

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 484 OF 2016

DISTRICT : THANE

Mrs Vaishali Suresh Lambhate,)
Working as Tahsildar, Tal-Bhiwandi,)
Dist-Thane, having office at Old Octroi)
Naka, Bhiwandi [W], Dist-Thane.)
R/o: D/403, Eternity Complex,)
Teen Hatnaka, Thane [W],)...**Applicant**

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
[Revenue], Revenue & Forest)
Department, Mantralaya,)
Mumbai 400 032.)
2. Shri Prashant Thakare,)
Occ : Government service in the)
cadre of Tahsildar [waiting for)
Posting], now transferred in the)
Place of the Petitioner as Tahsildar,)
Bhiwandi, Dist-Thane.)



3. The Divisional Commissioner,)
Konkan Division, having office at)
Konkan Bhavan, C.B. D Belapur,)
Navi Mumbai.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondent no 1 & 3.

Shri Chahal P.A Singh, learned advocate for Respondent no. 2.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 11.08.2016

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant, Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondent no 1 & 3 and Shri Chahal P.A Singh, learned advocate for Respondent no. 2.

2. This Original Application has been filed by the Applicant challenging order dated 27.5.2016 issued by the Respondent no. 1 transferring the Respondent no. 2 in her place as Tahsildar, Bhiwandi, Dist-Thane. The



Applicant is also challenging order dated 4.6.2016 passed by the Respondent no. 3 transferring the Applicant as District Supply Officer, Alibaug, Dist-Raigad.

3. Learned Counsel for the Applicant argued that the Applicant was transferred as Tahsildar, Bhiwandi by order dated 15.2.2014. She had not completed her tenure of 3 years in the post. However, by order dated 27.5.2016, the Respondent no. 2 was posted as Tahsildar, Bhiwandi, though the Applicant was not transferred from that post. The Applicant was subsequently transferred by the Respondent no. 3 as Assistant District Supply Officer, Alibaug by order dated 4.6.2016. Learned Counsel for the Applicant argued that the Applicant had not completed her tenure as Tahsildar, Bhiwandi. As such, the order should have mentioned special reasons for her transfer before completion of her tenure as per section 4(5) of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (the Transfer Act). However, no special case has been made out for her mid-tenure transfer. Similarly, the order dated 4.6.2016, is a mid-term transfer order and exceptional circumstances or special reasons for such transfers should have been recorded as per Section 4(4)(ii) of the Transfer Act. However, order dated 4.6.2016 does not mention any such circumstances or reasons.

Learned Counsel for the Applicant argued that her transfer was not placed before the Civil Services Board and on that ground also, it is illegal. Learned Counsel for the Applicant argued that the Respondent no. 2 was allotted to Aurangabad Division as per the Divisional Cadre Rules, 2015, and therefore, he could not be transferred to Konkan Division, without completion of his tenure there. His transfer to Konkan Division is illegal and void ab initio.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent nos 1 and 3 that the Applicant was transferred with the approval of Competent Authority as per the provisions of Section 4(5) of the Transfer Act. Power to transfer Tahsildar, Group 'A', have been delegated to Divisional Commissioner by order dated 15.12.2014. The transfer of the Respondent no. 2 was not recommended by the Civil Services Board, but it was approved by the Higher Competent Authority. As regards transfer of the Applicant, Divisional Commissioner, Konkan Division was authorized to post her in a vacant post.

5. Learned Advocate Shri Chahal P.A Singh argued on behalf of the Respondent no. 2 that the Applicant was working as Tahsildar, Retighat, Dist-Thane before her transfer to Bhiwandi. She had completed three years in Thane District. Learned Advocate Shri Singh

argued that State Election Commissioner has issued a notification on 19.1.2016 directing the State of Maharashtra to transfer those officers, who will be due for transfer during November, 2016 to February, 2017 during general transfer of 2016. These instructions has been issued to avoid transferring officers mid-term. The Applicant would have completed 3 years as Tahsildar, Bhiwandi in February, 2017, and, therefore, she was liable to be transferred in April-May, 2016, as per notification of the State Election Commissioner. Learned Advocate Shri Singh stated that Divisional Commissioner, Nagpur has passed such orders on 19.7.2016 transferring one Shri Padole as per instructions of State Election Commissioner dated 18.5.2016. Learned Advocate Shri Singh relied on the judgment of Hon'ble Supreme Court in the case of **STATE OF U.P Vs GOBARDHAN LAL & ANOTHER** reported in **2004 AIR (SC) 2165**. It was held by Hon. Supreme Court in that case that a transfer order cannot be lightly interfered unless it is an outcome of malafide exercise of powers or violative of any statutory provision or passed by an authority not competent to do so. In the present case, none of these conditions are satisfied. He also cited judgment of Hon'ble Bombay High Court in **S.N. JADHAV Vs. STATE OF MAHARASHTRA : 2011 (6) BOM C.R 792**. Learned Advocate Shri Singh stated that the Respondent no. 2 was allotted to Konkan

Division and contention of the Applicant that he belongs to Aurangabad Division is incorrect.

6. Let us first examine the issue whether the Applicant had completed her tenure at Bhiwandi. Section 3(1) of the Transfer Act provides that normal tenure of a Group 'A' officer in a post is three years. It is an admitted fact the Applicant was posted as Tahsildar, Bhiwandi on 15.2.2014. She had not completed her tenure of three years in the post of Tahsildar, Bhiwandi. Section 3 of the Transfer Act does not provide for tenure in a District, but in a post. The contention of the Respondent no. 2 that she had completed her tenure has no basis.

7. Next the question of reference of transfer to the Civil Services Board (C.S.B) is considered. The State has issued G.R dated 31.1.2014 in this regard. Hon'ble Supreme Court in the case of **T.S.R SUBRAMANIAN & ORS Vs. UNION OF INDIA & ORS ; AIR 2014 S.C 263** has held that the recommendations of the Civil Services Board can be overruled by the political executive but by recording reasons. In the present case, the Respondent no. 2 was recommended for posting as Tahsildar, Andheri, Mumbai by the Minister (Revenue) without citing any reasons for this change as the name of the Respondent no. 2 was not there in the recommendation of the Civil Services Board. Hon'ble Chief Minister

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decided to post him as Tahsildar, Bhiwandi in place of the Applicant that too without recording any reasons. Minister (Revenue) had not recommended the transfer of the Applicant, as she had not completed her tenure. What were the recommendations of the Civil Services Board is not placed on record. However, in para 4 of the affidavit in reply dated 13.6.2016, the Respondent no. 1 has admitted that Civil Services Board had not recommended transfer of either the Applicant or the Respondent no. 2. It was necessary to give reasons for their proposed transfers. The orders of transfer of both the Applicant and the Respondent no. 2 have been issued in violation of law laid down by Hon'ble Supreme Court in Subramanian's case.

8. The Applicant was in effect, transferred once the decision was taken to post the Respondent no. 2 in her place. The order posting the Respondent no. 2 in her place was issued on 27.5.2016. No special case was made out for transferring the Applicant. The ultimate order dated 4.6.2016 was issued in violation of the provisions of Section 4(5) of the Transfer Act. Also, actual order of transfer of the Applicant was issued in the month of June so it was a mid-term transfer order. No exceptional circumstances or special reasons were mentioned. The order dated 4.6.2016 is issued in violation of Section 4(4)(ii) of the Transfer Act.

9. The Respondent no. 2 has claimed that the Applicant was liable to be transferred in view of letter dated 19.1.2016 of the State Election Commission. He has cited transfer order of one Shri Shivraj Padole by the Divisional Commissioner, Nagpur. A copy of that order is placed on record. It is seen that in addition to letter dated 19.1.2016 from the State Election Commissioner, another letter dated 18.5.2016 is also referred to in the order issued by Divisional Commissioner, Nagpur. It appears that there were some additional reasons for transferring Shri Padole, which are not clear. In any case, letter of the State Election Commissioner was never considered by the Respondent nos 1 & 3, while issuing transfer order of the Applicant.

10. The issue raised by the Applicant that the Respondent no. 2 was allotted to Aurangabad Division and his transfer was in violation of Divisional Cadre Allotment Rules is mentioned in para 6 .17 of the Original Application. In the affidavit in reply dated 13.6.2016, the Respondent no. 1 has chosen not to give any reply. This is highly irresponsible behavior. The Respondent no. 1 was in the best position to clarify this issue. However, the Respondent no. 2 in para 18 of his affidavit in reply dated 14.6.2016 has denied that he was allotted to Aurangabad Division. The Applicant has failed to place any material on record in support of his contention that the Respondent no. 2 was allotted to

Aurangabad Division. This issue need not be considered further.

11. The Respondent no. 2 has relied on judgment of Hon'ble Supreme Court in the case of Gobardhan Lal (supra). However, it is seen that transfer order of the Applicant is violative of Sections 4(4)(ii) and 4(5) of the Transfer Act and also violates law laid down by the Hon'ble Supreme Court in **SUBRAMANIAN's** case (supra). This judgment (Gobardhan Lal's) will not help the case of the Respondent no. 2.

12. In the case of **S.J JADHAV** (supra), Hon'ble Bombay High Court has observed that the Petitioner had completed his tenure of three years and was due to be transferred otherwise in the general round of transfers in April-May. Here facts are entirely different as discussed above. The case is clearly distinguishable.

13. Learned Presenting Officer has relied on the judgment of this Tribunal dated 7.6.2016 in O.A no 19/2016. This Tribunal has observed in para 26 as below:-

"26. Record shows that treasons leading to mid-term and mid-tenure transfers are stated in the proposal sent by the Respondent no. 3. Reasons contained in the proposal are concurred by CBS and by the Minister and Hon'ble Chief Minister.

NA

Text of reasons is copied in foregoing Para No. 11 in second column in item (b). The Government is to be accepted as best judge of the matter of decision as to what action shall achieve larger and administrative interest. The decision of the Government in administrative matters cannot be assessed by use of a calibrating device. Tests such as arithmetic or geometric tests or tests applicable for gauging, used in any material sciences do not apply to Government decisions.”

In the present case, there is total absence of any reason for transferring the Applicant. There is no question of using any calibrating device. The case is clearly distinguishable.

14. Having regard to the aforesaid facts and circumstances of the case, transfer of the Applicant by order dated 4.6.2016 from the post of Tahsildar, Bhiwandi is quashed and set aside. Interim order dated 6.6.2016 merges in this final order and the Applicant will continue to work as Tahsildar, Bhiwandi. This Original Application is accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 11.08.2016

Dictation taken by : A.K. Nair.