

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO. 46 OF 2016

DISTRICT : SANGLI

Shri Amol Kisan Kadam )  
Age-26 years, )  
residing at 'Marva', Near Rama-Madhav )  
Apartment, Paranjape Colony, )  
Palus, District Sangli. )...Applicant

**VERSUS**

1. State of Maharashtra )  
Through Chief Secretary, )  
Mantralaya, Mumbai – 400 032. )  
2. Principal Secretary, )  
Revenue and Forest Department, )  
Mantralaya, Mumbai – 400 032. )  
3. The Divisional Commissioner, )  
Konkan Division, )  
Konkan Bhavan, 1<sup>st</sup> Floor, )  
Navi Mumbai – 400 614. )....Respondents

Smt. Punam Mahajan, learned Advocate for the Applicant.

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

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

RESERVED ON : 31.03.2016.

PRONOUNCED ON : 20.04.2016.



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

1. Heard Smt. Punam Mahajan, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer for the Respondents.
2. The Applicant is aggrieved by the mid-term and mid-tenure transfer order dated 7.1.2016, issued by the Respondent No.2 and 12.1.2016, issued by the Respondent No.3, by which the Petitioner is transferred from the post of Probationary Tahasildar, Khed, District Ratnagiri to the post of Tahasildar, Dodamarg, District Sindhudurg.
3. The record relating to transfer along with a photo copy was produced and photo copy of record is retained.
4. First affidavit filed by the State was considered inadequate, hence this Tribunal passed order on 21.1.2016 and directed the Principal Secretary, Revenue and Forest Department to file his own affidavit.
5. In response to the order passed by this Tribunal on 21.1.2016 the Principal Secretary, Revenue and Forest Department, Shri Manu Kumar Srivastava, has filed affidavit.
6. Thereafter case was taken up for hearing.
7. Heard both sides and perused the record.
8. Facts leading to this Original Application, and the date schedule revealing from record is as below:-

18.7.2014      Applicant had joined the Government services as Tahasildar.

7.10.2015      Applicant was posted as Probationary Tahasildar at Khed, District Ratnagiri, for the period of 287 days (7.10.2015 to 19.7.2016).



- 10.10.2015 Applicant joined at Khed, District Ratnagiri.
- 7.1.2016 Government has issued order transferring the Applicant from Khed, District Ratnagiri to Dodamarg, District Sindhudurg.
- 12.1.2016 The Respondent No.3 has issued order on 12.1.2016 based on Government's order dated 7.1.2016.

9. Applicant's exact pleading containing the challenge are seen in grounds read as below:-

"6.5.3. The impugned order is a midterm and midtenure transfer order; therefore it was obligatory on the part of the Respondent Nos. 2 and 3 to record the special reasons/exceptional circumstances in writing, before sending the proposal of transfer of the petitioner, to the Hon'ble Chief Minister for approval. No special reasons or exceptional circumstances have been recorded for the transfer of the Petitioner, the special procedure laid down u/s 4(4) (ii) and 4(5) of the Transfer Act has not been followed i.e. to say that neither the reasons have been recorded nor the approval of the Hon'ble Chief Minister has been taken before issuing the impugned order. Therefore the impugned order is illegal and bad in law as it is violative of the provisions of Section 4(4) (ii) and 4(5) of the Regulation of Transfer Act.'

6.5.4. The impugned order also suffers from malice in law, as it has not been issued in accordance with the provisions of Section 4(4) (ii) and 4(5) of the Transfer Act."

(Quoted from page no.4 of the O.A.)

10. The grounds contained in paragraphs quoted in foregoing paragraph reveal as follows:-

- (a) The impugned order is a mid-term and mid-tenure transfer order.
- (b) No special reasons or exceptional circumstances have been recorded for the transfer of the Petitioner, in the impugned order and to the best of the knowledge of the Petitioner, the special procedure laid down u/s 4(4) (ii) and 4(5) of the



Transfer Act has not been followed i.e. neither the reasons have been recorded.

- (c) Therefore the impugned order is illegal and bad in law as it is violative of the provisions of Section 4(4) (ii) and 4(5) of the Regulation of Transfer Act.

11. The affidavit of Principal Secretary Revenue and Forest Department, Shri Manu Kumar Srivastava which was filed pursuant to Tribunal's order dated 21.1.2016, to answer contents of paragraph nos. 6.5.3 and 6.5.4, opens with following placitum:-

"I say and submit that, as per the above directions, I am filing this affidavit in respect of paragraphs no.6.5.3 and 6.5.4 of this original application."

(Quoted from page no.18 of the O.A.)

12 Affidavit of Shri Manu Kumar Srivastava contains narration running in 2 pages however it is mute as to "Special Reasons or Exceptional Circumstances" leading to transfer of Applicant if any in existence and or record.

13. Perusal of record reveals the following:-

5.10.2015	Civil Services Board proposed Transfer posting of 15 officers in the rank of Tahsildar. In this list Applicant's Posting / Transfer was not proposed.
7.10.2015	Divisional Commissioner, Konkan Division ordered that applicant be posted as Tahsildar, Ked, District Ratnagiri for 287 days, for completing his training and thereafter a proposal for applicant's further posting would be furnished before the Government.
8.10.2015	File was put up before the Hon'ble Minister (Revenue) for approval of 14 Transfers/ Postings.
4.1.2016 or around that	Hon'ble Minister (Revenue) proposed transfer / posting of 21 officers in the rank of Tahsildar. This list contains few names as found in the list approved by Civil Services Board and vetted by the Department. In this list Applicant's transfer is proposed. His name is shown at

	Sr.No.16.
4.1.2016	Hon'ble Chief Minister has approved said list furnished by Hon'ble Minister (Revenue) excluding three names from said list.  Applicant's name is seen in said list prepared & furnished by Hon'ble Minister (Revenue) at Sr. No.16, and no reasons are disclosed towards the mid-tenure and mid-term Transfer.
7.1.2016	Impugned order is passed.

14. Applicant's name was not forming part of list proposed by Civil Services Board, and naturally Special Reasons or exceptional circumstances for transfer of Applicant did not and could not find place in Department's office noting.

15. Special Reasons or exceptional circumstances could have found place or could have been incorporated if those be in existence, in the narration if nay which could precede or follow the list couched or inducted by Hon'ble Minister himself.

16. The list which has come under the signature of Hon'ble Minister on record is a plain and simple list without narration whatsoever. It does not contain any preamble, lead or office note or narration whatsoever. Special reasons or exceptional circumstances, if any, and many have to be in the mind of Hon'ble Minister and are not brought on record. Reasons, if any, and whatever, have not seen the light of the day, because those are not borne on record and those continue to be in the realm of subjectivity of the executive and speculation for rest of the world.

17. It is thus evident that the Principal Secretary, Revenue and Forest Department, Shri Manu Kumar Srivastav was helpless and could not have incorporated in his affidavit any material forming special reasons and



exceptional circumstances, because the proposal had not emanated from his department, and he could not swear as to the reasons which Hon'ble Minister did not incorporate/ record in his list.

18. In the result Applicant's pleading that the transfer is ordered without recording special reasons or exceptional circumstances is proved by the record of the Respondents to be factually correct.

19. In the result O.A. is succeed and is accordingly allowed in terms of prayer clause 9(a) which reads as follows:

9(a) That this Hon'ble Tribunal be pleased to quash and set aside the transfer order dated 7.1.2016 and 12.1.2016, transferring the petitioner from Khed, District Ratnagiri to Dodamarg, District Sindhudurg and direct the respondent no.2 and 3 to allow the petitioner to continue to work as Probationary Tahsildar, Khed, District Ratnagiri.

20. In view that no interim-relief is granted, Applicant shall be entitled to restore his status and his post as existed prior to issuance of impugned order which is at Exhibit 'A2' page no.11 of the O.A. which be done within 2 weeks from the date of receipt of the order passed by this OA.

21. Learned P.O. is directed to communicate this order.

22. In the facts and circumstances of the case, parties are directed to bear own costs.

Sd/-

(A.H. Joshi, J.)  
Chairman

sba