

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.771 OF 2019**

**DISTRICT : THANE**

Shri Ashok Vyankaji Sontakke. )  
Age : 56 Yrs., Working as Block )  
Development Officer, Panchayat Samiti, )  
Bhiwandi, District : Thane and residing at )  
Golden Park, Phase-2, Beturkar Pada, )  
Kalyan (W), District : Thane. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Rural Development Department, )  
Mantralaya, Mumbai – 400 032. )  
2. Shri P.A. Ghorpade. )  
Aged : Adult, Working as Block )  
Development Officer, Panchayat )  
Samiti, Palghar, Dist.: Palghar. )...**Respondents**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

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

**Mr. N.P. Dalvi, Advocate for Respondent No.2.**

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

**DATE : 01.10.2019**

## **JUDGMENT**

1. The Applicant has challenged the impugned order dated 3<sup>rd</sup> August, 2019 whereby the Respondent No.1 – State of Maharashtra had issued posting on promotion of Respondent No.2 in place of the Applicant thereby displacing him without passing further consequent order of his posting invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant is serving in the cadre of Block Development Officer (Non-selection Grade) and was posted as Block Development Officer (BDO), Panchayat Samiti, Bhiwandi, District : Thane by order dated 21<sup>st</sup> June, 2017 and since then, he was working on the said post till the impugned order. Indeed, the post of BDO, Panchayat Samiti, Bhiwandi is of Selection Grade BDO / Deputy Chief Executive Officer, but due to non-availability of candidates in Selection Grade, he was posted on that post. Whereas, the Respondent No.2 was posted as BDO, Panchayat Samiti, Palghar, Thane. The post of BDO, Bhiwandi, District Thane as well as BDO, Panchayat Samiti, Palghar both were earmarked as the post of Selection Grade amongst other 148 posts of BDO vide G.R. dated 06.08.2016. The Respondent No.1 by order dated 3<sup>rd</sup> August, 2019 promoted 67 Officials in the cadre of BDO, Selection Grade / Deputy Chief Executive Officer including Respondent No.2. By order dated 3<sup>rd</sup> August, 2019, the Government transferred Respondent No.2 on promotion and posted as BDO, Selection Grade, Panchayat Samiti, Bhiwandi, District Thane in place of the Applicant.

3. The Applicant has challenged the impugned order dated 3<sup>rd</sup> August, 2019 whereby he was sought to be displaced for posting the

Respondent No.2 in his place, *inter-alia*, contending that he was not due for transfer, and therefore, the same is in 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 of 2005' for brevity) and secondly, the posting of Respondent No.2 is in contravention of "Revenue Division Allotment for appointment by nomination and promotion to the post of Group "A" and Group "B" (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2015 (hereinafter referred to as 'Revenue Division Allotment Rules, 2015' for brevity). He contends that only to accommodate Respondent No.2, he is being displaced in contravention of 'Transfer Act 2015' as well as 'Revenue Division Allotment Rules, 2015'. He, therefore, prayed to set aside the impugned order dated 03.08.2019.

4. The Respondent No.1 resisted the application by filing Affidavit-in-reply (Page Nos.49 to 63 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the relief claimed. It is not in dispute that the Respondent No.2 amongst others was promoted in the cadre of Selection Grade. It is also not in dispute that the post of BDO, Panchayat Samiti, Bhiwandi, District Thane as well as BDO, Panchayat Samiti, Palghar were amongst 148 posts earmarked for BDO, Selection Grade / Deputy Chief Executive Officer. However, due to non-availability of Officer in the Selection Grade Cadre, the Applicant was posted as BDO, Panchayat Samiti, Bhiwandi, District Thane and Respondent No.2 was posted on the post of BDO, Panchayat Samiti, Palghar and have not completed their normal tenure. However, in view of promotion of Respondent No.2 in the cadre of Selection Grade, he was required to be posted on the Selection Grade post. The Respondent NO.2 had given option of Konkan-1 Revenue Division for posting on promotion in terms of 'Revenue Division Allotment Rules, 2015'. When the matter was placed before Civil Services Board (CSB), he was recommended for

posting as Deputy Chief Executive Officer (Village Panchayat), Ratnagiri. However, the Respondent No.2 made request to Hon'ble Minister, Rural Development by letter dated 17.06.2019 for posting as BDO, Panchayat Samiti, Bhiwandi, District Thane on the ground that his wife is working as Deputy Executive Officer at Bhiwandi and his son is learning in 10<sup>th</sup> Standard. The minutes of CSB were placed before the Hon'ble Minister who, however, accepted the request of Respondent No.2 and posted him as BDO, Panchayat Samiti, Bhiwandi, District Thane i.e. on the post occupied by the Applicant by order dated 03.08.2019. The Respondent No.1 thus contends that, in view of promotion of Respondent No.2 in Selection Grade and acceptance of his request, he was posted in place of the Applicant, as the Applicant having not in Selection Grade was required to be shifted. The Respondent No.1 thus denied that there is breach of provisions of 'Transfer Act 2005' and 'Revenue Division Allotment Rules, 2015' and prayed to dismiss the O.A.

5. In view of the contentions raised by the Applicant in Rejoinder about breach of 'Revenue Division Allotment Rules, 2015', the Respondent No.1 later filed Affidavit-in-reply contending that the Respondent No.2 was promoted on the post of BDO (Group 'A') in 2013 and was posted in Raigad, Revenue Division (Konkan-1) and later in 2017 transferred as BDO, Panchayat Samiti, Palghar on earmarked post on Selection Grade due to non-availability of sufficient number of Selection Grade Officers. Later, in select list of the year 2018-2019, the Respondent No.1 was promoted in Selection Grade Cadre. He had given option for Konkan-1 Division. The Respondent No.1 contends that as per Rule 9 of 'Revenue Division Allotment Rules, 2015', the Respondent No.2 having completed three years in Konkan-1 Division is eligible for promotion and posting in any revenue division. Accordingly, the Respondent No.2 was allotted Revenue Division and posted as BDO, Selection Grade, Panchayat Samiti, Bhiwandi, District Thane, and therefore, the Applicant who is

not in Selection Grade have no locus to challenge the posting of Respondent NO.2 in his place.

6. The Respondent No.2 also resisted the application by filing Affidavit-in-reply *inter-alia* reiterating the contentions raised by Respondent No.1 and contends that in view of his promotion in Selection Grade, he has been rightly posted in place of the Applicant at Bhiwandi and the Applicant has no locus to challenge his posting.

7. Shri Bandiwadekar, learned Advocate for the Applicant submits that the Applicant has completed hardly one year and nine months as BDO, Panchayat Samiti, Bhiwandi, but he is transferred mid-term and mid-tenure only to accommodate Respondent No.2 in his place. According to him, the Applicant could have been continued on the same post at Palghar it being also ear-marked for Selection Grade, but the Applicant is displaced illegally. He, therefore, contends that no special case is made out for his transfer as contemplated under Section 4(5) of 'Transfer Act 2005'. The learned Advocate for the Applicant further urged that the change of Division of Respondent No.2 from Konkan-1 to Konkan-2 is in contravention of Rule 12 of 'Rules of 2015'.

8. Per contra, Shri A.J. Chougule, learned P.O. for Respondent No.1 and Shri N.P. Dalvi, learned Advocate for Respondent No.2 submits that the post of BDO, Panchayat Samiti, Bhiwandi was given to the Applicant due to non-availability of Selection Grade Cadre Officer and has no right to continue on the same post in view of the availability of Selection Grade Officers, and therefore, in view of promotion, the Respondent No.2 is rightly posted in his place. Thus, according to them, the Applicant has no locus to resist the posting of Respondent No.2 and he should make way for the posting of Respondent No.2. In this behalf, they invited my attention to the Judgment of Hon'ble High Court in **Writ Petition No.15201/2018**

**(Smt. Sheetal V. Pund Vs. State of Maharashtra & Ors.) decided on 24<sup>th</sup> July, 2018.**

9. In view of submissions advanced at the Bar, the question posed for consideration is whether the posting of Respondent No.2 as BDO, Panchayat Samiti, Bhiwandi, District Thane and consequent shifting/transfer of the Applicant is in contravention of provisions of 'Transfer Act 2005' or provisions of 'Revenue Division Allotment Rules, 2015'.

10. Admittedly, the posts of BDO, Panchayat Samiti, Bhiwandi as well as Panchayat Samiti, Palghar are amongst 148 posts ear-marked for Selection Grade in terms of G.R. dated 06.08.2016. Besides, admittedly, the Applicant as well as Respondent No.2 were posted as BDO, Panchayat Samiti, Bhiwandi and Palghar respectively in 2017, when they were not in Selection Grade and it was done so due to non-availability of candidates in Selection Grade. Furthermore, admittedly, the Respondent No.2 is promoted in Selection Grade as BDO and was required to be given posting. True, the post of BDO, Panchayat Samiti, Palghar being of Selection Grade, the Respondent No.2 could have been continued there. However, his request for posting at Bhiwandi was approved by the Hon'ble Minister considering his family difficulties.

11. Indeed, the issue of posting of Selection Grade on the post ear-marked for Selection Grade and the locus of the employee who is not in Selection Grade to oppose such posting is no more open to debate in view of decision rendered by Hon'ble High Court in **Writ Petition No.15201/2018** (cited supra). In similar situation, the Hon'ble High Court held that the employee who is not in Selection Grade, cannot insist upon to continue on the said post which is to be manned only by Selection Grade Officers. In Para No.27, the Hon'ble High Court held as follows :-

*“27. At this stage, we do not deem it either appropriate or necessary to examine allegations as regards mala fide and political patronage. This is because even de hors such allegations, it is quite clear, that the respondent no.2 cannot insist upon any posting at Raigad, which is an ear marked post to be manned only by selection grade officers. For all these reasons, we are unable to agree with the view taken by the MAT that the petitioner, in the facts and circumstances of the present case, lacked locus standi to maintain the Original Application under Section 19 of the Administrative Tribunals Act.”*

12. Turning to the facts, the G.R. dated 6<sup>th</sup> August, 2016 shows that on account of stagnation due to non-availability of promotional post in the cadre of BDO, the Government had proposed to confer Selection Grade to such Officers and thereafter post them on ear-marked posts. By the said G.R, 148 posts were ear-marked for Selection Grade Officers and thus posts are only to be manned by the Officers of Selection Grade. This is the intent of G.R. dated 6<sup>th</sup> August, 2016. True, initially, the Applicant as well as Respondent No.2 both were posted at Bhiwandi and Palghar when they were not in Selection Grade due to non-availability of Officers in Selection Grade. As such, it was apparently for transitional period. Once the Officers of the cadre of Selection Grade are made available, then they are required to be posted only on ear-marked posts and the Applicant, admittedly, having not in Selection Grade, cannot lawfully resist the posting of Respondent No.2 in his place.

13. True, the post of BDO, Palghar being of Selection Grade, it was within the discretion of Government to continue Respondent No.2 on the said post after promotion in Selection Grade. However, in view of representation made by Respondent No.2, the Government took decision to post him in the place of Applicant and the Applicant was, therefore, required to be shifted. No doubt, the Applicant had not completed three years' normal tenure in the said post. But because of promotion and posting of Respondent No.2, he is being transferred. In other words, in consequent to promotion of Respondent No.2, it has become inevitable for the Government to transfer the Applicant and

such course of action is permissible in view of proviso 1 of Section 4(4) of 'Transfer Act 2005'. Section 4 of 'Transfer Act 2005' is as follows :-

**“4.** (1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.

(2) The competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year.

(3) Transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalised by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be:

Provided that, any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.

(4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May:

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:—

(i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;

(ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.”

14. As such, in view of Proviso (1) of Section 4(4) of 'Transfer Act 2005' as reproduced above, the Government was justified in transferring the Applicant mid-term.

15. True, the Applicant had not completed three years' normal tenure. Besides, there is no denying that the CSB had recommended the posting of Ratnagiri to Respondent No.2 on his promotion on Selection Grade. Needless to mention that the recommendations



made by CSB are not binding upon the executive and the final decision rests with the Government. In the present case, the Government accepted the request of Respondent No.2 to post him at Bhiwandi. As the Applicant who was holding the said post was not in Selection Grade, the posting of Respondent No.2 in his place cannot be resisted by the Applicant who is not in Selection Grade. Such situation also qualifies administrative exigency or reason in terms of service jurisprudence. The posting of Respondent No.2 in place of Applicant has been approved by the Hon'ble Minister as well as Hon'ble Chief Minister being highest Competent Authority. This being the position, it cannot be said that there is no compliance of Section 4(5) of 'Transfer Act 2005'.

16. Shri Bandiwadekar, learned Advocate for the Applicant sought to place reliance on the decision of Hon'ble Bombay High Court in ***Writ Petition No.9844/2018 (Santosh Thite Vs. State of Maharashtra & Anr.) decided on 04.02.2019.*** It was a case of mid-term and mid-tenure transfer without recording special reasons or to make out a case of administrative exigency, as required under Section 4(5) of 'Transfer Act 2005'. The ratio of the Judgment is that there has to be reasons recorded in writing to make out special case or administrative exigency. In that case, the transfer was effected under the expression "administrative reason" without recording specific reasons. There was nothing to show that how the requirement of expediting the work of Samrudhi Highway was connected with the transfer of 2<sup>nd</sup> Respondent. There was no record that the 2<sup>nd</sup> Respondent has an expertise or experience in the matter of construction of Highways or in the matter of construction of lands relating to construction of Highway. As such, in fact situation, there being no compliance of Section 4(5) of 'Transfer Act 2005', Writ Petition was allowed. Whereas, in the present case, as discussed above, the transfer was imperative in view of availability of Selection Grade Officer in contrast of the fact that the Applicant was not

holding Selection Grade. Therefore, the decision in **Writ Petition No.9844/2018** (cited supra) is of little assistance to the Applicant in the present facts.

17. Now turning to the 'Revenue Division Allotment Rules, 2015', the learned Advocate for the Applicant sought to contend that the posting of Respondent No.2 is in contravention of Rule 12 of 'Revenue Division Allotment Rules, 2015'. Whereas, the learned P.O. submits that the Respondent No.2 having completed three years in Konkan-1 Division, he was entitled for posting in any of the Revenue Division in terms of Rule 9(2) of 'Revenue Division Allotment Rules, 2015'.

18. Now, let us see Rule Nos. 9 and 12 of 'Revenue Division Allotment Rules, 2015', which are as follows :-

**“9.** (1) An officer appointed on promotion, -

(a) in Group “A” cadre shall be required to complete service of minimum three years in the allotted Revenue Division;

(b) in Group “B” cadre shall be required to complete service of minimum six years in the allotted Revenue Division;

(2) After allotment of the Revenue Division, if an officer gets promotion before completion of the period of three years or six years, as the case may be, he or she shall be given posting in the same Revenue Division;

Provided that, if the post is not available at the time of such promotion in that Revenue Division, then before completion of the period of three years or six years, as the case may be, a posting on promotion may be given in any other Revenue Division:

Provided further that, if the period of three years or six years, as the case may be, is not completed due to non-availability of posts in that Revenue Division, then in case of such officers posting for the remaining period shall be given again either on promotion or transfer in the originally allotted Revenue Division :

Provided also that, after the completion of a period of three years or six years, as the case may be, in the allotted Revenue Division, such officer may be posted in any other Revenue Division as per the availability of the posts.

**12.** After completion of service of one year in the allotted Revenue Divisions, an officer may apply for change of the Revenue Division on the following grounds, namely :-

(a) these illnesses of the officer himself or of his or her spouse or children or father or mother, who are dependent on him or her :-

- (i) Cases of Heart Surgery.
- (ii) Kidney Transplantation or Kidney Dialysis.
- (iii) Cancer.
- (iv) Brain Tumor or Brain Surgery.
- (v) Coma
- (vi) Mental Disorder.

(b) Postings of spouses together at the same place or location :

If husband or wife is in service in the office of Central or State Government, Semi Government Organisation, Municipal Corporation, Municipal Council, Zilla Parishad, Panchayat Samiti or Government Educational Institution (excluding Government aided private educational institutions), -

- (i) a change of the Revenue Division may be allowed only from Konkan and Pune Revenue Divisions to Nagpur, Amravati, Aurangabad and Nashik Revenue Divisions; and
- (ii) Nagpur, Amravati, Aurangabad and Nashik Revenue Divisions may be inter-changed amongst themselves.

(c) Mutual change in allotted Revenue Divisions :-

- (i) If request for change in the Revenue Division on mutual basis is received from an officer appointed by nomination, the Revenue Division may be changed only with another officer appointed by nomination.
- (ii) If request for change in the Revenue Division on mutual basis is received from an officer appointed by promotion, the Revenue Division may be changed only with another officer appointed by promotion :

Provided that, while allowing such change in the Revenue Division on mutual basis, the officer whose Revenue Division is changed from Konkan or Pune Revenue Division to either Nagpur or Amravati or Aurangabad or Nashik Revenue Division, will be required to join first in the newly allotted Revenue Division.”

19. The perusal of 'Revenue Division Allotment Rules, 2015' reveals that the object behind framing of these Rules is to ensure some tenure compulsory in Revenue Division which are not much sought for. Normally, employees prefer Pune and Konkan Division and reluctant to go to other Revenue Divisions viz. Nagpur, Amravati, Aurangabad and Nashik. Therefore, by virtue of Rule 9, on promotion for Grade 'A' cadre, three years' service and for Group 'B' cadre, six years' service in allotted Revenue Division is made compulsory. As per Rule 12 after completion of service of one year in allotted Revenue Division, an Officer may apply for change of Revenue Division on the ground mentioned therein. Besides, the change from Division from Division is also regulated by Section 12(b)(i) and (ii) of 'Revenue Division Allotment Rules, 2015'. As such, the change, if any, should be in accordance to the sequence and preferential order set out in Rule 12.

20. In the present matter, there is no denying that the Respondent No.2 was promoted on the post of BDO in 1993 and as per his option of Konkan-1, he was posted in Raigad. Thereafter, in 2017, he was transferred to Palghar. As such, he being in Group 'A' cadre had already completed three years' tenure in Konkan-1 Division. This being the position, the present situation is squarely covered by the provision No.3 of Rule 9(2) of 'Revenue Division Allotment Rules, 2015' which *inter-alia* provides that, after completion of period of three years in the allotted Revenue Decision, such Officer may be posted in any of the Revenue Division as per the availability of the post. The post of BDO, Bhiwandi occupied by the Applicant was ear-marked post for Selection Grade and the Applicant was not Selection Grade. Therefore, the Applicant was required to be shifted as the said post was required to be manned in view of promotion of Respondent No.2. In other words, the Applicant was not entitled to continue on the same post as of vested right once the Officer from Selection Grade is made available. The Respondent No.2 had completed three years'

tenure in Konkan-1 Division in view of his promotion in 2013, and therefore, as per 3<sup>rd</sup> proviso of Rule 9(2) of 'Revenue Division Allotment Rules, 2015', he was eligible for allotment of any other Revenue Division. This being the position, the posting of Respondent No.2 in Konkan-2 Division at Bhiwandi can hardly be faulted with. I, therefore, see no contravention of 'Revenue Division Allotment Rules, 2015' in the posting of Respondent No.2 at Bhiwandi.

21. Needless to mention that the Government servant has no vested right to continue on the same post and transfer is an incidence of service. The transfer orders can be interfered by the Tribunal where it is in contravention of express provisions of law or malicious. In the present case, the Applicant having not in Selection Grade, he has no legally vested right to continue on the same post which is ear-marked for Selection Grade and bound to vacate the post once the candidate from Selection Grade is made available. The posting of Respondent No.2 on promotion is approved by the Hon'ble Minister as well as Hon'ble Chief Minister, being highest Competent Authority and this is not a case where the transfer is effected without recording any reasons nor malice can be attributed to it.

22. The cumulative effect of aforesaid decision leads me to conclude that the challenge to the impugned transfer order is devoid of any merit and O.A. deserves to be dismissed. Hence, the following order.

### **ORDER**

- (A) The Original Application is dismissed.
- (B) Interim relief granted by this Tribunal on 07.08.2019 stands vacated.

- (C) The Respondent No.1 shall pass appropriate posting and transfer order of the Applicant at the earliest.
- (D) No order as to costs.

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

Mumbai

Date : 01.10.2019

Dictation taken by :

S.K. Wamanse.

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