

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1224 OF 2023**

**DISTRICT : NASHIK**

**Sub.:- Transfer**

Shri Prashant Baburao Jagtap. )  
Age : 51 Yrs, Working as Sub-Divisional )  
Water Conservation Officer, Satana, )  
District : Nashik and Residing at Flat No.5,)  
A Krishna Residency, P&T Colony, )  
Nashik – 422 005. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Soil & Water Conservation Dept., )  
Mantralaya, Mumbai – 400 032. )
2. Shri Ramdas Sukhdeo Pawar. )  
Water Conservation Officer, )  
At Post : Soudane, Tal.: Malegaon, )  
District : Nashik. )
3. The Regional Water Conservation )  
Officer, Soil & Water Conservation )  
Department, Near Mico Circle, )  
Tryambak Road, Nashik – 422 002. )...**Respondents**

**Shri C.T. Chandratre, Advocate for Applicant.**

**Shri A.J. Chougule, Presenting Officer for Respondent No.1.**

**Shri M.B. Kadam, Advocate for Respondent No.2.**

**CORAM : DEBASHISH CHAKRABARTY, MEMBER-A**

**DATE : 24.01.2024**

**JUDGMENT**

1. The Applicant who is from cadre of Sub-Divisional Water Conservation Officer by invoking the provisions of 'Section 19' of the 'Administrative Tribunals Act 1985' has challenged the Government Order dated 21.09.2023 of Soil and Water Conservation Department by which he was shifted out from post of Sub-Divisional Water Conservation Officer, Sub-Division Satana, District Nashik to be replaced by Respondent No.2 who was granted 'Temporary Extension' even after repatriation to Water Resources Department and permitted to continue serving in Soil and Water Conservation Department.

2. The Applicant was represented by Shri C.T. Chandratre, learned Advocate and Shri A.J. Chougule, learned Presenting Officer represented the Respondents.

3. The learned Advocate for Applicant stated that Applicant was appointed on promotion to post of Sub-Divisional Water Conservation Officer, Sub-Division Satana, District Nashik by Government Order dated 17.04.2023 of Soil and Water Conservation Department. The Applicant was amongst 145 officers who were given 'Temporary Promotion' in cadre of Sub-Divisional Water Conservation Officer.

4. The learned Advocate for Applicant stated that thereupon Applicant had joined on the post of Sub Divisional Water Conservation Officer, Satana Sub-Division District Nashik on 20.04.2023 upon belated repatriation of Respondent No.2 to his 'Administrative Department' which is Water Resources Department in accordance with 'Policy Decision' in GR Soil & Water Conservation Department dated 31.05.2017 by which Soil and Water Conservation Department came to be established upon being carved out from Water Resources Department.

5. The learned Advocate for Applicant further stated that Applicant came to be shifted all of a sudden by Government Order dated

21.09.2023 of Soil and Water Conservation Department to the 'Vacant Post' of Sub Divisional Water Conservation Officer, Z.P (MI) Sub-Division Satana, District Nashik and Respondent No.2 was brought in his place as Sub-Divisional Water Conservation Officer, Sub-Division Satana, District Nashik.

6. The learned Advocate for Applicant then stated that it was pertinent to note that Government Order dated 21.09.2023 of Soil and Water Conservation Department which is paraphrased as "आता उक्त संदर्भ क्र.9 च्या आदेशात अंशतः बदल करून श्री. रामदास सुकदेव पवार यांना उपविभागीय जलसंधारण अधिकारी, मृद व जलसंधारण उपविभाग, सटाणा, जि. नाशिक या पदावर या शासनाच्या पुढील आदेशापर्यंत तात्पुरत्या स्वरूपात मुदतवाढ देण्यात येत आहे." which was issued only with intention to bypass the provisions of law in 'The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.'

7. The learned Advocate of Respondent No.2 stated that he had been working since 2005 in Soil and Water Conservation Department. He further stated that Respondent No.2 was posted on 30.06.2022 and posted as Sub-Division Water Conservation Officer, Sub-Division Satana, District Nashik and thus had served there for just 10 Months before he was replaced by Applicant on 17.04.2023.

8. The learned Advocate for Respondent No.2 then stated that while working as Sub-Division Water Conservation Officer, Sub Division Satana, District Nashik, he had undertaken many works which would remain incomplete and adversely affect the welfare of local people, especially Agriculturists. So, Soil and Water Conservation Department has justiciably posted Respondent No.2 again to post of Sub-Division Water Conservation Officer, Sub-Division Satana, District Nashik by Government Order dated 21.09.2023.

9. The learned PO referred to the Affidavit-in-Reply dated 30.10.2023 filed on behalf of Secretary, Soil and Water Conservation Department and stated that Respondent No.2 was deputed on temporary basis as Sub-

Divisional Water Conservation Officer, Sub-Division, Satana, District Nashik as per the order of Soil and Water Conservation Department dated 30.06.2022. In the said order, it was mentioned that the deputation of Respondent No.2 would be terminated with immediate effect after the posts of Soil and Water Conservation Department are filled-up by 'Direct Recruitment' or 'Promotion'. Accordingly, Respondent No.2 stood repatriated to Water Resources Department once Applicant was posted on the post of Sub-Divisional Water Conservation Officer, Sub-Division, Satana, District Nashik as per Government Order dated 17.04.2023 of Soil and Water Conservation Department. Applicant had joined on this post on 20.04.2023. However, 'Hon'ble Minister of Rural Development and Panchayat Raj, Medical Education, Sports' and 'Youth Welfare and Hon'ble Minister, Ports and Mines' had soon thereafter requested for continuation of Respondent No.2 on the post of Sub-Divisional Water Conservation Officer, Sub-Division, Satana, District Nashik. Subsequently, their requests were considered in meeting of 'Civil Service Board' held on 25.04.2023, but it was recommended not to grant 'Temporary Extension' to Respondent No.2. Also it was even mentioned in the 'Minutes of Meeting' of CSB that there would be possibility of cases being filed in 'Courts of Law'. However, the Minister-in-Charge of Soil and Water Conservation Department decided to grant 'Temporary Extension' for retention of Respondent No.2 on the post of Sub-Divisional Water Conservation Officer, Sub-Division Satana, District Nashik.

10. The learned PO further informed that proposal was submitted again for re-consideration as per earlier recommendations made by 'Civil Services Board' not to grant 'Temporary Extension' to Respondent No.2 to 'Hon'ble Chief Minister of Maharashtra State' through the 'Hon'ble Minister Incharge of Soil and Water Conservation'. On this proposal, the 'Hon'ble Minister Incharge of Soil and Water Conservation' had directed that action should be taken as per earlier orders given by 'Hon'ble Chief Minister of Maharashtra State'. The Applicant was thus shifted to the

vacant post of Sub-Division Water Conservation Officer, Z.P.(MI), Sub-Division Satana, District Nashik.

11. The learned PO concluded his arguments by stating that Respondent No.2 has only been temporarily posted as Sub-Divisional Water Conservation Officer, Sub-Division Satana, District Nashik. As a result of this, the Applicant has also been adjusted on the vacant post of Sub-Division Water Conservation Officer, Z.P.(MI), Sub-Division Satana, District Nashik. He said it is pertinent to note that, though the posting of Applicant has been changed there was no change in his Headquarters which remained at Satana, District Nashik.

12. The examination of roles played by respective 'Cadre Controlling Authority' of both Applicant and Respondent No.2 are of vital importance to lift the veil as to why Government Order dated 21.09.2023 came to be issued by Soil and Water Conservation Department. The Respondent No.2 belongs to the cadre of 'Deputy Engineer' of Water Resources Department but he had been working since 2005 in Soil and Water Conservation Department. As per 'Policy Decision' taken by Water Conservation Department GR dated 31.05.2017; all 'Deputy Engineers' borne on establishment of Water Resources Department who did not give option for 'Permanent Absorption' on the establishment of Soil and Water Conservation Department were required to be repatriated within period of 4 Years. The Respondent No. 2 had not given option for 'Permanent Absorption' on establishment of Soil & Water Conservation Department and therefore he should have invariably been repatriated to Water Resources Department by 31.05.2021. However, for reasons which remain in the realm of unknown, the Respondent No.2 was not repatriated by 31.05.2021 but rather belatedly by Soil & Water Conservation Department Government Order dated 17.04.2023 when Applicant came to be given 'Temporary Promotion' in the cadre of Sub-Divisional Water Conservation Officer.

13. The Soil and Water Conservation Department and Water Resources Department have both displayed lackadaisical attitude to diligently implement the major 'Policy Division' which had been taken by GR Soil and Water Conservation Department, dated 31.05.2017 as is quite evident from the case of Respondent No.2. The order of repatriation of Respondent No.2 was issued by Soil and Water Conservation Department on 17.04.2023 but was not taken to conclusion by Water Resources Department. The Respondent No.2 on his part was required to forthwith report back to Water Resource Department; it being the 'Cadre Controlling Authority' so that they could then post him as 'Deputy Engineer' on any regular post under Water Resources Department. However, it appears that Respondent No.2 intently did not join back immediately in Water Resources Department. The exceptions made in favour of Respondent No.2 all along were thus outcome of benevolence displayed in tandem by both Soil and Water Conservation Department and Water Resources Department.

14. The Soil and Water Conservation Department during the course of Final Hearing by way of advisory was informed through PO that use of ambiguous phrase such as "आता उक्त संदर्भ क.9 च्या आदेशात अंशतः बदल करून श्री. रामदास सुकदेव पवार यांना उपविभागीय जलसंधारण अधिकारी, मृद व जलसंधारण उपविभाग, सटाणा, जि. नाशिक या पदावर या शासनाच्या पुढील आदेशापर्यंत तात्पुरत्या स्वरूपात मुदतवाढ देण्यात येत आहे." made it evident that Government Order dated 21.09.2023 of Soil and Water Conservation Department was issued by circumventing provisions of 'The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 or 'Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules 1981'. The Soil and Water Conservation Department was therefore even afforded an opportunity for remediation so as to be able to withdraw Government Order dated 21.09.2023 in respect of Respondent No.2. Accordingly, the Soil and Water Conservation Department had again submitted file to 'Hon'ble Minister Incharge of the Soil and Water Conservation Department' to reconsider

the approval granted earlier by him as 'Competent Transferring Authority'. However, 'Hon'ble Minister Incharge of the Soil and Water Conservation Department' as 'Competent Transferring Authority' again did not agree and insisted that Government Order dated 21.09.2023 of Soil and Water Conservation Department be invariably implemented; as has been diligently affirmed in Affidavit-in-Reply dated 30.10.2023.

15. The Soil and Water Conservation Department Government Order dated 21.09.2023 by which the Respondent No.2 was plucked out of nowhere after having been repatriated to Water Resources Department by Soil and Water Conservation Department by Order dated 17.04.2023 and came to be deputed back again in Soil and Water Conservation Department on terms such as "आता उक्त संदर्भ क्र.9 च्या आदेशात अंशतः बदल करून श्री. रामदास सुकदेव पवार यांना उपविभागीय जलसंधारण अधिकारी, मृद व जलसंधारण उपविभाग, सटाणा, जि. नाशिक या पदावर या शासनाच्या पुढील आदेशापर्यंत तात्पुरत्या स्वरूपात मुदतवाढ देण्यात येत आहे." without making any reference to source of 'Statutory Powers' either under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' or 'Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules 1981'.

16. The Respondent No.2 had been relieved from post of Sub-Divisional Water Conservation Officer, Sub-Division Satana, District Nashik on 20.04.2023 and repatriated back to Water Resources Department. Thus, the Soil and Water Conservation Department had no jurisdiction whatsoever as 'Administrative Department' over Respondent No.2 so as to be able to even convene meeting of 'Civil Serviced Board' which was held on 25.04.2023. Although the 'Minutes of Meeting' of 'Civil Service Board' held on 25.04.2023 by the Soil and Water Conservation Department truthfully record relevant facts about Applicant and Respondent No.2, its proceedings have for reasons mentioned above become 'ab-initio void' in eyes of law; and so also the subsequent approval given by 'Competent Transferring Authority' and

next 'Superior Transferring Authority' by which nebulous 'Temporary Extension' was given to Respondent No.2 on post of Sub-Divisional Water Conservation Officer, Sub-Division Satana, District Nashik.

17. The 'Competent Transferring Authority' and next 'Superior Transferring Authority' should have accepted the recommendations made by 'CSB' in its meeting held on 25.04.2023 and desisted from granting 'Temporary Extension' to Respondent No.2 by using cleverly crafted words such as "आता उक्त संदर्भ क्र.१ च्या आदेशात अंशतः बदल करून श्री. रामदास सुकदेव पवार यांना उपविभागीय जलसंधारण अधिकारी, मृद व जलसंधारण उपविभाग, सटाणा, जि. नाशिक या पदावर या शासनाच्या पुढील आदेशापर्यंत तात्पुरत्या स्वरूपात मुदतवाढ देण्यात येत आहे". The lament is the 'Competent Transferring Authority' and 'Superior Transferring Authority' by shifting the Applicant from post of Sub-Divisional Water Conservation Officer, Sub-Division, Satana, District Nashik where he was serving upon 'Temporary Promotion' given by Soil and Conservation Department on 17.04.2023 has once again brought to life the following words of caution recorded about incidences of frequent transfers in respect of Government Servants serving under State Governments in landmark judgment of the **Hon'ble Supreme Court of India in (2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**.

*"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."*

18. The Hon'ble Bombay High Court in **Seshrao Nagarao Umap Vs. State of Maharashtra, (1985)II LL J 73(Bom)** has summarized the law



on the aspect of colourable exercise of powers to accommodate another Government Servant for undisclosed reasons by observing that :-

*"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilize the services of its employees. However this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colorable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair."*

19. The Hon'ble High Court of Bombay in **Writ Petition No.8987 of 2018 (Shri Balasaheb Vitthalrao Tidke Vs State of Maharashtra & Ors.)** had recorded with disdain about Political Interference in the process of transfers of Government Servants and observed that :-

*"Now there is a clear assurance that all transfers will be effected strictly in accordance with the provisions of the said Act of 2005 and none of the transfers will now be influenced by the recommendations of the political leaders including the Hon'ble Ministers (Who are not a part of the process of transfers). We direct that the statements made in para-1 of the said Affidavit are brought to the notice of all the concerned who have to exercise powers of transfers under the said Act of 2005 so that there will not be any attempt to make any recommendations thereby influencing the process of transfers of the Government Servants".*

20. The Hon'ble Supreme Court of India judgment of "The Hon'ble Supreme Court in the case of **East Coast Railway & Another Vs. Mahadev Appa Rao & Ors. (2010) 7 SCC 678** which has emphasized the crucial importance of application of mind and recording of reasons by 'Public Authority'. The relevant extract of the judgment is as under :-

*"There is no precise statutory or other definition of the term "arbitrary". Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making an order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or record contemporaneously maintained. Application of mind is best demonstrated*

*by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable.”*

21. The Soil and Water Conservation Department Order dated 21.09.2023 suddenly to shift out the Applicant who was working as Sub-Divisional Water Conservation Officer, Sub Division Satana, District Nashik since his ‘Temporary Promotion’ on 17.04.2023 is classic example of the growing tendency of ‘Competent Transferring Authorities’ and ‘Superior Transferring Authorities’ to casually overstep the boundaries marked out by law and rules and often reiterated by several judgments of Hon’ble Supreme Court of India and Hon’ble Bombay High Court.

22. The tepid implementation of the major ‘Policy Decision’ taken by Soil & Water Conservation Department GR dated 31.05.2017 also Showcases act of ‘Cherry Picking’ by those who are able to influence the process of transfers of Government Servants and bestow their benevolence as seen in case of ‘Respondent No.2’ who inspite of having been repatriated to Water Resources Department still harboured covert intentions to somehow continue to work in Soil and Water Conservation Department. The Soil and Water Conservation Department Government Order dated 21.09.2023 issued to abruptly shift out Applicant from post of Sub-Divisional Water Conservation Officer, Soil and Water Conservation, Sub-Division Satana, District Nashik in order to anyhow accommodate Respondent No.2 stands extremely vulnerable without any support whatsoever from the provisions of either ‘Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005’ or ‘Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981’ and thus unquestionably deserves to be quashed and set aside. Hence, the following order :-

**ORDER**

- (i) The Original Application is Allowed.
- (ii) The Soil and Water Conservation Department Government Order dated 21.09.2023 is quashed and set aside with directions that Soil and Water Conservation Department should within 'One Week' post back Applicant to his earlier post of Sub Divisional Water Conservation Officer, Sub-Division Satana, District Nashik.
- (iii) No Order as to Costs.

Sd/-

**(DEBASHISH CHAKRABARTY)**  
**Member-A**

Mumbai

Date : 24.01.2024

Dictation taken by :

S.K. Wamanse.

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Corrected and Reloaded on 13.02.2024