

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION No. 481 of 2018 (S.B.)**

Abhay S/o Anantrao Joshi,  
Aged about 48 years, Occ. Service,  
Resident of Alpabachat Nivas-Sthan,  
Type-I, near Zilla Stadium, Civil Lines,  
Chandrapur, Tq. And Dist. Chandrapur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Principal Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai-32.
- 2) The Settlement Commissioner and  
Director of Land Records, New Administrative  
Building, in front of Commissioner Office, Pune.
- 3) Shri Kamlakar Sudhakar Hattekar,  
Aged about 47 years, Occ. Service,  
Presently posted as District Superintendent of Land  
Records, Amravati.
- 4) Shri Anil Dattatraya Mane,  
Aged about 47 years, Occ. Service,  
District Superintendent of Land Records,  
Near CBS Bus Stand, Nashik, Dist. Nashik.

**Respondents.**

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S/Shri A.C. Dharmadhikar, Ritu P. Jog, Advs: for the applicant.

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

Shri S.P. Palshikar, Id. counsel for R-3.

Shri S.V. Bhutada, Y.J. Maheshwari, Ms. V.V. Tiwari, Ms. P. Daga,

Ms. S.Agrawal, Advocates for respondent no.4.

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WITH

ORIGINAL APPLICATION No. 548 of 2018

With Civil Application No. 315 of 2018 (S.B.)

Kamlakar Sudhakar Hattekar,  
Aged about 47 years, Occ. Service,  
R/o Plot No.47, Rukmini Nagar,  
Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,  
through its Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai.
- 2) The Settlement Commissioner and  
Director of Land Records, New Administrative  
Building, in front of Commissioner Office, Pune.

Respondents.

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Shri S.P. Palshikar, Advocate for the applicant.

Shri P.N. Warjurkar, P.O. for respondents.

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

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COMMON JUDGMENT

(Delivered on this 3<sup>rd</sup> day of May, 2019)

Heard Shri A.C. Dharmadhikari, Id. counsel for the applicant, Shri P.N. Warjurkar, Id. P.O. for R-1&2, Shri S.P. Palshikar, Id. counsel for R-3 and Shri S.V. Bhutada, Id. counsel for R-4 (in O.A.481 of 2018) and Heard Shri S.P. Palshikar, Id. counsel for the

applicant and Shri. P.N. Warjurkar, Id. P.O. for the respondents (In O.A.548 of 2018 with C.A.No.315 of 2018).

2. The applicant in O.A. 481 of 2018 is challenging his transfer from Chandrapur to CIDCO, Navi Mumbai and the applicant in O.A.548 of 2018 (R 3) is challenging his transfer to Chandrapur from Amravati. As both the matters are connected together, therefore, both the applications decided by this common order.

3. In the year 2018 the applicant was serving as District Superintendent of Land Record, Chandrapur. It is his contention that his request of transfer and posting at Thane was considered by the Civil Services Board and all of a sudden without assigning any reason the Hon'ble Chief Minister approved the note sheet and directed to post the respondent no.4 at Thane. It is submission of the applicant that when the matter was considered by the Civil Services Board the respondent no.4 was not in picture at all and all of a sudden when the matter was placed before the Hon'ble Chief Minister one line was written in the proposal to post the respondent no.4 at Thane and to post the applicant at CIDCO, Navi Mumbai.

4. The impugned transfer is mainly attacked on the ground that the transfer on deputation is in violation of law because consent of the applicant was not obtained. The learned counsel for the applicant

submitted that as per provisions of the Maharashtra Civil Services (Joining time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 (In short "MCS (Joining time...) Rules, 1981) consent of the Government servant for his transfer to foreign service was mandatory and the transfer against his will is illegal. For this purpose the learned counsel for the applicant has placed reliance on Rule-36 of the MCS (Joining time...) Rules, 1981. The second contention of the applicant is that at the relevant time the post of District Superintendent of Land Record was not created on the establishment of CIDCO, Navi Mumbai and consequently there was no propriety to appoint the applicant by transfer on deputation to CIDCO, Navi Mumbai. It is submitted that without considering these aspects mechanically the note sheet was approved by the Hon'ble Chief Minister and consequently the posting of the applicant at CIDCO, Navi Mumbai is in violation of law.

5. It is submitted on behalf of the applicant that ordinarily the competent authority is bound to accept and act upon the recommendations made by the Civil Services Board and if the competent authority disagrees with the recommendations the competent authority shall record some reasons and for this purpose the learned counsel for the applicant has placed reliance on the Judgment in Writ Petition No.9844/2018 between Shri Santosh

Machhindra Thite Versus the State of Maharashtra & Ors., decided on 04/02/2019. It is submitted that the note sheet which was forwarded by the Civil Services Board was not considered by the Hon'ble Chief Minister who was the competent authority, but the Hon'ble Chief Minister accepted the proposal which was all of a sudden submitted and therefore the posting of the respondent no.4 at Thane is illegal. It is submitted that the exercise of the discretion is in violation of the law and therefore the transfer and posting of the applicant at CIDCO, Navi Mumbai be quashed, so also the transfer of respondent no.4 at Thane be quashed and the applicant be posted at Thane as District Superintendent of Land Record.

6. In O.A. 548 of 2018 the applicant R (3) was working as District Superintendent of Land Record at Amravati and he was posted by transfer at District Superintendent of Land Record, at Chandrapur. The learned counsel for the applicant R (3), in this matter submitted that the applicant had already completed three years service at Gadchiroli and therefore it was incumbent on the respondent nos. 1 and 2 to give him choice posting as per the G.R. dated 06/08/2002. It is submitted that as per the Clause-6 of the G.R., if the options given by the Government servant cannot be acted upon in general transfers, his options shall be valid for three years and be considered. It is submitted that due to non consideration of this

mandatory term in the G.R. the transfer of applicant R (3) is vitiated and it is liable to be quashed.

7. The O.A. is opposed by the respondent nos. 1 and 2 on the ground that there is no violation of any rules, therefore, there is no illegality in the order of posting of the applicant on deputation at CIDCO, Navi Mumbai. It is submitted that the Hon'ble Chief Minister considered the note sheet submitted by the Civil Services Board and later note sheet also and considering all the circumstances the Hon'ble Chief Minister was pleased to post the applicant on the establishment of CIDCO, Navi Mumbai. It is submitted that as the applicant was insisting for Thane and consequently the applicant was given posting at Navi Mumbai which was closed to Thane. It is submitted that there is no illegality in the exercise of jurisdiction because the Hon'ble Chief Minister was the competent authority and the recommendations made by the Civil Services Board were not binding on him.

8. The learned counsel for respondent no.4 submitted that this Tribunal has no jurisdiction to entertain the original application as the respondent no.4 was serving at Nashik and later on he was transferred to Thane. It is also contended by the respondent no.4 that the applicant has no locus standi to challenge transfer of respondent no.4, the respondent no.4 has no right to claim the posting. It is

submitted that only name of the applicant was recommended to be posted at Thane, there was no order and the competent authority not acted upon on the recommendation, therefore, there is no violation of law. It is submitted that the recommendations made by the Civil Services Board were not binding on the Hon'ble Chief Minister who was the competent authority and the Hon'ble Chief Minister has rightly exercised the jurisdiction and posted the applicant at CIDCO, Navi Mumbai and posted the respondent no.4 at Thane considering his need.

9. In order to examine the contention, initially I would like to examine the contention whether the order of deputation of the applicant is legal or illegal. The Rule 36 of the MCS (Joining time...) Rules, 1981 is as under –

***“(36) Transfer to foreign service not permissible without consent –***

*(1) No Government servant may be transferred to foreign service against his will;*

*Provided that in so far as the transfer of a Government servant on foreign service to a Zilla Parishad under the provisions of Section 253 B of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (as amended from time to time) is concerned, his transfer on foreign service shall be regulated in accordance with the provisions of that section ;*

*Provided further that this sub rule shall not apply to the transfer of a Government servant recruited in service on or after 30<sup>th</sup> July, 1977 to the service of a body incorporated or not, which is wholly or substantially owned or controlled by Government”.*

10. The language of Rule 36 (1) is mandatory which say that no Government servant may be transferred to foreign service against his will. In addition, the learned counsel for the applicant has invited attention to the G.R. dated 17/12/2016 which is at Annex-A-11A. In clause nos. 9&10 of the G.R. are as under –

“(९) संबंधित अधिकारी / कर्मचारी ज्या प्रशासकीय विभागात / विभागाच्या अधिपत्याखालील कार्यालयात कार्यरत आहे त्या प्रशासकीय विभागांची व ज्या प्रशासकीय विभागात / विभागाच्या अधिपत्याखालील कार्यालयात तो प्रतिनियुक्तीवर नियुक्ती रिकारणार आहे अशा दोन्ही विभागांची पुर्वसंमती व ना-हरकत प्रमाणपत्र आवश्यक राहिल. अशी पुर्वसंमती व ना-हरकत प्रमाणपत्र देताना संबंधित अधिकारी/कर्मचा-यांचे गोपनीय अहवाल, कर्तव्य परायणता, सचोटी व चारित्र्य या बाबतची तपासणी मूळ संवर्ग नियंत्रण प्राधिका-याने करावी व मागील १० वर्षांच्या कालावधीत झालेल्या शिक्षेचा तपशील उपलब्ध करून दयावा.

(१०) या मार्गाने नियुक्तीसाठी इच्छुकता दिलेल्या अधिकारी/ कर्मचा-यांचे अलीकडचे ५ वर्षांचे गोपनीय अहवाल अवलोकन करण्यात यावे. ज्या पदावर प्रतिनियुक्तीने नियुक्ती देण्यात येणार आहे त्या पदावर पदोन्नतीसाठी / त्या दर्जाच्या पदावर पदोन्नतीसाठी आवश्यक ठरविलेली गोपनीय अहवालाची किमान प्रतवारी धारण केली असल्यास त्यांचा या मार्गाने प्रतिनियुक्तीसाठी विचार करता येईल.”

11. Particularly after reading the Clause no.10 it seems that considering five years C.Rs. of the concerned government servant who is to be deputed shall be considered and examined and then it can be considered whether that government servant is suitable for the deputation. As per Clause 9 for sending a Government servant on deputation, consent of the both department is mandatory, so also no objection certificate of the respective department is must. After



reading clause no.10 it seems that the government servant who has given his consent, whose record is to be examined. This implies that unless consent is given by the government servant to accept the post on deputation, he cannot be compelled or forced to join that post. In view of this discussion, I am of the view that there are legal lacunas. After perusal of the record, it seems that the applicant never gave the consent to accept the posting on deputation. The second fact is that there was no post created on the establishment of CIDCO, Navi Mumbai therefore, mere posting the applicant by issuing the order there could have been difficulties to post the applicant because the post was not in existence. It is nowhere mentioned in the note sheet which is approved by the Chief Minister that there was any specific demand made by the CIDCO, Navi Mumbai to post a Government officer of the rank District Superintendent of Land Record and there was post on their establishment. It is nowhere mentioned in the note sheet that five years C.Rs. of the applicant were examined and the CIDCO, Navi Mumbai gave consent to accept services of the applicant on deputation. In view of this lacuna, I am compelled to say that the post of the applicant on the establishment of CIDCO, Navi Mumbai is on face of it contrary to law and consequently this order cannot be saved.

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12. Now I would like to examine the case of the applicant that as he is challenging the transfer of the respondent no.4 to Thane. Page No.184 of the record is the recommendation made by the Civil Services Board regarding the officers who were due for transfer in the year 1980. The name of applicant is at sr.no.2, but after reading this chart it seems that the applicant did not give any option postings, that column is left blank. At sr.no.15 name of the applicant in O.A.548/2018 is mentioned. He had given options Satara, Ahemadnagar and Solapur, but he was recommended to transfer at Chandrapur. The name of respondent no.4 at sr.no.15 and he had given options at Raigad, Satara and Amendnagar. After reading these recommendations forwarded by the Civil Services Board there appears no substance in the contention of the applicant that the respondent no.4 was not in picture at all and his name for the first time came in the note sheet which was placed before the Hon'ble Chief Minister.

13. I have perused the page no.198 of the note sheet which was placed before the Hon'ble Chief Minister. In para-4 it is candidly mentioned that the Hon'ble MLA Shri Nanaji Shamkule requested the Hon'ble Chief Minister to post the applicant Shri Abhay Joshi at Thane and that request was approved by the Hon'ble Chief Minister. As a matter of fact this is very surprising the applicant when his options for

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the transfer were called, did not give any option, on the contrary he contacted the politician Shri Nanaji Shamkule who was MLA and only for this reason the Civil Services Board had recommended to post the applicant at Thane. Page no.200 is the note sheet which is approved by the Hon'ble Chief Minister and in the note sheet name of respondent no.4 is at sr.no.2 and name of applicant Shri Abhay Joshi is at sr.no.3 and it was mentioned in the note sheet that respondent no.4 be transferred to Thane and the applicant Shri Abhay Joshi be transferred to CIDCO, Navi Mumbai and this note sheet was approved.

14. In this regard I would like to pose a question, when the Hon'ble Chief Minister himself approved the request of Shri Nanaji Shamkule MLA for transferring the applicant to Thane why Hon'ble Chief Minister acted contrary to it, there appears no reason. On the contrary, the action of the Hon'ble Chief Minister discarding that recommendation of Civil Services Board for posting the applicant at Thane implies something else on the basis of this inference can be drawn that the Hon'ble Chief Minister never approved the request of MLA Shri Nanaji Shamkule and therefore he passed the contrary order.

15. The learned counsel for the applicant has placed on record the G.R. dated 11/02/2015 which is at Annex-A-8. In this G.R.

in para-5 Government circular is reproduced and it is directed to follow the circular. In that circular as per clause-5 if request is made by the Government servant for transfer through the people's representative then it should be accompanied with written representation along with letter of recommendation made by the people's representative, in the present matter it is missing. As per clause 6 of this circular, rule 23 of the Maharashtra Civil Services (Conduct) Rules 1979 is applicable and it is mentioned that no Government servant shall pressurise the superior authority taking advantage of his acquaintance. It is also observed that if any Government servant has acted in such manner to pressurise the higher officers then such Government servant be liable for the disciplinary action. As a matter of fact it is not expected for the Government servant to have thick relation with the politicians. It is duty of every Government servant that he shall make his representation to his department for the desired relief and if desired relief is not granted by the department the forum like Administrative Tribunal and High Court are established by the Government. In the present matter, the conduct of the applicant Abhay Joshi not giving any option posting and straight way approaching to the local MLA was not expected from public servant and as on request of the local MLA the name of the applicant was considered by the Civil Services Board and he was recommended to be transferred to Thane. In my opinion it

was absolutely against the official discipline and it was not fair. Under these circumstances, I do not see reason to accept the request of the applicant Abhay Joshi to cancel the transfer of respondent no.4.

16. After reading rule 6 of the procedure rules which are framed by the Central Administrative Tribunal (CAT) rules 1987, I do not see any merit in the contention that this Tribunal has no jurisdiction to entertain this O.A. So far as the contention of the respondent no.4 that the applicant has no locus standi to file this application is concerned, there appears no substance in it. In this situation it must be seen whether the applicant has a right in view of the subsequent act done by the authorities and definitely such was available to the applicant. In view of this discussion I am compelled to say that posting of applicant on deputation at CIDCO, Navi Mumbai was contrary to law it cannot be sustained but the applicant is not entitled to the relief i.e. cancellation of transfer and posting to respondent no.4 at Thane and the applicant's posting at Thane.

17. So far as the O.A.No. 548/2018 is concerned, the applicant R (3) was posted at Gadchiroli, he had completed three years services there, he had submitted options for his transfer but his options were not considered and he was posted at Amravati. The applicant completed three years tenure at Amravati and later on he was due for transfer. The learned counsel for the applicant has invited

my attention to G.R. dated 6/8/2002. In para-2 guidelines are issued and clause (d) (6), direction is given that if Government servant has completed his tenure in tribal or naxalite area, on completion of his tenure, preference shall be given to the options given by him and if due to some administrative difficulties if not possible to give him posting at the place as per the options, the matter should be brought to the notice of the higher officers or Government. It is specifically made clear that though such Government servant has not given posting as per his choice his right will remain valid to claim the post as per his option for further period of three years. In the present matter it is made clear that the applicant earlier completed full tenure at Gadchiroli his options were not considered and he was posted at Amravati. In this background as per this G.R. it was duty of the transferring authority to consider the options given by the applicant and post him as per his option, but it was not done.

18. Secondly, in the present matter, the posting of Shri Abhay Joshi at CIDCO, Navi Mumbai is cancelled and consequently now there will be no post to accommodate the applicant Hattekar at Chandrapur. In this background I pass the following order –

**ORDER**

- (i) The O.A.No. 481/2018 is partly allowed. The transfer and posting of applicant as District Superintendent of Land Record in

CIDCO, Navi Mumbai is quashed and set aside. The other reliefs claimed by the applicant i.e. cancellation of transfer of respondent no.4 and posting to applicant at Thane are dismissed.

(ii) The O.A.No.548/2018 is allowed. Transfer and posting of the applicant at Chandrapur is hereby set aside.

(iii) The respondent nos. 1 and 2 directed to call the options of applicants for transferring the applicant Shri Abhay Joshi and the applicant Shri K.S. Hattekar from their present postings as Abhay Joshi has completed tenure more than six years and Shri K.S. Hattekar is also due for transfer. The respondent nos. 1 and 2 are directed to consider the options of both the applicants and give them suitable postings as per the vacancies. This exercise shall be done within two months. No order as to costs.

(iv) The C.A. No.315/2018 in O.A. 548/2018 also stands disposed of.

**Dated** :- 03/05/2019.

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