

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 984 of 2021 (S.B.)**

Shri Vijay Sundersingh Chavhan,  
Aged about 38 years, Occ. Superintendent,  
Office at Joint Charity Commission,  
Nagpur Division, Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Principal Secretary,  
Law and Judiciary and RLA Department,  
Mantralaya, Mumbai-32.
- 2) Charity Commissioner,  
3<sup>rd</sup> floor, 83, Dr. Annie Besent Road,  
Worli, Mumbai-400 018.
- 3) Joint Charity Commissioner,  
Nagpur Division, Nagpur.
- 4) Joint Charity Commissioner,  
Aurangabad Division, Aurangabad.

**Respondents.**

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**S/Shri G.N. Khanzode, Mrs. P. Joshi, Advocates for the applicant.**  
**Shri S.A. Deo, learned C.P.O. for respondents.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Vice Chairman.**

**Dated :- 11/08/2022.**

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**JUDGMENT**

Heard Shri G.N. Khanzode, learned counsel for applicant  
and Shri S.A. Deo, learned CPO for respondents.

2. The case of the applicant in short is as under –

The applicant was transferred to Nagpur on 01/09/2016 from Amravati. On 05/08/2021, the applicant came to be transferred from Nagpur to Aurangabad on administrative ground, though his name was not in the list of the employees eligible for transfer. The applicant after joining at the said place made a representation, to respondent no.1, against the transfer order. The respondent no.1 on 24/09/2021 passed order holding that the transfer order dated 05/08/2021 was illegal and contrary to the provisions of G.R. and Acts, therefore, directed the respondent no.2 to revoke / cancel the transfer order immediately. On 22/10/2021, the respondent no.2 without considering the finding of respondent no.1 recorded in the order dated 24/09/2021, deliberately with malafide intention issued fresh transfer order at the same place, i.e., Aurangabad. The impugned order therefore smells arbitrary and illegal act on the part of the respondent no.2 apart from the violation of provisions of Act and G.R., therefore, same is liable to be quashed and set aside.

3. The O.A. is strongly opposed by respondents by filing affidavit in reply. It is contended that the applicant has been transferred in a general transfer order, so by no stretch of imagination it can be said to be a mid-tenure transfer as the transfer of the applicant is effected by following the procedure contemplated under Section 4 (4) and 4 (5) of the Maharashtra Government Servants

Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "Transfers Act,2005"). Therefore, impugned transfer order dated 22/10/2021 needs to be maintained. It is submitted that the applicant was working at Nagpur. He was transferred to Amravati. He worked for one day at Amravati. Thereafter he was deputed to Nagpur and within three months again he was transferred to Nagpur, therefore, he cannot say that he is working from 2016, in fact he is working at Nagpur from 11/01/2012. It is submitted that two posts of Superintendent are vacant at Aurangabad and therefore he is transferred on administrative ground. At last, submitted that the O.A. is liable to be dismissed.

4. Heard Shri G.N. Khanzode, learned counsel for applicant. He has pointed out the note sheet / order passed by respondent no.1, dated 24/09/2021. The learned Counsel for applicant submitted that this order of respondent no.1 is not followed by respondent no.2 and again passed the impugned order transferring the applicant at the same place, i.e., at Aurangabad. He has pointed out the decision of the Hon'ble Supreme Court in the case of **Ms. X Vs. Registrar General, High Court of Madhya Pradesh and Ano., 2022 (3) SLR (SC)** and the judgment in the case of **State of Maharashtra and others Vs. Dr. (Ms.) Padmashri Shriram Bainade and others 2015 (2) Mh.L.J.,679.** The learned counsel for applicant has submitted

that the impugned transfer order is a malafide transfer order and therefore liable to be quashed and set aside.

5. Heard Shri S.A. Deo, learned C.P.O. for the respondents. He has submitted that the applicant is working at Nagpur since 2012. In the year 2016, he was transferred to Amravati. He worked there only for one day and got deputation at Nagpur. Again he was transferred to Nagpur within three months. The applicant was due for transfer. Two posts of Superintendent are vacant at Aurangabad and therefore due to administrative exigency, he is transferred to Aurangabad. There is no malafide on the part of respondents and hence the O.A. is liable to be dismissed. In support of his submission, he has pointed out the Judgments of Hon'ble Supreme Court in the case of **Anil S/o Marotrao Khobragade Vs. State of Maharashtra and Ors.,2010 (2) Mh.L.J.,319, Union of India and others Vs. Ganesh Dass Singh, 1995 Supp (3) SCC,214** and **Union of India and others Vs. S.L. Abbas (1993) 4 SCC,357.**

6. The learned C.P.O. has submitted that the transfer is a condition of service. The transfer cannot be stayed unless there is any illegality or malafide on the part of the Transferring Authority. There is no any malafide or illegality on the part of the respondents. The applicant has completed normal tenure. He is working at Nagpur since 2012. He was due for transfer. Two posts of Superintendent

are vacant at Aurangabad and therefore he is transferred to Aurangabad. At last submitted that the O.A. is without any merit and liable to be dismissed.

7. The respondent no.1 is the State Government. The Law and Judiciary Department has passed the order / note sheet dated 24/09/2021. Para-2 of the said order / note sheet (P-45 and 46) is reproduced as under –

*“ (2) There is no dispute that the transfers were to be done as per the instructions of G.R. dated 9<sup>th</sup> April,2018 and 29<sup>th</sup> July,2021. It is seen that the guidelines in both the G.Rs. are given go by and the case of Shri V.S. Chavan is considered for transfer by including his period as Inspector from the year 2012. It is seen from the record that Shri V.S. Chavan was transferred to Amravati on promotion as the Superintendent in the year 2016 and thereafter, he was taken on deputation in Nagpur office and transferred to Nagpur office in the year 2016. It is clear from the papers on record that Shri V.S. Chavan, Superintendent, Nagpur office will not come within the bracket of 25% Superintendents who were due for transfer. Had there been no cap or limit for effecting the transfers, then Shri V.S. Chavan had no case. In view of these aspects **the***

***office of Charity Commissioner ought not to have transferred Shri V.S. Chavan as he was not in the 25% cap of Superintendents due for transfer. The office of Charity Commissioner has to do the needful by cancelling or revoking the transfer of Shri V.S. Chavan effected vide order dated 05/08/2021, from Nagpur to Aurangabad.”***

8. After passing this order / note sheet, the respondent no.2 again passed the same order, transferring the applicant from Nagpur to Aurangabad. In fact, the respondent no.2 was directed to revoke or cancel the impugned transfer order dated 05/08/2021, but instead of revoking or cancelling the said order, again the same order was passed by respondent no.2 transferring the applicant from Nagpur to Aurangabad. In the previous order dated 05/08/2021, he was transferred from Nagpur to Aurangabad. That order was challenged / placed before the respondent no.1 and the respondent no.1 directed the respondent no.2 to revoke or cancel.

9. The Joint Secretary, Law and Judiciary Department, Government of Maharashtra submitted letter dated 05/05/2022. The said letter addressed to the Chief Presenting Officer, Maharashtra

Administrative Tribunal, Nagpur. As per this letter, the note sheet / decision dated 24/09/2021 is the legal opinion of respondent no.1.

10. It is the contention of respondents that the applicant was due for transfer as he was in service at Nagpur since 2012. It is clear that the applicant was transferred to Amravati in the year 2016. He is again transferred to Nagpur. As per the legal advice of the Principal Secretary Law and Judiciary Department, the applicant was not shown in the list of transfer and therefore the respondent no.2 was directed to revoke or cancel the transfer order dated 05/08/2021.

11. It appears that the direction of respondent no.1 is not followed by respondent no.2. From the perusal of the impugned transfer order dated 22/10/2021 (P-51), it appears that the transfer order dated 05/08/2021 was cancelled and he was posted at Aurangabad. It is pertinent to note that the Law and Judiciary Department, Government of Maharashtra directed the respondent no.2 to revoke / cancel the order dated 05/08/2021 by which the applicant was posted at Aurangabad from Nagpur. The same order was passed on 22/10/2021, therefore, it cannot be said that it is the compliance of the order / opinion given by the respondent no.1. Therefore, the impugned transfer order is liable to be quashed and set aside. Hence, the following order –

**ORDER**

- (i) The O.A. is allowed.
- (ii) The impugned transfer order dated 22/10/2021 is hereby quashed and set aside.
- (iii) The respondents are at liberty to transfer the applicant as per rules / law.
- (iv) No order as to costs.

**Dated** :- 11/08/2022.

dnk.

**(Justice M.G. Giratkar)**  
**Vice Chairman.**



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 Vice Chairman.

Judgment signed on : 11/08/2022.

Uploaded on : 17/08/2022.

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