

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.647 OF 2021
(Subject:- Transfer)**

DISTRICT: - NANDED

Vinod Vitthalra Gundamwar)
Age : 45 years, Occu: Service (as Tehsildar),)
R/o: Tehsildar's Quarter, Tal Galli,)
Near Balaji Temple, Degloor, Dist. Nanded.)
Mobile:7038034916.)..**APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Addl. Chief Secretary,)
Revenue & Forest Department,)
M.S., Mantralaya, Mumbai-32.)
- 2. The Divisional Commissioner,**)
Aurangabad Division,)
Aurangabad.)
- 3. The Collector,**)
Nanded.)
- 4. Mr. Rajabhau Sopanrao Kadam,**)
Tahsildar, Degloor,)
C/o Tahsil Office, Degloor,)
Dist. Nanded.)..**RESPONDENTS**

APPEARANCE : Shri A.S. Deshmukh, learned Advocate
for the applicant.
: Shri V.B. Bhumkar, learned Presenting
Officer for the respondent Nos.1 to 3.
: Shri K.B. Bhise, learned Advocate for
the respondent No.4.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**
DATE : **26.04.2022**

ORDER

By invoking the jurisdiction under Section 19 of the Administrative Tribunals Act, 1985, the applicant has filed this O.A. challenging the impugned transfer order dated 08.10.2021 (Annex. 'A-5') issued by the respondent No.1 to the extent of the applicant or in the alternative seeking direction against the respondent No.1 to repost the applicant on the post of Tahsildar at Degloor immediately after the process of bye-election to the Degloor Assembly Constituency is completely over.

2. The facts in brief giving rise to this application are as follows:-

- (i) As per order dated 19.11.2020 (Annex. 'A-1'), the applicant was posted as Tahsildar at Degloor in Nanded District. He joined the said post on 20.11.2020 and took over charge of the post of Tahsildar, Degloor as reflected in his communication dated 20.11.2020 (Annex. 'A-2') made to the respondent No.3 i.e. the Collector, Nanded. Since 20.11.2020 till September, 2021 he discharged the

duties of the said post completing the tenure of about ten months.

- (ii) The native place of the applicant is Vaijapur (Pardi) in Mudkhed Taluka of Nanded District and the said native place is not situated in Degloor Taluka or in the Degloor Assembly Constituency. The said fact is necessary to be considered in view of the background of the transfer order of bye-election to the Degloor Assembly Constituency which was declared on 28.09.2021.
- (iii) It is further stated that in view of death of incumbent Hon'ble Member of Legislative Assembly (MLA) bye-election to the Degloor Assembly Constituency was declared on 28.09.2021. Thereafter, as a part of process of said bye-election, the respondent No.3 i.e. the Collector, Nanded sent a communication dated 30.09.2021 (Annex. 'A-3') to the Principal Secretary-cum-Chief Electoral Officer of Maharashtra in his capacity of the District Electoral Officer, Nanded mentioning therein relevant Rule 3(i) and 2(2.1) (i) of the guidelines issued by the Election Commissioner of India (ECI) by its letter dated 16.01.2019 and 16.08.2014 respectively.

- (iv) Accordingly, by said communication, the respondent No.3 sought posting of Tahsildar- Biloli and Tahsildar- Degloor (i.e. the applicant) together from Degloor Assembly Constituency.
- (v) The applicant being in the cadre of the Tahsildar, he is group 'A' category officer admittedly following under column 'b' of Section 6 of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act, 2005'). So is also the case of the respondent No.4.
- (vi) Resultantly the Minister In-charge of concerned department i.e. the Revenue and Forest Department in consultation with the Secretary of the said department is the competent transferring authority i.e. the respondent No.1.
- (vii) It is the contention of the applicant that as per clause No. 2(2.1) (i) of letter dated 16.08.2014 of the ECI, the applicant was not liable to be transferred as native place of the applicant is not situated in Degloor Assembly Constituency limits. However, by impugned order dated 08.10.2021 issued by the respondent No.1, the applicant was transferred from the post of

Tahsildar- Degloor, District-Nanded to the post of Tahsildar- Ashti, District- Beed in place of the respondent No.4 i.e. Mr. Rajabhau Sopanrao Kadam and by the same order the respondent No.4 was transferred from Ashti to Degloor in place of the applicant.

- (viii) It is the further contention of the applicant that the impugned order of transfer of the applicant is issued in contravention of directions issued by the ECI more particularly in its letter dated 16.08.2014 in respect of holding of bye-election and therefore the impugned order of transfer of the applicant is liable to be set aside. In the alternative the applicant has prayed that direction can be given to the respondent No.1 to repost the applicant as Tahsildar- Digloor immediately after process of bye-election to the Degloor Assembly Constituency is completely over.

3. The application is resisted by the respondent Nos.1 to 3 by filing the affidavit-in-reply of one Parag Suresh Soman, working as Deputy Commissioner (Revenue) in the office of respondent No.2 i.e. the Divisional Commissioner, Aurangabad Division, Aurangabad.

- (i) Thereby he denied adverse contentions raised in the application. It is specifically submitted that the impugned order of transfer of the applicant is issued after having complied with the provisions of Section 4(4) and 4(5) of Transfer Act, 2005 and more particularly in view of bye-election to be held in Degloor Assembly Constituency declared on 28.09.2021. The said impugned order is issued by competent transferring authority by getting prior approval of the next higher authority/immediately superior transferring authority. The applicant has not disputed that there was bye-election in Degloor Assembly Constituency. Admittedly, the native place of the applicant is Vaijapur (Pardi), Tal. Mudkhed, District Nanded and Degloor Assembly Constituency falls in the said Nanded District.
- (ii) Moreover, impugned order is issued by taking into consideration the guidelines issued by the Election Commission of India in letter and spirit. As per the said guidelines, the applicant whose home district is Nanded is required to be transferred out of the district during bye-election of Assembly Constituency. Hence, application is liable to be dismissed.

4. Respondent No.4 also filed his affidavit-in-reply and resisted the application.

(i) It is specifically contended that the applicant was required to be transferred from Degloor Assembly Constituency in view of ensuing bye-election as per norms framed by the Election Commission of India. The impugned order of transfer of the applicant is, therefore legal and proper.

(ii) The respondent No.4 is transferred in the place of the applicant on his request. He has shifted his family at Degloor. His kids are taking education in the school at Degloor. The impugned transfer order of the applicant is issued by the respondent No.1 in accordance with the provisions of Section 4(4) and 4(5) of Transfer Act, 2005. Hence, it is legal and proper and consequently the same is liable to be dismissed.

5. I have heard at length the arguments advanced by the Shri A.S. Deshmukh, learned Advocate for the applicant on one hand, Shri V.R. Bhumkar, learned Presenting Officer for the respondent Nos.1 to 3 and Shri K.B. Bhise, learned Advocate for the respondent No.4 on other hand.

6. Considering the admitted facts on record it is evident that the impugned order of transfer of the applicant dated 08.10.2021 (Annex. 'A-5') is issued by the respondent No.1 within a period of ten months of tenure of the applicant as Tahsildar, Degloor. By the said order, the applicant has been transferred from the post of Tahsildar – Degloor, District- Nanded to Tahsildar- Ashti, District - Beed in place of the respondent No.4, who has been transferred in place of applicant. In view of same, the impugned transfer order of the applicant is midterm as well as mid-tenure being not issued in the month of April or May, 2021 or not issued during extended period of General Transfer of the year, 2021 and being issued before completion of normal tenure of three years. In view of same, the impugned order is required to be considered as to whether it satisfies the tests of the relevant provisions of Section 4(4) and 4(5) of Transfer Act, 2005. The said provision speaks of the exceptional circumstances or special reasons with the approval of the immediately superior transferring authority or next higher authority.

7. In the case in hand, admittedly, the applicant and the respondent No.4 are working in the cadre of Group 'A' in pay scale of Rs. 15,600 -39,100/- as per 6th pay commission. In view of same, both of them fall in column 'b' of Section 6 of Transfer Act, 2005. The provision of Section 6 prescribes competent transferring authority for the Government officials in different cadre. As per

the said provision the Minister in-charge in consultation with Secretaries of the concerned departments is competent transferring authority and Hon'ble Chief Minister is next higher competent authority or immediately superior transferring authority.

8. Perusal of the impugned transfer order of the applicant dated 08.10.2021 (Annex. 'A-5') would show that it is allegedly issued in view of the guidelines issued by Election Commission of India and by allegedly complying with the provision of Section 4(5) of Transfer Act, 2005. As per the said transfer order dated 08.10.2021, five officers are transferred in the cadre of Tahsildars. We are concerned with the transfer of the applicant as well as the respondent No.4 as they are transferred vice versa.

9. In order to consider the contentions raised by the respondents to justify the transfer order, I have to take into consideration Press Note dated 28.09.2021 (Annex. 'A-6') issued by the Election Commission of India in the first place. Perusal of the document, bye-election to the Assembly Constituency of Degloor, District - Nanded was declared. Election program of the said election was from 01.10.2021 to 05.11.2021. However, I have to refer to clause no.3(i) of letter dated 16.01.2019 and clause no.2(2.1) of letter dated 16.08.2014, both issued by the Election

Commission of India. Clause 3(i) of letter dated 16.01.2019 is as follows:-

“3. Hence, the Commission has decided that **no officer connected directly with elections shall be allowed to continue in the present district of posting:-**

(i) if she/he is posted in her/his home district.”

Clause 2(2.1) of letter dated 16.08.2014 is as follows:-

“2. Bye-election to the Assembly Constituency (ies):-

(2.1) The Commissioner, in suppression of existing instructions, has decided that no officer connected directly with the conduct of Bye-elections, should be allowed to continue in the present posting within the Assembly Constituency limits:-

(i) If she/he is posted in her/his home Assembly Constituency limit.

Such officers shall be shifted out of the Assembly Constituency limit.”

10. Learned Advocate for the respondent No.4 contended that, however, as regards the exceptional circumstances or special reasons as contemplated under Section 4(4) and 4(5) of Transfer Act, 2005 is concerned, the Tribunal shall be slow in going into sufficiency of reasons and the Tribunal should restrict only to see as to whether there is proper compliance of Section 4(4) and 4(5) of Transfer Act. To Support the said submissions, he placed reliance on following two citations.

(i) **2008 BCI 126 in the matter of the State of Maharashtra & Anr. Vs. Omprakash Ghanshyamdias Mudiraj & Anr. and**

(ii) **2009 (3) Bom.C.R.673 in the matter of State of Maharashtra Vs. Ashok Ramchandra Kore & Anr.**

In the first citation it is held that Tribunal exceeded its jurisdiction in re-appreciating verifying transfer order. In the second citation it is held that the MAT could not have gone into aspect to find out whether reasons recorded by the State of Maharashtra are sufficient or otherwise. The employer would be the best judge, who would appreciate the performance of his employee and their suitability in a particular place.

11. In the case in hand, however, it is seen that the impugned transfer order of the applicant is issued specifically in the background of guidelines issued by the Election Commission of India about posting of the offices working in particular parliamentary Election or Assembly Election. As regards the question of the applicability of the concerned guidelines, I will be examining to the extent as to whether the impugned order is as per the said guidelines or not.

12. In the circumstances as above, it is seen that guidelines are provided in ECI letter dated 16.08.2014 which is produced at page no.85 of Paper Book. Paragraph no.2 thereof deals with guidelines regarding bye-election to the Assembly Constituency (ies). Paragraph No.3 thereof deals with bye-election to the Parliamentary Constituency (ies). I have already produced the

relevant provisions. Upon plain reading of the said paragraphs it is seen that in bye-election to the Assembly Constituency no officers connected directly with the conduct of bye-elections, should be allowed to continue in the present posting within the Assembly Constituency limits if she/he is posted in her/his home Assembly Constituency limit in terms of paragraph No. 2 (2.1) (i).

13. In the case in hand bye-election to Degloor Assembly Constituency was held. The said Constituency constitutes of two Talukas namely Degloor and Biloli in Nanded district. It is not disputed that the native place of the applicant is Vaijapur (Pardi), Tal. Mudkhed, Dist. Nanded and his native place is not situated in either Degloor or Biloli Talukas. It is also pertinent to note that in this regard the respondent No.3 i.e. the Collector, Nanded in his capacity of District Electoral Officer wrote letter dated 30.09.2021 (Annex. 'A-6') to the Principal Secretary-cum-Chief Electoral Officer, Maharashtra State requesting for posting of Tahsildars at Biloli and Degloor in view of guidelines provided in para No.3(i) and 2(2.1) (i) of letters dated 16.01.2019 and dated 16.08.2014.

14. In this regard I have also perused letter dated 16.01.2019 issued by the Election Commission of India (page no.101 of Paper Book) relied upon by the applicant. Subject of the said letter is as follows:-

“Subject:- General Elections to House of the People (Lok Sabha), 2019 and State Legislative

Assemblies of Andhra Pradesh, Arunachal Pradesh, Odisha and Sikkim – Transfer/Posting of officers-regarding.”

More particularly paragraph No.3 of the said letter which is also relevant is as follows:-

“3. Hence, the Commission has decided that **no officer connected directly with elections shall be allowed to continue in the present district of posting:-**

- (i) **if she/he is posted in her/his home district.**
- (ii) **if she/he has completed three years in that district during last four(4) years or would be completing 3 years on or before 31st May, 2019.**

Upon reading of abovesaid subject in the totality, it is found that the said guideline is issued for General Elections to House of the People (Lok Sabha), 2019 and State Legislative Assemblies of Andhra Pradesh, Arunachal Pradesh, Odisha and Sikkim – Transfer/Posting of officers-regarding. So it cannot be said that the same would also can be applicable to bye-election. In fact guidelines dated 16.08.2014 are specifically applicable to bye-election to the Assembly Constituency. Hence, guidelines incorporated in the said circular dated 16.08.2014 would be relevant and applicable.

15. In the circumstances as above, in my considered opinion, impugned order of the applicant is issued in contravention of guideline issued by the Election Commission of India dated 16.08.2014 and more particularly, paragraph no.2(2.1) (i) thereof.

16. So far as compliance of Section 4(4) and 4(5) of the Transfer Act, 2005 is concerned, the record produced at page nos.67 to 107 would show that the proposal of transfer of the applicant was placed before the requisite Civil Services Board signed by the Hon'ble Minister in-charge with consultation of Secretaries of concerned department and the same is approved by the Hon'ble Chief Minister being the next higher authority or immediately superior transferring authority. In view of same, the said procedure is appropriately followed. However, it is apparent on record that exceptional circumstances or special reasons as sought to be made out by the respondent Nos.1 to 3 of the guideline of Election Commission of India is not followed in it's true spirit. It is glaring that impugned order of transfer of the applicant is in contravention of the said guideline. The said provision cannot be just and enough under the garb of administrative reason.

17. In the circumstances, impugned order of transfer of the applicant is not sustainable in the eyes of law and is liable to be set aside. In the case in hand there is no question of considering the aspect of malafide as the respondent Nos.1 to 3 have ultimately relied upon guideline of Election Commission of India. The impugned transfer order of the respondent No.4 is request transfer and he is incidentally posted as Tahsildar Degloor, which post was earlier held by the applicant. Once the impugned transfer order of

the applicant is quashed and set aside consequently the transfer order of the respondent No.4 also would not be sustainable in the eyes of law. Hence I proceed to pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order of transfer of the applicant dated 08.10.2021 (Annex. '5') issued by the respondent No.1 is quashed and set aside.
- (C) The respondent No.1 is directed to repost the applicant on the post of Tahsildar at Degloor within the period of one month from the date of this order.
- (D) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad

Date :-26.04.2022

SAS O.A.647/2021