

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.196 OF 2019**

**(Subject :- Transfer)**

**DISTRICT : JALNA**

**Dr. Kishor Avchitrao Deshmukh,** )  
Age:48 years, Occu: Service, )  
(as Tahsildar), R/o: C/o Mr. Sitaram )  
Pachpule, Sharda Nagar, Ambad, )  
Dist. Jalna. )...**Applicant**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Addl. Chief Secretary, )  
(Revenue, Registration & Stamp), )  
Revenue & Forest Department, )  
M.S., Madam Cama Road, )  
Hutatma Rajguru Chowk, )  
Mantralaya, Mumbai-32. )
2. **The Divisional Commissioner,** )  
Aurangabad, Near Delhi Gate, )  
Collector Officer Campus, )  
Fazilpura, Aurangabad. )
3. **The Collector,** )  
Jalna, A'bad-Nagpur Road, )  
Old Jalna, Jalna. )
4. **Smt. Manisha Mene,** )  
Tahsildar, Ambad, )  
Tahsil Office, Ambad, )  
Dist. Jalna. )...**Respondents**

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**APPEARANCE :- Shri A.S. Deshmukh, learned Advocate for the Applicant.**

**Smt. Priya R. Bharaswadkar, the learned Presenting Officer for the Respondents.**

**CORAM** :- **JUSTICE A.H. JOSHI, CHAIRMAN**

**RESERVED ON** :- **06.03.2019.**

**PRONOUNCED ON** :- **07.03.2019.**

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**O R D E R**

1. Heard Shri A.S. Deshmukh, learned Advocate for the Applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the Respondents.

2. Learned Advocate for the Applicant has tendered additional affidavit. It is taken on record.

3. The Applicant has been transferred from his present posting as Tahsildar, Ambad to Assistant District Supply Officer, Osmanabad.

4. The Applicant has challenged the impugned transfer order with averments contained in ground para nos.II, V and VIII etc., which read as follows:-

“(II) The impugned order dtd.20/02/2019 issued by Resp.No.1 is most illegal, arbitrary, high-handed, irrational & illogical, as a result of total non-application of mind and in colourable exercise of powers inasmuch as the same has been issued by the Resp.No.1 not only in violation of the statutory and mandatory provisions contained in Ss.3(1), 4(4) and 4(5) of the Transfers Act of 2005, but also in spite of the fact that the applicant does not fit-in in any of the criteria prescribed by the ECI.

(V) The impugned order of transfer dtd.20/02/2019 has been issued by the Resp.No.1 not due to any ‘exceptional circumstances’ or ‘special reason’ or due to any ‘special case’ which has been made out in writing, but it has

clearly been issued on the wrong premise that the applicant fits-in the criteria prescribed by the ECI vide its letters dtd.16/01/2019, 07/02/2019 and 09/02/2019.

(VIII) Impugned transfer order is further liable to be interfered with by this Hon'ble Tribunal, because it has been issued by Resp.No.1 without referring the applicant's case to the Civil Services Board.

(quoted from page nos.8,9 & 10 of O.A.)

5. Learned P.O. for the Respondents has tendered text of minutes of Civil Services Board. Entry No.33 relates to Applicant. Column No. 6 thereof refers to the reason for transfer which was placed before the Civil Services Board. Relevant text reads as follows:-

“ श्री देशमुख यांचेविरूद्ध निवडणूक विभागातील थकित बिलांच्या बाबत केलेल्या अनियमिततेसंदर्भात विभागीय चौकशी सुरू असल्याने निवडणूक आयोगाच्या निकषानुसार श्री किशोर देशमुख यांची सहाय्यक जिल्हा पुरवठा अधिकारी, उस्मानाबाद या निवडणूक कामकाजाशी संबंधित नसलेल्या पदावर बदली प्रस्तावित करण्यात येत आहे.”

6. In the additional affidavit tendered by the Applicant today, he has placed on record the copy of charge-sheet served on him by the Divisional Commissioner, Aurangabad which is at Exh. 'A-3', page no.46 . Charge No.3 relates to misconduct of the Applicant which pertains to work performed by the Applicant during the assignment of election duty. The said charge no.3 reads as under:-

“ दोषारोप क्र. ३ पैठण तहसिल कार्यालयाचे निवडणूक विभागातील थकित देयक प्रदानाकरीता प्राप्त अनुदानातून नियमबाह्य स्टेशनरी खरेदी करून आर्थिक गैरव्यवहार केला.

रॉयल कॅम्प्युटर्स ऍन्ड झेरॉक्स यांनी त्यांचे पत्र दि.२८. ०३.२०१६ मध्ये नमूद देयकांच्या गोषवाच्यामध्ये सदरील देयके कशाचे आहेत याबाबत काहीच नमूद केले नाही. तसेच ही देयके कशाचे असल्याने pass for payment करून रक्कम पुरवठादारास अदा केली. सदर पुरवठादाराकडून कोणते साहित्य कोणत्या आदेशान्वये खरेदी केले व त्याची नोंद साठा नोंदवहीत कोठे केली व कोणत्या कार्यालयीन कामासाठी सदर साहित्य वापरण्यात आले याबाबतच्या नोंदी तहसिल कार्यालयाच्या अभिलेखात घेण्यात आलेल्या नाहीत.

तहसिलदार पैठण यांचेकडे देयके प्रलंबित नसतांना त्यांनी दिनांक ०४.१२.२०१५ रोजी जिल्हाधिकारी औरंगाबाद यांचेकडे रक्कम रू.४००३६१/- निधीची मागणी केली. त्यानुषंगाने जिल्हाधिकारी औरंगाबाद यांनी दि.३०.०३.२०१६ रोजी रू.२०००००/- अनुदान उपलब्ध करून दिले. त्यानंतर तहसिलदार पैठण यांनी उपरोक्त पुरवठादाराकडून फक्त देयके हस्तगत करून रक्कम रू.२०००००/- कोषागारातून आहरीत करून सदर पुरवठादारांना वितरीत केले.

रू.३०००००/- पेक्षा कमी रक्कमेची खरेदी करण्यासाठी स्थानिक पुरवठा दाराकडून दर पत्रके मागवून खरेदीची प्रक्रिया करणेची तरतुद उद्योग, ऊर्जा व कामगार विभाग यांचे शासन निर्णय क्र. भांखस२०१४/प्रक्र ८२/भाग ॥१ /उद्योग ४ दि.३०.१०.२०१५ च्या परिच्छेद ९ मध्ये नमूद करण्यात आली आहे. सदर तरतुदीनुसार तहसिलदार पैठण यांनी कार्यवाही केलेली नाही.

तहसिलदार पैठण यांनी जिल्हाधिकारी औरंगाबाद यांच्याकडून दिनांक ३०.०३.२०१६ रोजी अनुदार प्राप्त झाल्यानंतर उक्त पुरवठादाराकडून दिनांक नसलेले देयके व प्रलंबित देयकांचा गोषवारा घेऊन कार्यालयीन कामकाजासाठी पुरवठादाराकडून साहित्य खरेदी केल्याचे भासवून रक्कम रू. २०००००/- ची आर्थिक अनियमितता केली/गैरव्यवहार केला.”

(quoted from page nos.50 &51 of additional affidavit)

7. The Applicant has placed on record text of guidelines given by the Election Commission at Annexure 'A-4'. Copy thereof is at page no.28 of paper book. Guidelines contained in para no.7(viii) reads as under:-

“(viii) It is further directed that the officers/officials against whom the Commission had recommended disciplinary action in past and which is pending or **which has resulted in a penalty or the officers who have been charged for any lapse in any election or election related work in the past, shall not be assigned any election related duty.** However, an officer who was transferred during any past election under the commission's order without any recommendation of disciplinary action will not be,

just on this ground, considered for transfer, unless specifically so directed by the Commissioner. A copy of the Commission's instruction number 464/INST/2008-EPS dated 23<sup>rd</sup> December, 2008 regarding tracking of names of tainted officers is enclosed. CEOs must ensure its compliance.

(quoted from page no.30 of O.A.)

8. On the basis of whatever is shown by the Applicant himself, it is evident that the charge-sheet served on him relates to charge of misconduct relating to election duty. Therefore, he is disqualified from entrustment of any election duty.

9. Applicant's other grounds for challenging impugned transfer being

(a) Without reasons.

(b) Without recording those reasons and without consulting of Civil Service Board.

are found to be factually erroneous.

10. Applicant's pleading of grounds amount to misleading in the background that Applicant has been fully aware of facts and law as well.

11. Hence, Original Application has no merit and same is dismissed with costs.

**(A.H. JOSHI,J.)**  
**CHAIRMAN**

**Place:- Aurangabad**

**Date :- 07.03.2019**

SAS. O.A.No.196/2019.Transfer