

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.931 OF 2019

DISTRICT : MUMBAI

Shri Rajendra Biru Markad.)
Age : 53 Yrs., Occu.: Assistant Town)
Planner, Collector of Stamps Office)
Mumbai City, Mumbai having permanent)
Residence at Flat No.A-804, West Side)
County, Pimple Gurav, Pune – 411 061.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Urban Development Department,)
Mantralaya, Mumbai – 400 032.)
2. The Director.)
Town Planning, Central Building,)
Pune – 411 011.)
3. The Additional Controller of Stamps.)
Main Office, Nagar Bhavan, Fort,)
Mumbai.)
4. Shri Anil Ramdas Yelmame.)
Age : 52 Yrs, Occu.: Government)
Service, presently working as)
Assistant Town Planner in the)
Office of Collector of Stamps Office,)
Mumbai and residing at Flat No.4,)
Samarth Villa Govind Nagar,)
Nashik – 9.)
5. Inspector of General of Registration)
And Controller of Stamps, M.S,)
Pune.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents 1 to 3 and 5.

Mr. C.T. Chandratre, Advocate for Respondent No.4.

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

DATE : 05.02.2020

JUDGMENT

1. The Applicant has challenged the impugned order dated 18.09.2019 issued by Respondent No.3 – Additional Controller of Stamps, Fort, Mumbai whereby he was posted on the establishment of Collector of Stamps, Mumbai (Enforcement) [मुद्रांक जिल्हाधिकारी अंमलबजावणी-२] 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 under:-

The Applicant is serving in the cadre of Assistant Town Planner. While he was on deputation on the establishment of Joint Registrar, Pune, the Respondent No.5 Inspector of General of Registration and Controller of Stamps, Pune by order dated 07.03.2019 directed him to work for three days in the Office of Collector of Stamps, Mumbai [मुद्रांक जिल्हाधिकारी, मुंबई] and remaining days in the Office of Collector of Stamps, Pune in a week. Later, the Collector of Stamps, Mumbai [मुद्रांक जिल्हाधिकारी] by letter dated 14th June, 2019 requested Respondent No.5 to transfer the Applicant on his Establishment to achieve the target of recovery of revenue. In pursuance of it, the Respondent No.5 sent proposal to Government by letter dated 18.06.2019. In pursuance of it, the Government issued order on 14th August, 2019 and transferred him on the establishment of General Stamps Office, Mumbai City [प्रधान मुद्रांक कार्यालय, मुंबई शहर]. In consequence to it, the Director of Town Planning, Pune

(original establishment of the Applicant) issued Office Order dated 19.08.2019 and relieved the Applicant. After relieving, the Applicant joined on 21.08.2019 on the post of Assistant Town Planner in the Office of क्षेत्रीय मुद्रांक जिल्हाधिकारी in terms of order of Shri Suresh Jadhav, Additional Controller of Stamps, Mumbai. However, later the Respondent No.3 by order dated 18.09.2019 changed the posting of the Applicant in the Office of Collector of Stamps, Enforcement-2, Mumbai and got Respondent No.4 – Shri Yelmame joined on the post of Assistant Town Planner, मुद्रांक जिल्हाधिकारी in place of Applicant in terms of order of Government dated 17.09.2019. The Applicant has challenged this order dated 18th September, 2019 contending that, since he has already joined on the post of Assistant Town Planner, मुद्रांक जिल्हाधिकारी, Mumbai, there is no reason whatsoever to change his posting and shift him in Enforcement Department.

3. Shri M.D. Lonkar, learned Advocate for the Applicant sought to assail the impugned order dated 18.09.2019 contending that in view of the proposal moved by Collector of Stamps, Mumbai dated 14.06.2019 and the recommendation made by Respondent No.5 – Inspector of General of Registration & Controller of Stamps to the Government by letter dated 18.06.2019, the Applicant was meant to be posted in the office of Collector of Stamps, Mumbai. He has further pointed out that it is in pursuance of it, the Government by order dated 14th August, 2019 transferred the Applicant on the establishment of प्रधान मुद्रांक कार्यालय, मुंबई शहर, and therefore, in terms of it, he was rightly posted in the Office of मुद्रांक जिल्हाधिकारी, Mumbai on the post of Assistant Town Planner by virtue of order passed by Shri Suresh Jadhav – अप्पर मुद्रांक नियंत्रक on 21.08.2019. However, the problem crop-up in view of posting of Respondent No.4 – Shri Yelmame by order dated 17th September, 2019 on the post of Assistant Town Planner, मुद्रांक जिल्हाधिकारी, मुंबई शहर. According to him, only to accommodate Respondent No.4 - Shri Yelmame, the Applicant's posting was again changed by order dated 18th September, 2019 by the same authority thereby giving posting to the Applicant in the Office of मुद्रांक

जिल्हाधिकारी अंमलबजावणी-२. Thus, the sum and substance of his submission is that he is entitled for continuation on the post of Assistant Town Planner, मुद्रांक जिल्हाधिकारी, मुंबई in view of his joining since 21.08.2019.

4. Per contra, Smt. S.P. Manchekar, learned Chief Presenting Officer appearing for Respondents 1 to 3 in reference to reply filed by Respondent No.3 sought to contend that by order issued by Government dated 14.08.2019, the Applicant was posted on the establishment of प्रधान मुद्रांक कार्यालय, मुंबई शहर and not on the establishment of मुद्रांक जिल्हाधिकारी, मुंबई [Collector of Stamps, Mumbai]. However, the Respondent No.3 – Additional Controller of Stamps, who is Head of the Department of प्रधान मुद्रांक कार्यालय has posted the Applicant on the establishment of Collector of Stamps, Mumbai on the post of Assistant Town Planner as a stop-gap arrangement, it being vacant at the relevant time by order dated 21st August, 2019. Later, the Government by order dated 17th September, 2019 posted Respondent No.4 – Yelme on the post of Assistant Town Planner on the establishment of Collector of Stamps, Mumbai, and therefore, the Respondent No.3 – Additional Controller of Stamps modified his order dated 21.08.2019 by issuing fresh order on 18th September, 2019 and thereby posted the Applicant as Assistant Town Planner (Enforcement-2), which is a branch of प्रधान मुद्रांक कार्यालय, मुंबई. She thus submits that the Applicant has no legally enforceable right to continue on the establishment of Collector of Stamps, Mumbai and prayed to dismiss the O.A.

5. Whereas Shri C.T. Chandratre, learned Advocate for Respondent No.4 also adopted the submission made by learned C.P.O. and pointed out that in terms of G.R. dated 30.12.2005 in view of administrative organizational set-up, the Applicant cannot claim posting on the establishment of Collector of Stamps, Mumbai in view of his specific transfer order issued by Government posting him on the establishment of प्रधान मुद्रांक कार्यालय. He also submits that the Applicant is making capital of the order dated 21.08.2019 issued by Respondent No.3 – Additional

Controller of Stamps whereby he was allowed to be joined on the establishment of Collector of Stamps, Mumbai. According to him, it was sheer mistake and the same has been rectified by Additional Controller of Stamps himself by issuing order dated 18th September, 2019. He has further pointed out that the said rectification was necessary in view of the order of Respondent No.4 issued by Government on 17th September, 2019 thereby posting Respondent No.4 on the establishment of Collector of Stamps, Mumbai. He thus contend that subsequent order dated 18th September, 2019 issued by Respondent No.3 giving revised posting to the Applicant in Enforcement Branch is legal and valid and challenge to the same holds no water.

6. To begin with, it would be apposite to see G.R. dated 30.12.2005 about the administrative organizational set-up and nomenclature of the Offices. The relevant portion from G.R. dated 30.12.2005 is as follows:-

“प्रधान मुद्रांक कार्यालयामध्ये पुढीलप्रमाणे ३ स्वतंत्र शाखा कार्यरत राहातील -

१) मुद्रांक जिल्हाधिकारी शाखा- या शाखेमध्ये मुद्रांक अधिनियम विषयक सर्व कामकाजासाठी ४ मुद्रांक जिल्हाधिकारी राहतील. त्यांना मुद्रांक जिल्हाधिकारी (मुंबई) मुद्रांक जिल्हाधिकारी (अंधेरी), मुद्रांक जिल्हाधिकारी (कुर्ला) व मुद्रांक जिल्हाधिकारी (बोरीवली) असे संबोधण्यात येईल. यासाठी प्रधान मुद्रांक कार्यालयामध्ये नोंदणी व मुद्रांक विभागाच्या सह जिल्हा निबंधक वर्ग-१ संवर्गातील (वेतनश्रेणी रु ८,००० - १३,५००) ४ पदे नव्याने निर्माण करण्यात येत आहेत. सदर पदे नोंदणी व मुद्रांक विभागातून किंवा महसूल विभागातील उपजिल्हाधिकारी या संवर्गातून भरण्यात येतील. प्रत्येक मुद्रांक जिल्हाका-यांचे पथकात जोडपत्र ६ मध्ये नमुद केल्याप्रमाणे प्रत्येकी ११ कर्मचारी राहतील. या मुद्रांक जिल्हाधिका-यांना अनुक्रमे मुंबई जिल्हा, बांद्रा तालुका, कुर्ला तालुका व बोरीवली तालुका असे स्वतंत्र कार्यक्षेत्र नेमून देण्यात येईल. उक्त मुद्रांक जिल्हाधिकारी त्यांना नेमून दिलेल्या कार्यक्षेत्रामध्ये अभिनिर्णय, अटकाव, परतावा व मुद्रांक कार्यालयामध्ये मुद्रांक जिल्हाधिकारी म्हणून विहित केलेले सर्व अनुषंगिक कामकाज पार पाडतील.

२) चुकविलेल्या मुद्रांक शुल्काचा शोध शाखा : चुकविलेल्या मुद्रांक शुल्क शोधासाठी व वसूलीसाठी २ मुद्रांक जिल्हाधिकारी कार्यरत राहतील. त्यांना मुद्रांक जिल्हाधिकारी (अंमलबजावणी - १) व मुद्रांक जिल्हाधिकारी (अंमलबजावणी - २) असे संबोधण्यात येईल. ही पदे नोंदणी व मुद्रांक विभागातून किंवा महसूल विभागातील उपजिल्हाधिकारी या संवर्गातून भरण्यात येतील. यासाठी प्रधान मुद्रांक कार्यालयामध्ये नोंदणी व मुद्रांक विभागाच्या सह जिल्हा निबंध वर्ग -१ संवर्गातील ८,००० - १३,५००) २ पदे नव्याने निर्माण करण्यात येत आहेत. या प्रत्येक मुद्रांक जिल्हाधिका-यामध्ये पथकात जोडपत्र क्र. ६ मध्ये नमुद केल्याप्रमाणे प्रत्येकी २३ कर्मचारी कार्यरत राहतील, तर अंमलबजावणी -१ यांचे पथकात उपमुद्रांक अधिकाकाचे १ पद कार्यरत राहिल, तर अंमलबजावणी - २ यांचे पथकात त्याऐवजी सहायक नगररचनाकाराचे १ पदे कार्यरत राहिल. उक्त मुद्रांक जिल्हाधिकारी त्यांना अपर मुद्रांक नियंत्रक यांनी नेमून दिलेल्या कार्यक्षेत्रामध्ये चुकविलेल्या मुद्रांक शुल्काचा शोध घेउन त्याची वसूली करण्याचे व अनुषंगिक सर्व कामे पार पाडतील.

३) मुद्रांक विक्री व पुरवठा शाखा - कोषागार अधिकारी (वेतनश्रेणी रु.८,००० - १३,५००) ४ पदे) हे ह्या शाखेचे प्रमुख असतील. त्यांचेकडे मुंबई विभागातील मुद्रांक विक्रेत्यांना मुद्रांकाचा पुरवठा करणे, सर्व संबंधित प्रतिभूती मुद्रणालये व राज्यातील सर्व कोषागारे यांचे दरम्यान समन्वय साधणे, मागणी व पुरवठ्यासंदर्भातील सर्व कामे करणे तसेच परतावा दिलेल्या मुद्रांकाबाबत ताळमेळ घेवून महालेखापाल यांचेकडे विवरण पत्र सादर करणे ही कामे असतील. त्याशिवाय फॅकींग मशीन्सद्वारे मुद्रांक विक्री संदर्भातील सर्व कामकाज कोषागार अधिकारी यांचेमार्फत पार पाडले जाईल. यासाठी त्यांचे अधिनस्त पुढील प्रमाणे पथके असतील.’’

7. As such, from G.R. dated 30.12.2005 and the administrative organizational set-up of the Stamp Department, there are separate posts of Officers as ‘मुद्रांक जिल्हाधिकारी’ for detecting evasion of stamps and recovery under the name of मुद्रांक जिल्हाधिकारी अंमलबजावणी-१ and मुद्रांक जिल्हाधिकारी अंमलबजावणी-२. It is further clear from Para No.2 of G.R. dated 30.12.2005 that Enforcement-2 Section will be manned by Assistant Town Planner. Furthermore, it is also crystal clear that this Enforcement Branch will be under the control of Additional Controller of Stamps. There is no denying that the Office viz. Collector of Stamps at Mumbai, Andheri, Kurla and Borivali are separate though it also falls under the supervision of Additional Controller of Stamps who is the Head of प्रधान मुद्रांक कार्यालय known as ‘General Stamp Office’.

8. Now let us see the Government order dated 14.08.2019. By this order, the Applicant was posted on the establishment of प्रधान मुद्रांक कार्यालय, मुंबई शहर as Assistant Town Planner. His posting is not on the establishment of मुद्रांक जिल्हाधिकारी, मुंबई. True, as canvassed by the leaned Advocate for the Applicant that as per the recommendation made by Respondent No.5 – Inspector of General and registration and Controller of Stamps, Pune, the Applicant’s transfer was sought on the establishment of मुद्रांक जिल्हाधिकारी, मुंबई as seen from his recommendation dated 18.06.2019. It is also equally true that when the matter was placed before Hon’ble Minister, a note was prepared by the Department on the line of recommendation made by Respondent No.5. However, it was only proposal. The Government in its wisdom ultimately gave posting to the Applicant, specifically on the establishment of प्रधान मुद्रांक कार्यालय, मुंबई शहर. As such, irrespective of recommendation, the fact remains

that the final order of transfer is on the establishment of प्रधान मुद्रांक कार्यालय, मुंबई शहर. The submission advanced by the learned Advocate for the Applicant that reference of मुंबई शहर implies that the Applicant was intended to be posted on the establishment of मुद्रांक जिल्हाधिकारी, मुंबई can hardly be accepted in terms of specific order on the establishment of प्रधान मुद्रांक कार्यालय. Suffice to say, there is no such specific posting of the Applicant on the establishment of मुद्रांक जिल्हाधिकारी, मुंबई. Whereas, in case of Respondent No.4, there is specific order of Government dated 17th September, 2019 whereby he was transferred specifically on the establishment of मुद्रांक जिल्हाधिकारी, मुंबई on vacant post. However, by that time, the Respondent No.3 by his order dated 21.08.2019 had already got the Applicant joined on the establishment of मुद्रांक जिल्हाधिकारी, मुंबई which he later rectified/corrected by order dated 18th September, 2019 giving posting to the Applicant in Enforcement-2 Branch.

9. The Respondent No.3 in his Affidavit had stated that the Applicant was initially got joined by order dated 21.08.2019 on the post of मुद्रांक जिल्हाधिकारी, मुंबई as a stop-gap arrangement. True, there is no such mention in order dated 21.08.2019 that it is temporary or stop-gap arrangement. However, the fact remains that there was no such specific posting of the Applicant by the Government on the establishment of मुद्रांक जिल्हाधिकारी, मुंबई. Indeed, the Respondent No.3 was not supposed to give posting on the establishment of मुद्रांक जिल्हाधिकारी, मुंबई in absence of any such specific posting orders to that effect by the Government in its order dated 14.08.2019. This order passed by Respondent No.3 – Additional Controller of Stamps dated 21.08.2019 has resulted in anomalous situation in view of the posting of Respondent No.4 on the establishment of मुद्रांक जिल्हाधिकारी, मुंबई. Thus, there was posting of two officials on one post viz. मुद्रांक जिल्हाधिकारी, मुंबई. It is on this background, the Respondent No.3 himself modified his order dated 21.08.2019 by issuing order on 18th September, 2019 giving the Applicant posting in Enforcement-2 Branch.

10. Needless to mention that the Government servant has no legal vested right to claim a particular post. How the administration has to run its affairs squarely falls in the domain of executive. Unless the orders of transfer are not conflict with the express provisions of law or *malafide*, the same should not be interfered with. The transfer and posting is required to be done by executive having regard to the exigencies of service. This being the settled legal position, the Applicant has no legal vested right to continue on the establishment of मुद्रांक जिल्हाधिकारी, मुंबई. It is more so, when he is not posted on that establishment by the Government as his establishment is प्रधान मुद्रांक कार्यालय, मुंबई शहर.

11. Shri M.D. Lonkar, learned Advocate for the Applicant right pick-hole in the transfer order of Respondent No.4 contending that there is interpolation in the file noting and there is no approval to the posting of Respondent No.4 in मुद्रांक जिल्हाधिकारी, मुंबई by Hon'ble Chief Minister. He has produced the copies of file noting of the Department, which is at Page Nos.134 to 136 of P.B. Its perusal reveals that the Respondent No.4 was serving at Shrirampur, District Ahmednagar but requested for transfer on the ground of family difficulties on the establishment of मुद्रांक जिल्हाधिकारी, मुंबई शहर. His request application dated 27.03.2019 is at Page No.139 of P.B. As per file noting, initially, the Applicant was given posting on the establishment of प्रधान मुद्रांक जिल्हाधिकारी कार्यालय, मुंबई in pursuance of his request, but later it is corrected as मुद्रांक जिल्हाधिकारी, मुंबई शहर on vacant post in handwriting. The correction is signed by Deputy Secretary (Shri Choudhary) on 13.09.2019. It appears that the Desk Officer has also prepared the file on 13.09.2019 and it was approved by Additional Principal Secretary on 13.09.2019. In so far as approval of Hon'ble Chief Minister is concerned, the following is the endorsement made by Principal Secretary to Hon'ble Chief Minister on 16.09.2019, which is as below :-

“मा. मुख्यमंत्री यांच्या संमतीने नस्ती परत करण्यात येते.”

12. Then, on Page No.136, the Desk Officer has mentioned that the note of transfer of Respondent No.4 and Applicant is approved by Hon'ble Chief Minister and sought approval of Additional Chief Secretary to issue necessary orders. Accordingly, the Additional Chief Secretary approved the note on 16.09.2019 for issuance of orders.

13. Shri M.D. Lonkar, learned Advocate for the Applicant sought to contend that the Hon'ble Chief Minister has not approved the transfer of Respondent No.4, as in view of endorsement reproduced above, the file was returned back. I find myself unable to agree with his submission, as from the endorsement itself, file appears to have been approved by the Hon'ble Chief Minister. It is further made clear on next page No.136 of file noting whereby Additional Chief Secretary had endorsed that the file is approved by Hon'ble Chief Minister and accordingly, transfer orders were issued. In reply filed by Respondent No.1 also, it is reiterated that the transfer order of Respondent No.4 has been approved by Hon'ble Chief Minister.

14. Thus, what transpires from the record that the Applicant was posted on the establishment of प्रधान मुद्रांक कार्यालय and not on the establishment of मुद्रांक जिल्हाधिकारी, मुंबई. The Respondent No.3 though initially posted the Applicant on the establishment of मुद्रांक जिल्हाधिकारी, मुंबई by order dated 21.08.2019, he rectified the order by giving posting to the Applicant in Enforcement Branch, which is distinct from मुद्रांक जिल्हाधिकारी कार्यालय. Therefore, it cannot be said that the Applicant is entitled to continue on the establishment of मुद्रांक जिल्हाधिकारी, मुंबई. The challenge to the impugned order issued by Respondent No.3 on 18.09.2019 giving posting to the Applicant in Enforcement Branch, therefore, holds no water and O.A. deserves to be dismissed. Hence, the following order.

ORDER

- (A) The Original Application is dismissed.
- (B) Interim relief stands vacated.
- (C) In view of decision on merit, the M.A. filed for vacation of interim relief stands disposed of.
- (D) No order as to costs.

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

Mumbai

Date : 05.02.2020

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2020\February, 2020\O.A.931.19.w.2.2020.Transfer.doc