&2.

None for respondent no.3.

WITH

ORIGINAL APPLICATION No. 397/2020 (S.B.)

Madansingh Gangaram Fulkuwar,
Aged about 56, R/o Desaiganj, Tq. Wadsa,
Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.
- 2) Collector, Gadchiroli
- 3) Smt. R.N. Borkar, Tahsil Office,
Gadchiroli, Dist. Gadchiroli.

Respondents.

Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.

Shri P.N. Warjurkar, P.O. for respondent nos.1&2.

None for respondent no.3.

WITH

ORIGINAL APPLICATION No. 398/2020 (S.B.)

Pramod Fakira Warjurkar,
Aged about 57, R/o Chatgaon, Tq. Dhanora,
Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.

- 2) Collector, Gadchiroli
- 3) L.V. Lade, Tahsil Office,
Aheri, Dist. Gadchiroli.

Respondents.

Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.

Shri P.N. Warjurkar, P.O. for respondent nos.1&2.

Shri G.N. Khanzode, Advocate for respondent no.3

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Dated :- 20th October, 2020.

COMMON JUDGMENT

Heard Shri N.R. Saboo, learned counsel for the applicants and Shri P.N. Warjurkar, learned P.O. and other Id. P.Os. for respondent nos. 1&2, Shri G.N. Khanzode, Id. counsel for respondent no.3 (in O.A.398/2020) and none for respondent no.3 in other O.As.

2. All the applicants entered the service as Talathi and during course of time they were promoted as Circle Officers. As common questions of law are involved therefore all these O.As. are heard together and they are being decided by this common order –

3. All the applicants are disputing the legality of the transfer order dated 28/7/2020 on the ground that the respondents had no authority in law to change the cadre of the applicants as Awwal

Karkun. It is submitted that in the guise of the transfer order, the respondents were not empowered by law to change the cadre of the applicants who are Circle Officers as Awwal Karkun. The second contention is that the applicants, in O.A. Nos. 388, 389, 390, 391 and 392 of 2020 were not due for transfer and before completion of the normal tenure they are transferred by the respondent no.2 without following the procedure under Section 4 (4) & (5) of the Transfers Act,2005. The third submission is that the respondents have avoided to follow the G.Rs. issued by the Government time to time to protect the interest of Govt. Servants to avoid arbitrary transfers.

4. The respondent nos.1&2 have filed their reply. It is contention of the respondent nos.1&2 that the G.R. dated 21/11/1995 empowered the respondents to interchange the posting of Circle Officer to Awwal Karkun and vice versa and therefore there is no illegality in the order. The second contention is that after exercising the power as per the G.R. dated 21/11/1995 the Divisional Commissioner, Nagpur decided to interchange 11 posts of Circle Officer / Awwal Karkun in the Gadchiroli District and in order to implement that decision the respondent no.2 issued the transfer orders and this was the administrative reason for the transfer, therefore, there was no illegality in the order. According to the respondent nos.1&2 as there was special reason to transfer the

applicants, consequently, compliance of Section 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short "Transfers Act,2005") was not necessary. It is submitted that there is no substance in the contention of the applicants that it was necessary to comply the provisions under Section 4 of the Transfers Act,2005.

5. The applicants have filed rejoinder and contended that the G.R. dated 21/11/1995 ceases to operate as staffing pattern was approved by the Government in the year 2006 and later on in the year 2009. It is contention of the applicants that purpose of the G.R. dated 21/11/1995 was to give permission to interchange the posts of circle officer and Avval Karkoon only for limited period and once the staffing pattern was approved, the G.R. ceases to operate automatically. The respondents have submitted their reply to the rejoinder and again supported their action. In para-3 of this reply the respondents have made out a case that throughout the State of Maharashtra the G.R. dated 21/11/1995 is followed and the Circle Officers and the Awwal Karkuns have taken benefits of this G.R. and they have derived the benefit of so many years, therefore, the applicants have lost their right to dispute the legality of this Government policy.

6. In order to decide the controversy, it is necessary to examine the first contention whether the respondents were authorized

to interchange the post of Circle Officer to Awwal Karkun and vice versa. The para-2 of the G.R. dated 21/11/1995 is as under –

^ nksu fHkUu egl wy foHkxke/; sojhy inl a; s cny djko; kps vl rhy rj R; kl a/khps vf/kdkj 'kkI ukl jkghy- ek= l a wkjKT; ke/; s; k 2 l dxkzhy ijLi j vnyknyhusHkjko; kP; k i nkph l a; k gh i R; d l dxkz kbh 600 brdhp dk; e jkghy o 2 l dxkz bh dkskR; kgh l dxkzhy , duk rkr i jR; k i nkph l a; k deh vFkok tklr >kyh rjh ijLi j vnyknyhusHkjko; kP; k i nkP; k l a; s cny gkskj ukgh- eMG vf/kdkjh l dxkzhy i nkP; o depjhoim jpuskr vfire fu.kz gkb; i gh i/nrh pkywjghy- ; k nkgh l dxkzhy i ns ijLi j vnyknyhusHkj.; kph fdz; k gh nkgh l dxkz; k ckrhr , dkp oGh veykr vk.k.; kr ; koh- **

7. The last four lines of this para-2 are very much specific. These lines say that till the approval of the staffing pattern, this arrangement regarding to the post of Mandal Officers be enforced.

8. It is further stated in para-2 that exchange of post be done only for once.

9. Now it is undisputed that the staffing pattern was approved by the Government of Maharashtra for the first time in the year 2006. After perusal of the G.R. dated 20/3/2006 it seems that so far as the Revenue Department is concerned, the Government of Maharashtra approved the new staffing pattern for the offices of the Revenue Commissioner, Collector, Sub Divisional Officer, Tahsildar, Circle Officer and Talathi office. Secondly, in the year 2009 then Collector, Gadchiroli wrote letter dated 26/10/2009. This letter shows that as per the approved staffing pattern there were 40 posts of Circle Officers in

Gadchiroli District. On the basis of this material, it can be safely said that the staffing pattern was approved by the Government of Maharashtra. Now the substantial question is whether after approval of the staffing pattern the respondents can place reliance on the G.R. dated 21/11/1995 for interchanging the cadre of Circle Officer and Awwal Karkun. I have already discussed that this G.R. was permissive and permission was given to interchange the post i.e. cadre of Circle Officer and Awwal Karkun only for limited period i.e. till the approval of the staffing pattern and this power was to be exercised only once, therefore, once a staffing pattern came in existence it does not lie in the mouth of the respondents that they have authority to exercise the same power as per 21-11-1995 G.R..

10. In this matter, in reply to the rejoinder; somewhat strange submission is raised by the respondents. It is contended by the respondents that the policy as per G.R. dated 21/11/1995 is followed in the State of Maharashtra and the Circle Officer and Awwal Karkun have derived benefit of this policy, no one raised objection for so many years and therefore the applicants have lost their right to dispute the the policy as per G.R. dated 21/11/1995. In my opinion, the respondents are claiming acquisition of prescriptive right by lapse of time as no objection was raised. In my opinion in service

jurisprudence, such principle of acquisition of right by prescription has no place.

11. In the present matter it is undisputed that all the applicants entered the service as Talathi, lateron they were promoted on the post of Circle Officer and once the staffing pattern was approved and confirmed by the Government. Now who gave right to the respondents to change the cadre of Circle Officer as Awwal Karkun and cadre of Awwal Karkun as Circle Officer. It must be remembered that nature of their duties are totally different. Once it is accepted that after approval of the staffing pattern, the G.R. dated 21/11/1995 ceases to operate, therefore, it is not possible to justify the action of the Government. I therefore, hold that the transfer orders issued by the respondent no.2 to implement the policy of the Divisional Commissioner to interchange 11 posts of Circle Officer/ Avval Karkoon in Gadchiroli District are contrary of law and cannot be sustained.

12. In addition, it is undisputed that the applicants in O.A. Nos. 388, 389, 390, 391 and 392 of 2020 were not due for transfer. The legal position is settled that if the Government is intending to transfer any Government servant before the completion of normal tenure, it is mandatory to fulfil the requirements under Section 4 (4) & (5) of the Transfers Act, 2005. In the present case admittedly those

requirements are not fulfilled. The respondent no.2 is putting finger on the Govt. G.R. dated 7/7/2020. In my opinion, the Govt. G.R. cannot override the statute, on the contrary even after reading that G.R., it seems that specific directions were given to consider the provisions under the Transfers Act,2005.

13. Before parting with it is necessary to observe that the respondents have not followed the G.Rs. issued by the Government of Maharashtra, they did not give opportunity to the applicants to submit their options, there was no conciliation process and the respondent no.2 unilaterally appointed all the Circle Officers as Awwal Karkun. In my view, this exercise of jurisdiction was contrary to the statute and Govt. G.Rs., therefore, the impugned transfers cannot be sustained. In the result, I pass the following order –

ORDER

All the impugned transfer orders are hereby quashed and set aside. The respondent no.2 is directed to post the applicants on the same post which were held by them before issuance of the impugned orders. No order as to costs.

Dated :- 20/10/2020.

(Anand Karanjkar)
Member (J).

*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 20/10/2020.
and pronounced on

Uploaded on : 21/10/2020..