

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 653/2022 (D.B.)**

1. Vinayak Sudhir Magar,  
Age 38 Years, Occ : Service,  
R/o Arvi, Tahsil Arvi, District Wardha.

2. Amol Balkrishna Kadam,  
Age 31 years, Occ: Service,  
R/o Arvi, Tahsil Arvi, District Wardha.

3. Sandip Chandrakant Bhangre,  
Age 31 years, Occ : Service,  
R/o Nagbhid, Tahsil Nagbhid,  
District Chandrapur.

4. Atul Balnath Gangurde,  
Age 36 years, Occ: Service,  
Tahsil Rajura, District Chandrapur.

5. Dr. Vinod Marotrao Dongaonkar,  
Age 39 years, Occ: service,  
R/o Rajura, District Chandrapur.

6. Hemant Ramesh Mohare,  
Age 32 years,  
Occ: Service, R/o Gadchiroli,  
Tahsil & District Gadchiroli.

7. Avinash Prakash Pisal,  
Age 34 years, Occ: Service, R/o Desaiganj,  
Tahsil Desaiganj, District Gadchiroli.

8. Nilam Dattatraya Dhorajkar.  
Age 32 years, Occ: Service,  
R/o Chandur Bazar, District Amravati.

9. Smt. Sonali Triyambak Wagh,  
Age 37 years, Occ : service,  
R/o C-12/2, Government Quarters,  
Ravi Nagar, Nagpur.

10. Smt. Jai Prakash Konde,  
Age 35 years, Occ : service,  
R/o Balapur, Tahsil Balapur,  
District Akola.

11. Ku. Swati Ramesh Narote,  
Age 37 years, Occ : Service,  
R/o Mehkar, District Buldana.

12. Padmashri Vilas Tasgaonkar,  
Age 31 years, Occ : Service,  
R/o Nagpur.

13. Ku. Darshana Ramesh Suryawanshi,  
Age 36, Occ : Service, R/o Hingna,  
District Nagpur.

14. Rutuja Ankush Kadam,  
Age major, Occ : Service,  
R/o Nagpur.

15. Anil Tukaram Nadekar,  
Age 46, Occ : Service, R/o Daryapur,  
Distt. Amravati.

**Applicants.**

**Versus**

- 1) The State of Maharashtra,  
through its Principal Secretary,  
Revenue Department,  
Mantralaya, Mumbai-32.
- 2) The State of Maharashtra,  
Through its Additional Chief Secretary,  
General Administration Department,  
Mantralaya, Mumbai-32.
- 3) The Divisional Commissioner,  
Nagpur Division,  
Old Secretariat Building, Civil Lines,  
Nagpur-440 001.

**Respondents.**

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**Shri D.M.Kakani, Id. Advocate for the applicants.  
Shri A.M.Ghogre, Id. P.O. for respondents.**

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**Coram :- Shri Shree Bhagwan, Vice Chairman and  
Shri Justice M.G.Giratkar, Vice Chairman.**

**Dated :- 07/10/2022.**

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**JUDGMENT**

**Per : Vice Chairman.**

Heard Shri D.M.Kakani, Id. Counsel for the applicant and Shri A.M.Ghogre, Id. P.O. for the Respondents.

2. The Id. counsel for the applicant has pointed out Rules framed on 14.07.2021 more particularly Rule 8. Id. counsel for the applicant has submitted that as per Rule 8, Naib Tahsildar are liable to be transferred from one Division to another Division, but as per G.R. of 13.04.2022 in Clause A-(ii) and D (vi) it is mentioned that Naib Tahsildar shall be transferred in their division only. As per his submission, G.R. of 13.04.2022 is contrary to the Rules framed on 14.07.2021. Therefore, prayed for direction to the respondents.

3. Id. P.O. Shri Ghogre has submitted that the G.R. is not challenged at the most direction should be given to consider the representations of the applicant. *Prima facie* it appears that G.R. of 13.04.2022 is contrary to the rules framed dated 14.07.2021. As per Rule 8, the Naib Tahsildar who have completed three years were illegible to transfer from one division to another but whereas as per G.R. of

13.04.2022 i.e. specifically mentioned in Rule A (ii) and Rule D (vi) that they shall be transferred in their own division.

4. Ld. P.O. has pointed A (ii) and submitted that they cannot be transferred because in event of their promotion, seniority is to be taken into consideration. Therefore, it is mentioned in the G.R. that they should be transferred in their own division.

5. The applicants are requesting transfer and there is guidelines in the request transfer. Hence, the respondents may take necessary steps in respect of the request transfer from one District to other District. Rules framed by the respondents dated 14.07.2021 clearly shows that Naib Tahsildar are eligible for transfer from one division to another.

6. Ld. Counsel for the applicant has pointed out decision of **Hon'ble Supreme Court in the case of State of Maharashtra Vs. Chandrakant Anant Kulkarni in Civil Appeal No. 420 (N) of 1971 decided on 08.09.1981.** In para no. 14 of the Judgment it is held as under:-

*“The remaining question whether the State Government by its Resolution dated June 13, 1964 and Memorandum dated November 21, 1964, effected a change of recruitment rules by*

*an executive order, in the conditions of service of the ASTOs from Madhya Pradesh and Hyderabad, contrary to the Proviso to sub-s. (5) of s. 115 of the Act; and if so, whether such a change in the conditions of service could be brought about without framing a rule under the Proviso to Art. 309 of the Constitution. In our opinion, the question does not really arise. There can be no dispute with the proposition that a rule framed under the Proviso to Art. 309 of the Constitution cannot be modified by an executive order.”*

7. In view of the Judgment of Hon’ble Supreme Court, the G.Rs. cannot be issued contrary to the Rules framed under Article 309 of Constitution of India. As per the rules framed by the respondents dated 14.07.2021, Naib Tahsildar are eligible for transfer from one division to another. Hence, the respondents should have considered their request for transfer from one division to another. Hence, the following order:-

### **ORDER**

**The O.A. is allowed in the following terms:-**

1. The respondents are directed to consider the representations of the applicants as per Rules dated 14.07.2021 and **transfer them**

**from one division to another as prayed by them in the coming  
General Transfer of 2023 and onwards.**

2. By the above directions, O.A. is disposed of.
3. No order as to costs.

**(Justice M.G.Giratkar)  
Vice Chairman.**

**(Shree Bhagwan)  
Vice Chairman.**

**Dated :- 07/10/2022.**

\*aps.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava

Court Name : Court of Hon'ble V.C. and Hon'ble V.C.

Judgment signed on : 07/10/2022.

Uploaded on : 10/10/2022.