

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.206 OF 2019**

**DISTRICT : THANE**

Smt. Satwashila C. Shinde. )  
Age : 45 Yrs., Occu.: Tahasildar, Wada, )  
District : Palghar and residing at Runwal )  
Regency, Majiwada, District : Thane (W). )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
[Revenue], Revenue & Forest Dept., )  
Mantralaya, Mumbai – 400 032. )
2. Shri Dinesh Kurhade. )  
Aged : Adult, Occu.: Tahasildar, )  
MMRDA, Mumbai transferred in )  
place of Applicant. )
3. Shri Uddhav Kadam. )  
Age : Adult, Working as Tahasildar, )  
Wada, Tal.: Wada, District : Palghar.)...**Respondents**

**Mr. Arvind V. Bandiwadkar, Advocate for Applicant.**

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

**Mr. M.D. Lonkar, Advocate for Respondent No.2 and 3.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 31.01.2022**

## **JUDGMENT**

1. The Applicant has challenged transfer order dated 25.02.2019 as well as subsequent transfer order of Respondent No.3 dated 07.09.2019 which has been passed during the pendency of this OA, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Following are the admitted facts giving rise to this O.A. :-

(i) The Applicant is serving in the cadre of Tahasildar and by order dated 14.09.2016, she was posted as Tahasildar (Encroachment Department), Borivali and had completed normal tenure at Borivali, Mumbai.

(ii) In view of guidelines issued by Election Commission of India, by letter dated 16.01.2019, the Applicant came to be transferred from Borivali and posted as Tahasildar, Wada, District Palghar by order dated 20.02.2019 invoking Section 4(5) of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity). Accordingly, she came to be relieved.

(iii) Respondent No.2 – Dinesh Kurhade who was working as Tahasildar, Wada, District Palghar was transferred by order date 20.09.2019 as Tahasildar, MMRDA, Mumbai. He was working there from 2017.

(iv) Though by order dated 20.02.2019, the Applicant as posted as Tahasildar, Wada, the said order was subsequently changed and by order dated 25.02.2019, she was posted as Assistant Divisional Supply Officer, Divisional Commissioner Officer, Konkan Division since Respondent No.2 was brought back to the post of

Tahasildar, Wada, District Palghar cancelling his posting at MMRDA, Mumbai.

(v) During the pendency of O.A, the Respondent No.2 was transferred from Wada, District Palghar to Slum Rehabilitation Authority, Mumbai by order dated 07.09.2019 and in his place, Respondent No.3 who was serving in Maharashtra Revenue Tribunal was posted as Tahasildar, Wada, District Palghar.

(vi) In view of aforesaid development, the Applicant amended the O.A. and also challenged the order dated 07.09.2019 whereby Respondent No.3 is posted as Tahasildar, Wada, District Palghar which was initially given to the Applicant by order dated 20.02.2019 but later changed. The Respondent No.3 is accordingly impleaded in O.A.

3. It is on the above background, the Applicant has challenged transfer order dated 25.02.2019 whereby her posting is changed from Wada to Assistant Divisional Supply Officer, Konkan Division and also challenged the order dated 07.09.2019 whereby Respondent No.3 was posted as Tahasildar, Wada, District Palghar.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned transfer orders *inter-alia* contending that once Applicant was given posting as Tahasildar, Wada, District Palghar by order dated 20.02.2019, there was no reason to change her posting by order dated 25.02.2019 by giving her another posting as Assistant Divisional Supply Officer, Konkan Division. He further sought to contend that Government knowing that Applicant has challenged transfer order dated 25.02.2019 asserting her claim to be posted as Talathi, Wada, the Government should not have posted Respondent No.3 as Tahasildar, Wada by order dated 07.09.2019 and it has been done only to favour him. He further pointed out that while giving posting to Respondent No.3 as Tahasildar, Wada, the matter was not placed before

the Civil Services Board (CSB) but it was only at the level of Government, his name was approved, and therefore, non-consultation of CSB rendered his transfer order illegal. On this line of submission, he prayed to quash and set aside the transfer orders dated 25.02.2019 and 07.09.2019.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer submitted that change in the posting of Respondent No.2 was necessitated in view of subsequent guidelines issued by Election Commission of India by letter dated 07.02.2019 and Respondent No.2 was brought back to the post of Tahasildar, Wada and consequent to it, Applicant's posting was changed from Wada to Assistant Divisional Supply Officer, Konkan Division. She has further pointed out that matter was placed before CSB and with the approval of Hon'ble Chief Minister, it was done. As regard posting of Respondent No.3 by order dated 07.09.2019 during the pendency of O.A, she submits that it was done with the approval of Hon'ble Chief Minister. She submits that though initially, Applicant was posted as Tahasildar, Wada, it was required to be changed in view of fresh guidelines of Election Commission of India and cancellation of transfer of Respondent No.2 thereby sending him back to Wada. The Applicant accordingly joined as Assistant Divisional Supply Officer, Konkan Division and has completed normal tenure of three years and due for transfer in forthcoming general transfers and, therefore, interference by the Tribunal is not warranted.

6. Whereas Shri M.D. Lonkar, learned Advocate for Respondent No.2 and 3 raised the issue of limitation *inter-alia* contending that though Applicant was aware about transfer of Respondent No.3 by order dated 07.09.2019, she remained silent without making any grievance before the Government and belatedly filed M.A. on 12.10.2021 for impleading Respondent No.3 in the matter. He, therefore, submits that in so far as Respondent No.3 is concerned, his transfer order dated 07.09.2019 is barred by limitation since he is deemed to be added on the date of notice

of his addition, which was served upon him on 21.10.2021. He further submits that since Respondent No.3 is posted with the approval of Hon'ble Chief Minister as competent authority and Applicant have no such vested right to ask for the post of Tahasildar, Wada the absence of minutes of CSB will not render transfer of Respondent No.3 invalid. He too pointed out that Respondent No.3 as well as Applicant both have now completed normal tenure and will be due for transfer in forthcoming general transfers of 2022 and at this stage, interference by the Tribunal would be unwarranted.

7. In view of submission advanced at the Bar, the issue posed for consideration is whether impugned transfer orders dated 25.02.2019 whereby Applicant's posting has been changed from Tahasildar, Wada to Assistant Divisional Supply Officer, Konkan Division and transfer order dated 07.09.2019 whereby Respondent No.3 is posted as Tahasildar, Wada suffers from material legal infirmity or malicious, so as to warrant the interference by this Tribunal and the answer is in emphatic negative.

8. Needless to mention that transfer is an incidence of service and no Government servant can claim particular place or post as legally vested right. Indeed, transfer orders are administrative orders passed by competent authority in view of administrative exigencies and unless transfer is in contravention of express provisions of law or malafide, it need not be interfered with. Now transfers of Government servant are regulated and governed by the provisions of 'Transfer Act 2005' and not left to the whims and caprice of the executives. As per provisions of 'Trasnfer Act 2005', the normal tenure of Government servants is three years, but at the same time, the competent authority can transfer a Government servant mid-tenure after recording reasons as contemplated under Section 4(5) of 'Transfer Act 2005'.

9. Indisputably, in view of previous postings of the Applicant in District Mumbai Suburb for more than three years, she was due for transfer outside the District in view of guidelines of Election Commission

of India dated 16.01.2019. Para No.3 of letter is relevant, which is as under :-

“Hence, the Commission has decided that **no officer connected directly with elections shall be allowed to continue in the present district of posting :-**

- (i) if she/he is posted in her/his home district.
- (ii) if she/he has completed three years in that district during last four (4) years or would be completing 3 years on or before 31<sup>st</sup> May, 2019.”

10. As stated above, the Applicant was promoted in April, 2013 as Tahasildar and since then, she was serving in Mumbai Suburb. Therefore, in view of general elections of 2019, she was required to be transferred out of District as explicit from Election Commission of India guidelines dated 16.01.2019. It is in pursuant to the guidelines of Election Commission of India, the Applicant by order dated 20.02.2019 was transferred as Tahasildar, Wada, District Palghar invoking guidelines of Election Commission of India as well as Section 4(5) of ‘Transfer Act 2005’ as evident from transfer order dated 20.02.2019 (Page No.36 of Paper Book). The Respondent No.2 – Dinesh Kurhade who was serving as Tahasildar, Wada was transferred to Tahasildar, MMRDA, Mumbai. Subsequently, by order dated 25.02.2019, her posting was changed from Tahasildar, Wada to Assistant Divisional Supply Officer, Konkan Division. At the same time, by order dated 25.02.2019, the transfer of Respondent No.2 – Dinesh Kurhade from Wada to MMRDA, Mumbai was cancelled and he was brought back to the post of Tahasildar, Wada, District Palghar since he was not found due for transfer in view of fresh guidelines of Election Commission of India dated 07.02.2019. Accordingly, matter was placed before CSB as seen from minutes (Page Nos.65 to 67 of P.B.) and Applicant was given reposting as Assistant Divisional Supply Officer, Konkan Division. Suffice to say, since Respondent No.2 was required to be brought back as Tahasildar,

Wada in view of fresh guidelines of Election Commission of India, consequent to it, posting given to the Applicant as Tahasildar, Wada was required to be changed and accordingly, she was given posting as Assistant Divisional Supply Officer, Wada Division and accordingly, she joined there. This being the position, even if initially, the Applicant was given posting as Tahasildar, Wada by order dated 20.02.2019, she cannot claim it as legally vested right, particularly when Respondent No.2 was required to be brought back as Tahasildar, Wada. It is not the case that Applicant joined at Wada, worked for some period and then displaced. Before joining at Wada, posting was changed.

11. Shri Bandiwadekar, learned Advocate for the Applicant sought to make much capital that when post of Tahasildar, Wada had fallen vacant in view of transfer of Respondent No.2 to SRA by order dated 07.09.2019. That time, the Applicant ought to have been posted as Tahasildar, Wada, but Government favoured Respondent No.3 by giving posting him at Wada by order dated 07.09.2019. According to learned Advocate for the Applicant this shows undue favour to Respondent No.3 and secondly, it being without permission obtained by the Tribunal since O.A. is subjudice, it is illegal. I find no substance in this submission.

12. The Tribunal by reasoned order dated 06.03.2019 declined to grant interim relief to the transfer order dated 25.02.2019 whereby her posting was changed from Tahasildar, Wada to Assistant Divisional Supply Officer, Konkan Division. As such, there being no interim relief, the question of seeking permission of the Tribunal before posting Respondent No.3 does not survive. Reference made by learned Advocate for the Applicant **2007 (2) Mh.L.J. 481 [Kishor B. Rajput Vs. Preeti K. Rajput]** is totally misplaced. In that case, all that Hon'ble High Court held that when order of subordinate Court is challenged before Hon'ble High Court and Hon'ble High Court is seized of the matter, the subordinate Court should stay their hands away since there is issue of judicial propriety. Here, there is no question of judicial propriety or breach of any express

provision of law by giving posting to Respondent No.3 as Tahasildar, Wada by order dated 07.09.2019.

13. As regard issue of limitation raised by Shri M.D. Lonkar, learned Advocate for Respondent No.3, all that, it can be said that Applicant did not make application for amendment immediately though she was aware of the transfer order dated 07.09.2019 in favour of Respondent No.3. Perusal of Affidavit filed by the Applicant in September, 2019 (Page Nos.89 to 91 of P.B.) made it explicit that she was aware of transfer order dated 07.09.2019. However, she made an amendment application belatedly on 12.10.2021 which came to be allowed. Since O.A. was pending and it being subsequent event taken place during the pendency of O.A, the M.A. for amendment was allowed and Respondent No.3 is added in O.A. However, as rightly pointed out by learned Advocate for the Applicant that in view of order of Hon'ble Supreme Court in the matter of cognizance for extension of limitation in Covid-19 pandemic situation, the amendment and addition of party cannot be said barred by law of limitation. True, as per Section 21 of Limitation Act, in case of addition of new party in Suit, the Suit deemed to be instituted when the party is added. The limitation to challenge order dated 07.09.2019 in favour of Respondent No.3 was one year expiring on 07.09.2020. However, the orders passed by Hon'ble Supreme Court dated 23.09.2021 and 10.01.2022 makes it quite clear that the period from 15.03.2020 to 28.02.2022 stands excluded for the purpose of limitation, as may be prescribed under general or special laws in respect of judicial or quasi-judicial proceedings. This being the position, the issue of limitation for joining Respondent No.3 and challenging order dated 07.09.2019 does not survive.

14. True, as pointed out by learned Advocate for the Applicant while giving posting to Respondent no.3 as Tahasildar, Wada, the matter was not placed before the CSB. Perusal of record (Page No.182 noting file) reveals that it was directly approved by Minister of the Department and

Hon'ble Chief Minister. However, in the present case, material question is about legality of transfer order dated 25.02.2019 whereby posting of the Applicant was changed from Tahasildar, Wada to Assistant Divisional Supply Officer, Konkan Division. The Applicant has to stand or fall on her own legs and she cannot take some benefit of certain irregularities in the transfer order of Respondent No.3. Once transfer order dated 25.02.2019 found not suffering from any legal infirmity, in my considered opinion, the posting of Respondent No.3 by order dated 07.09.2019 cannot be termed illegal for absence of approval of CSB. It is more so, when Applicant and Respondent No.3 both are completing three years' tenure by general transfers of 2022. The Applicant have no legally vested right to ask for posting of Tahasildar, Wada. Suffice to say, the challenge to transfer order dated 25.02.2019 as well as 07.09.2019 holds no water. No malice or colourable exercise of power can be attributed to it.

15. At this juncture, it would be apposite to note that, though Applicant was aware of transfer order dated 07.09.2019 in favour of Respondent No.3, she did not make any representation to the Department or Government for claiming the post of Tahasildar, Wada when it fallen vacant in view of transfer of Respondent No.2 by order dated 07.09.2019. On the contrary, the perusal of minutes of CSB (Page No.179 of P.B.) reveal that she was asking for Shahapur, District Thane, as seen from minutes of CSB dated 20.08.2019. Since she was not due for transfer, her request was not accepted by CSB.

16. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned transfer orders holds no water and O.A. is liable to be dismissed. However, since Applicant is now due for transfer in general transfers of 2022, the Respondents may consider her transfer to Wada, if she asked for the said post. Hence, the following order.

**ORDER**

The Original Application stands dismissed with no order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 31.01.2022

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2022\January, 2022\O.A.206.19.w.1.2022.Transfer.doc

Uploaded on