

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.534 OF 2020**

**DISTRICT : Ratnagiri**

Shri Mahesh Vilas Patil , )  
Age 46 years, Occ. Deputy Collector, )  
R/at Plot No.5, Tara Ratna Apartments, )  
Thiba Palace Road, Ratnagiri 415612. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Addl. Chief Secretary, )  
Revenue & Forest Department, )  
Mantralaya, Mumbai 400 032. )
2. The Secretary, Food and Civil Supplies )  
Consumer Protection, Mantralaya, )  
Mumbai 400 032. )....**Respondents**

**Smt. Punam Mahajan, learned Counsel for the Applicant**

**Ms S. P. Manchekar. Chief Presenting Officer for Respondents.**

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

**DATE : 04.03.2021**

**JUDGMENT**

1. The Applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 challenging the order dated 01.10.2020 passed by the Respondent No.1 thereby transferring the Applicant on the post of District Supply Officer, Ratnagiri to Deputy District Election Officer, Bhandara on the vacant post.

2. Shortly stated facts giving rise to this application are as under:-

While the Applicant was serving in the cadre of Tahasildar, he was promoted as Deputy Collector and in terms of Revenue Division Allotment for appointment by nomination and promotion to the post of Group "A" and "B" (Gazetted and Non Gazetted) of the Government of Maharashtra Rules 2015 (hereinafter referred to as "Revenue Division Allotment Rules, 2015 for brevity) he was allotted Nagpur Revenue Division. Accordingly, the Respondent No.1 (Revenue & Forest Department) by order dated 14.03.2019, posted him on the promotional post of District Supply Officer, Gadchiroli which is equal to the cadre of Deputy Collector. In pursuant to it, the Applicant joined at Gadchiroli. However, later the Respondent No.2 (Food and Civil Supplies department) by order dated 20.09.2019 transferred him from Gadchiroli to District Supply Officer, Ratnagiri invoking Section 4(4) and 4(5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005). Accordingly the Applicant joined at Ratnagiri. He claims to have tenure of three years at Ratnagiri in terms of provisions of 'Act 2005'. However, abruptly the Respondent no.1 (Revenue & Forest Department) recalled his order dated 20.09.2019 on the ground that he had not completed three years tenure in Nagpur Division in terms of Division Cadre Allotment Rules, 2015 and with the recommendation of Civil Services Board (CSB) as well as by approval of the Hon'ble Minister invoking Section 4(5) of 'Act 2005', he was repatriated in Nagpur division and posted as Deputy District Election Officer, Bhandara on vacant post. The Applicant has challenged the order dated 01.10.2020 *inter-alia* contending that once he was transferred to Ratnagiri with approval of the Hon'ble Chief Minister then he could not have been shifted back in Nagpur division curtailing his normal tenure at Ratnagiri and he is

subjected to victimization since the Government had not recalled the orders of other officials who were transferred out of division before completing three years tenure in the division allotted to them in terms of Division Cadre Allotment Rules, 2015.

3. Respondent No.1 –Revenue and Forest Department had resisted the O.A. by filing affidavit in reply which is at page nos.48 to 58 *inter-alia* denying that the impugned order suffers from any legal infirmity. According to Respondent No.1 though the Applicant was allotted Napur division, he was wrongly transferred by the Respondent No.2 (Food and Civil Supplies Dept.) by order dated 20.09.2019 thereby posting him at Ratnagiri and having realized the mistake the Respondent No.1 repatriate him in Nagpur division and posted at Bhandara by impugned order dated 01.10.2020 in compliance of Section 4(5) of Transfer Act, 2005.

4. Later, the Applicant has filed affidavit –in –Rejoinder (which is at Page Nos.83 to 89 of PB along with posting order of his counterpart showing discrimination.

5. In counter, the Respondent No.1 filed Sur-Rejoinder (Page Nos.118 to 127 of PB) denying that there is any such discrimination.

6. Significantly, the Respondent No.2 –Secretary, Food and Civil Supplies department has not filed affidavit-in-reply. It is the Respondent No.2 who by order dated 20.09.2019 transferred the Applicant from Gadchiroli to Ratnagiri in contravention of Division Cadre Allotment Rules, 2015.

7. Smt. Punam Mahajan, learned Counsel for the Applicant vociferously urged that even if on promotion, Nagpur division was allotted to the Applicant in terms of Division Cadre Allotment Rules, 2015 and was given posting at Gadchiroli. Later, the Government

(Food and Civil Supplies Department) itself by order dated 20.09.2019 with approval of the Hon'ble Chief Minister invoking Rule 4(5) of 'Act 2005' transferred the Applicant at Ratnagiri then he should not have been called back and posted at Bhandara by impugned order dated 01.10.2020. She has pointed out that the order of transfer and posting of the Applicant at Ratnagiri was consciously approved by the Hon'ble Chief Minister invoking Section 4(5) of 'Act 2005', and therefore, the Government is estopped from changing the position by retransferring the Applicant in Nagpur division. In absence of special case, there was no reason to invoke Section 4(5) of Act 2005 to curtail his normal tenure and to repost him at Bhandara. She, further raised the ground of discrimination contending that in the matter of some officials, though they were given one division they were transferred before completion of their tenure in that division but in the matter of Applicant only his transfer order is recalled and thereby Government had victimized the Applicant. Thus, according to him, the Applicant is subjected to discrimination and it is violative of Article 14 of the Constitution of India.

8. Per contra, learned Chief Presenting Officer sought to justify the impugned transfer order dated 01.10.2020 contending that infact it is remedial correction/measure taken by the Revenue and Forest department (parent department of the Applicant) having noticed that the Applicant was wrongly transferred by Food and Civil Supplies department without consultation of Revenue and Forest Department by order dated 20.09.2019 at Ratnagiri and having noticed that he should not have been transferred out of division before completion of three years in the said division, the respondent No.1 again moved the file and with the recommendation of CSB as well as approval of the Hon'ble Chief Minister reposted the Applicant in Nagpur division by giving him posting as Deputy District Election Officer, Bhandara. As regard, discrimination, he submits that the orders pointed out by the Applicant about other officials are in fact orders of deputation and

department is taking necessary action to recall them in accordance to law. Thus, according to her, the Applicant cannot be allowed to take benefit of others wrong or incorrect orders otherwise it would perpetuate illegality.

9. At this juncture, it would apposite to reproduce the relevant portion from Sur-Rejoinder filed by the Respondent No.1 in respect of ground of discrimination which is as under:-

*“ As regards para Nos.5 and 6 of Rejoinder Affidavit, I say and submit that while denying contents of para nos.3, 3.6 and 7 of Affidavit in reply filed on behalf of respondents, the Applicant has given list of Revenue Officers whose original allotted Divsiion has been changed without completing 3 years in the original Divisions. It is submitted that amongst 18 such officers, Shri Mane, Shri Pawar and Shri Joshi have been immediately transferred out side the Division and Shri Gujar, Shri Butale and Shri Thombre have been transferred outside the Revenue Division within a period of less than one year. However, it is submitted that said officers have been transferred by following due procedure of deputation by the Appointing Authority. However, Applicant though promoted and posted in Naxalite area is not transferred by the Appointing Authority. Hence, contention of Applicant regarding discriminatory treatment to the Applicant is denied.*

*I further say and submit that after considering the fact that deputation in the cadre of Deputy Collectors has exceeded the ceiling of 15% in view of Government Resolution dated 16.02.2018, Respondents in Revenue Department have taken review of the same and a proposal submitted to recall 11 such officers whose normal tenure of 3 years on deputation is already completed or about to complete shortly is approved by the Competent Authority.”*

10. Indisputably, on promotion in the cadre of Deputy Collector, Nagpur division was allotted to the Applicant in terms of Cadre Allotment Rules, 2015 and accordingly, he was posted as District Supply Officer, Gadchiroli. Material to note that the parent department of the Applicant is Revenue and Forest Department who had posted him at Gadchiroli by order dated 14.03.2019. However, later within six months another department i.e. Respondent No.2 through Secretary, Food and Civil Supplies Department by order dated 20.09.2019 transferred the Applicant from Gadchiroli to

Ratnagiri. There is no denying that at that time, Food and Civil Supplies department did not consult the Revenue & Food Department which is parent department of the Applicant. True, the order dated 20.09.2019 was also approved by the Hon'ble Chief Minister. In this behalf, interesting to note that perusal of Page No.90 (Note of Food and Civil Supply Department) clearly demonstrates that it was done to accommodate one Shri Bhangade who was serving as District Supply Officer at Hingoli. The file note vividly reveals that Shri Sudhir Mungantivar the then Hon'ble Finance Minister, Shri Devrao Holi, MLA, Gadchiroli and Shri Krishna Gajabe, MLA, Armori by their letters dated 23.07.2019, 22.07.2019 and 23.07.2019 respectively recommended for the transfer of Shri Narendra Bhagade from Hingoli to Gadchiroli. The CSB had also recommended for transfer of Bhagade at Gadchiroli. The Secretary, Food and Civil Supplies Department accordingly placed the note before the Hon'ble Minister in charge of Food and Civil Supplies Department who approved the note and put his own note and approved the transfer of Shri Narendra Bhagade and in his place transfer the Applicant at Ratnagiri. The note is as under:-

“जिल्हा पुरवठा अधिकारी संवर्गातील रिक्त पदे व कामाची व्यापकता पाहता (१) श्री.नरेंद्र भागडे यांची गडचिरोली येथे, (२) डी.के.वानखेडे यांची गोंदिया येथे, (३) श्री.महेश पाटील यांची रत्नागिरी येथे, (४) श्री.रमेश बेंडे यांची वर्धा येथे व (५) श्री.अनिल बनसोडे यांची भंडारा येथे बदलीने पदस्थापना करण्यास मान्यता असावी.”

11. The file was then placed before the Hon'ble Chief Minister who approved the same. It is thus *ex-facie* that only to accommodate Shri Bhagade on the recommendation of Public Representatives and Ministers of another department, the Applicant was displaced from Gadchiroli which was given to him in terms of Division Allotment Rules, 2015. That time Respondent No.2 completely ignored that the Applicant could not have been transferred before completion of his three years tenure in the said division in terms of Division Cadre Allotment Rules, 2015. Apart, Respondent No.2 even did not consult

the parent department of the Applicant before issuance of the transfer order which is *ex-facie* in contravention of provisions of Division Cadre Allotment Rules, 2015. The Tribunal has come across several such brazen instances where the Government servant is transferred only on the recommendation of politicians or public representatives in defiance of express provisions of law. Indeed, in **W.P.No.8987/2018, in (Balasaheb Vittalrao Tidke V/s State of Maharashtra & Anr.)**, decided by the Hon'ble High Court on 12.12.2018, having noticed such interference of politicians in governance had strongly deprecated practice of transfer of Government servant on recommendation of an elected representatives of people or the Hon'ble Ministers who are not concerned with the process of transfer. In Writ Petition, Shri Dinesh Kumar Jain, the Chief Secretary filed an affidavit dated 12.12.2018 that transfers will not be influenced by any recommendations made by any political leaders or Ministers (who are not a part of the process of transfer).

12. After taking affidavit of the Chief Secretary on record, the Hon'ble High Court in Para No.2 stated as under:-

*"We accept the statements made in paragraphs-1 and 2 of the said affidavit quoted above as the undertakings given on behalf of the State of Maharashtra. 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 Rane5/6 WP-8987-2018 (SR.4) 12.12.2018 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 transfer under the said Act of 2015 so that there will not be any attempt to make any recommendations thereby influencing the process of transfers of the Government Servants."*

13. Shockingly despite filing of Affidavit and specific order of the Hon'ble High Court as reproduced above, the practice of transfer of a Government servant on recommendation of politicians seems continued unabated with impunity for which there is absolutely no explanation from the Government.

14. True, as pointed out by learned Counsel for the Applicant, that there was no request of the Applicant to transfer him from Gadchiroli to Ratnagiri and only to accommodate Shri Bhagade, he was displaced from Gadchiroli to Ratnagiri. However, the fact remains that the Applicant got posting at Ratnagiri which appears convenient to him, and therefore, he did not challenge the said order. In other words, he is also beneficiary of the said order, and therefore, did not challenge it. Be that as it may, the order dated 20.09.2019 is *prima facie* contempt of the order of Hon'ble High Court and secondly it is in contravention of provision of Division Cadre Allotment Rules, 2015.

15. Once the Applicant was allotted Nagpur division in terms of Rule 9(1) of Division Cadre Allotment Rules, 2015, he should not have been transferred out of revenue division allotted to him before completion of three years tenure in the said division. Thus, even if the transfer order dated 20.09.2019 was approved by the then Hon'ble Chief Minister, it was in contravention of Division Cadre Allotment Rules, 2015.

16. Needless to mention that the transfer is an incident of Government service and Government servant cannot claim particular post or place as a matter of right. Now, the transfers are governed and regulated by 'Act 2005' and executive is bound to follow the provisions of 'Act 2005' along with Division Cadre Allotment Rules, 2015 so as to uphold the Rule of law.

17. Later, the Respondent No.1 i.e. Revenue and Forest Department which is parent department of the Applicant noticed the illegality in transferring the Applicant by Food and Civil Supply department out of division without consultation, and therefore, again moved the file. The Respondent No.1 specifically pointed out the mistake and placed the matter before CSB. The Minutes of CSB are at Page Nos.74 of PB

wherein it is clearly stated that Food and Civil Supplies department unilaterally transferred the Applicant without consultation with parent department and in contravention of Division Cadre Allotment Rules, 2015 transferred the Applicant to Ratnagiri. The CSB accordingly, approved the note to repatriate the Applicant to Nagpur division and recommended for his transfer at Bhandara. Accordingly, the matter was then placed before the Hon'ble Chief Minister who was pleased to approve the same. Thus, indeed it is remedial measure taken by the parent department for compliance of Division Cadre Allotment Rules, 2015 and reposted him in Nagpur division. In other words, order dated 20.09.2019, the Respondent No.1 rectified the illegality done by the Respondent No.2.

18. Now, turning to the ground of discrimination, learned Counsel for the Applicant tried to make much capital of some orders in respect of some other officials who were transferred out of division before completion of three years tenure as mandated under Division Cadre Allotment Rules, 2015. In Sur-Rejoinder, the Applicant has given details of such transfers of out of division and has also placed on record their posting orders. Their initial posting orders are at page No.92 and reposting orders are at Page Nos.96 to 106. In respect of these grounds of discrimination, the Respondent no.1 in Sur-Rejoinder stated that those are the orders of deputation by Appointing Authority and secondly they will be recalled after completion of tenure of deputation.

19. Learned Counsel for the Applicant has also pointed out that in terms of G.R. dated 17.12.2016, even in the matter of deputation, a Government servant cannot be recalled before completion of one year service on deputation, in case, the parent department wants to recall a person send on deputation for administrative exigency. In this behalf she referred to condition no.4 of G.R. dated 17.12.2016. Perusal of these orders of officials who were transferred out of division

reveals that mostly these are the orders passed by the Appointing Authority for deputation. Thus, if from the point of administrative exigency, the Appointing Authority/ Government deputed certain officials for particular period, curtailing their period, which they were required to serve in division allotted to them, that itself cannot be made foundation for plea of discrimination as a matter of law. Even if one department or authority has passed some incorrect orders that itself cannot be the ground to legalize the illegality otherwise it would be amounting to perpetuate the illegality which I am afraid, is impermissible in law. In other words, some incorrect or illegal orders cannot be used as lever or handle asking the department to repeat the illegality. In other words, there cannot be discrimination in illegality. Giving effect to such plea would be prejudicial to interest of law and if allow to continue, there will be no rule of law and authorities will free to repeat the illegalities. When it comes to the court of law, if such illegality is noticed then certainly it ought not be countenanced nor party can be allowed to take benefit of it raising plea of discrimination. Illegal action must be corrected and even if not corrected, it is incomprehensible to contend that it should be made basis for repetition.

20. In this behalf, Tribunal is guided by the decision of the Hon'ble Supreme Court in **AIR 1995 SC 705 Chandigarh Administration v/s Jagjit Singh** wherein the Hon'ble Supreme Court held " it is trite law that there cannot be equality in illegality. Only because illegality is committed, the same cannot be directed to be perpetuated. Giving effect to such plea would be prejudicial to the interest of law and will do incalculable mischief to public interest and it will be also negation of rule of law." In this view of the matter, in my considered opinion the ground of discrimination sought to be canvassed is devoid of merit.

21. Suffice to say, there is no illegality in transfer order dated 01.10.2020 whereby the Applicant was repatriated in his division which was allotted to him in terms of Division Cadre Allotment Rules 2015 and challenge to the same holds no water.

22. The cumulative effect of the aforesaid discussion leads me to sum up that the impugned order 01.10.2020 is unexceptionable and O.A. deserves to be dismissed. Hence the following order:-

**ORDER**

- (A) Original Application is dismissed with no order as to costs.
- (B) Interim relief stands vacated.

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

Place : Mumbai  
Date : 04.03.2021  
Dictation taken by : VSM  
Uploaded on :  
*E:\VSO\2021\Judgment 2021\March 21\O.A.534 of 2020 transfer.doc*