

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.184 of 2020**

**District : PUNE**

Shri Sanjay Gangadhar Sali )  
Age 47 years, Occ : Govt. Service, working as )  
Talathi, Sanjay Gandhi Yojana, Nashik )  
R/at Flat No.604, Shriji Pinacal Apartment )  
Near Dream City, Nashik-Pune Road, )  
Nashik – 422 006. )...**Applicant**

**- Versus**

1. The State of Maharashtra, through )  
Secretary (Revenue), Revenue & Forest )  
Department, Mantralaya, Mumbai 400032)
2. The Collector, Nashik District )  
Nashik 422 002. )
3. The Sub Divisional Officer, Nashik Sub )  
Division, Collector office Compound, )  
Nashik – 422 002. )
4. Shri Yogesh S. Wagh, Talathi, Nashik )  
Collector Office Compound, Nashik 422002)...**Respondent**

Shri C. T. Chandratre, learned Advocate for the Applicant.

Shri A. J. Chougule , learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 22.01.2021.

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

The Applicant has challenged the transfer order dated 31.05.2019 invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts are as under:-

The Applicant was working as Talathi and by order dated 31.05.2018 he was posted as Talathi, Nashik-1. He claims to be entitled

for six years tenure being Class-C employee. However, abruptly the Respondent No.-S.D.O., Nashik by order dated 31.05.2019 transferred him mid-tenure from the post of Talathi, Nashik-1 to the office of Sanjay Gandhi Yojana, Nashik. Being aggrieved by this mid-tenure transfer, he had filed present Original Application contending that it is in blatant violation of provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005').

3. Respondent No.4 is served but absent. He seems to have been transferred in place of the Applicant, and therefore, he is joined as Respondent.

4. Shri C. T. Chandratre, learned Counsel for the Applicant sought to assail the impugned transfer order dated 31.05.2019 on following grounds:-

(a) The transfer order dated 31.05.2019 being mid-tenure in absence of compliance of Section 4(5) read with Section 6 of 'Act 2005', it is unsustainable in law.

(b) Respondent No.3 - S.D.O. is not competent to transfer the Applicant before completion of his mid-tenure and on that ground also impugned order is bad in law.

5. Per contra, Shri A. J. Chougule, learned Presenting Officer sought to justify the impugned transfer order dated 31.05.2019 contending that in view of Notification dated 16.05.2011 issued by Revenue & Forest Department, Government of Maharashtra, Sub Division Officer is declared regional head of the department for Group-C employees and in that capacity S.D.O. has rightly passed impugned transfer order. He further pointed out that after passing of transfer order dated 31.05.2019, when the Applicant had made representation to the Collector for cancellation of transfer order, the Collector by order dated 24.01.2020 (Page Nos.10 and 11 of PB) had given ex-post facto sanction

to the transfer order issued by S.D.O. Nashik, and therefore, challenge to the transfer order is devoid of merit.

6. Indisputably, the Applicant was posted at Talathi, Nashik-1 by order dated 31.05.2018 and was entitled to six years tenure in view of Section 3 of 'Act 2005'. However, the Respondent No.2-S.D.O. by order dated 31.05.2019 transferred him abruptly. There is absolutely nothing in impugned order dated 31.05.2019 what was the administrative exigency for such mid-tenure transfer of the Applicant. Once the Transfer Act, 2005 mandates particular tenure of three years or six years as the case may be, it is only in special case after recording reasons in writing, a Government servant can be transferred that too with prior permission of immediately preceding transferring authority as contemplated in Section 4(5) read with Section 6 of 'Act 2005'. In the present case, the Respondent No.2-S.D.O at his level only transferred the Applicant without compliance of Section 4(5) read with Section 6 of 'Act 2005'.

7. Admittedly, the matter was not placed before the Civil Services Board (CSB) which is contravention of direction given by the Hon'ble Supreme Court in ***T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732.***

8. As regard competency of S.D.O., the Notification dated 16.05.2011 relied by learned P.O. material to note that it no more survives in view of another Notification dated 19.03.2015 whereby District Collector is declared Head of the Department for Group -C employees. This Notification has been issued in exercise of the powers conferred by Section 7 of 'Act 2005'. As such, it is District Collector who is Head of the Department for transfer of Group -C employees and not S.D.O. Suffice to say, the S.D. O. was not at all competent to transfer the Applicant. Apart it is a case of mid-tenure transfer, and therefore, there has to be compliance of Section 4(5) read with Section 6 of 'Act 2005' which is completely missing.

9. Now turning to the order dated 24.01.2020 passed by the Collector, it would not wipe out illegality crept in the transfer order dated 31.05.2019. Subsequent ex-facto sanction purportedly given by the Collector attributing certain mis-conduct of the Applicant will not legalize the transfer order dated 31.05.2019. There is no provision of ex-facto sanction in case of mid-tenure transfer under the provisions of 'Act 2005'. Therefore, ex-facto sanction purportedly given by the Collector has no sanctity or meaning in the eye of law.

10. True, after transfer order dated 31.05.2019, the Applicant was suspended by order dated 01.07.2020 by S.D.O. Nashik in view of contemplated departmental enquiry but later he was reinstated in service in the office of Sanjay Gandhi Yojana, Nashik by order dated 09.10.2020. This subsequent development has no effect on merits of the matter of transfer. As such, challenge to the transfer order dated 31.05.2019 still survives in view of his reinstatement in service.

11. The totality of the aforesaid discussion leads me to sum up that the impugned transfer order dated 31.05.2019 is in blatant violation of 'Act 2005' and liable to be quashed. Hence the following order :-

**ORDER**

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 31.05.2019 and ex-facto sanctioned dated 24.01.2020 are quashed and set aside.
- (C) Respondents are directed to reinstate the Applicant on his post as Talathi, Nashik-1 within a month from today.
- (D) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**MEMBER (J)**

Date : 22.01.2021  
Place : Mumbai  
Dictation taken by :  
Vaishali Santosh Mane  
Uploaded on :

