

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

**ORIGINAL APPLICATION NO.732 OF 2019**

**(Subject :- Transfer)**

**DISTRICT : NANDED**

**Rajendra s/o Dnyanoba Tubakale,** )  
Age: 48 years, Occ: Service, )  
(as Dy. Chief Executive Officer )  
[General Administration], )  
Zilla Parishad, Nanded), )  
R/o: Yash Nagari, Unit 3, )  
Near More Chowk, Nanded, )  
Dist. Nanded. )...**Applicant**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, )  
Rural Development Department, )  
M.S., Mantralaya, Mumbai-32. )
2. **The Chief Executive Officer,** )  
Zilla Parishad, Nanded, )  
Nanded. )
3. **Mr. S.B. Thombre,** )  
Block Development Officer, )  
Panchayat Samiti, )  
Aundha-Nagnath, )  
Dist. Hingoli. )...**Respondents.**

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

**Shri M.P. Gude, learned Presenting Officer for the Respondent No.1.**

**Shri Anant R. Devekate, learned Advocate for the Respondent No.3.**

**Shri S.B. Pulkundwar, learned Advocate for the Respondent No.2 (Absent).**

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**CORAM : B.P. PATIL, ACTING CHAIRMAN**

**RESERVED ON : 05.12.2019.**

**PRONOUNCED ON : 07.12.2019.**

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**ORDER**

1. The Applicant has challenged the impugned order dated 03.08.2019 issued by the Respondent No.1 by which the Respondent No.3 has been posed in his place and thereby resulting in his mid-term and mid-tenure transfer out of the post of Dy. Chief Executive Officer (General Administration), Zilla Parishad, Nanded by filing the presenting Original Application and prayed to quash and set aside the impugned order and also prayed to direct the Respondents to continue him on the post of Dy. CEO (General Administration), Zilla Parishad, Nanded.

2. The Applicant was initially appointed as Agriculture Officer, in Zilla Parishad, Aurangabad in June, 1996. In the year 2008, he entered the State Cadre of Child Development Project Officers (CDPO). In the year, 2014, he was promoted in the cadre of Blok Development Officers/ Deputy Chief Executive Officers (BDOs/Dy. CEOs) and since then he is working in the said cadre.

3. In June 2017, he was working as Deputy Chief Executive Officer (Water Supply and Sanitation), Zilla Parishad, Osmanabad. On 21.06.2017, the Respondent No.1 was pleased to issue order transferring him from Osmanabad to Nanded on the post of Deputy Chief Executive Officer (General Administration), Zilla Parishad, Nanded. Accordingly, he was relieved from the Zilla Parishad, Osmanabad. Thereafter, he joined the post of Dy. CEO (General Administration), Zilla Parishad, Nanded on 27.06.2017 and since then he is working there. He has completed two years, one month and some odd days. He was not due for transfer as he has not completed his normal tenure of three years as prescribed under Section 3(1) of the Maharashtra Government Servants Regulations of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ('the Transfers Act' for short).

4. On 03.08.2019, the Respondent No.1 issued the order by which the Respondent No.3 has been transferred from the post

of BDO, Panchayat Samiti, Aundha-Nagnath, Dist. Hingoli to the post of Dy. CEO (General Administration), Zilla Parishad, Nanded on the ground that he is granted ad-hoc promotion to the Selection Grade. The Respondent No.3 was posted in the Applicant's place, but no order regarding Applicant's transfer out of the post of Dy. CEO (Gen. Admin.), Zilla Parishad, Nanded has been issued by the Respondent No.1.

5. It is his contention that due to impugned transfer order, the Respondent No.3 has been posted at his place and it results in his mid-term and mid-tenure transfer. It results in his displacement from the post of Dy. CEO (Gen. Admin.), Zilla Parishad, Nanded that too without issuing the actual order of transfer. It is in contravention of the provision of Transfer Act, 2005. It is his contention that mandatory provision of Section 4(4) and 4(5) have not been followed by the Respondents. His matter has not been placed before the Civil Services Board for effecting mid-terms and mid-tenure transfer. Therefore, it is against the provision of Transfer Act, 2005. It is his contention that the Respondent No.1 intends to shift him out of the post of Dy. CEO (Gen. Admin.), Zilla Parishad, Nanded on the ground that he is not Selection Grade BDO. But the Respondent No.1 issued order dated 05.08.2019 by which one Mr. C.G. Chavan who is not

Selection Grade BDO has been posted on Selection Grade post at Yavatmal.

6. It is his further contention that four officers who are not entered in Selection Grade namely Mr. S.M. Godbharle, Mr. O.M. Yadav, Mr. Dilip Mankar and Mr. Arvind Gudade have been posted on the Selection Grade post in view of the G.R. dated 06.08.2016. It is his contention that the Respondent No.1 has posted the Respondent No.3 at his place and thereby displacing him from the post of Dy. CEO (Gen. Admin.), Zilla Parishad Nanded in the midst of the term. Therefore, the impugned order is illegal and arbitrary as it has been passed against the provision of the Transfer Act, 2005.

7. It is his contention that the impugned order has been issued only to accommodate the Respondent No.3 at his place of choice and it is against the provision of Transfer Act, 2005 and therefore, he prayed to quash and set aside the impugned order and also prayed to direct the Respondents to allow him to continue at present place till completion of his tenure by filing the present Original Application.

8. The Respondent No.1 resisted the contention of the Applicant by filing his affidavit-in-reply. It is contended by the Respondent No.1 that the Government issued the G.R. dated

04.07.2016 and modified the staffing pattern of Maharashtra Development Service Cadre. As per the modified staffing pattern, the Maharashtra Development Service Cadres consisted of four difference cadres namely Block Development Officer/Deputy Chief Executive Officers (Selection Grade), Additional Chief Executive Officers/Project Director, District Rural Development Agency and Additional Chief Executive Officers (Selection Grade). According to the staffing pattern, 148 posts of Dy. Chief Executive Officer (Selection Grade) were sanctioned. Out of 148 officers only 51 Dy. Chief Executive Officers (Selection Grade) were working in the cadre. Due to non-availability of sufficient number of Dy. Chief Executive Officers of Selection Grad, the Government had issued the G.R. dated 06.08.2016 and decided to fill up the post of Dy. Chief Executive Offices (Selection Grade) from the non selection grade Block Development Officers. Therefore, the Applicant was posted on the post of Dy. Chief Executive Officer by order dated 21.06.2017 and posted as Dy. Chief Executive Officer (GAD), Zilla Parishad, Nanded.

9. The Government published the Maharashtra Development Group 'A' Service Rules by Government notification dated 18.09.2018. As per the Service Rules dated 18.09.2018, the Deputy Chief Executive Officers (Selection Grade) is separate Cadre. The post of Dy. Chief Executive Officers (Selection Grade)

has to be filled in by promotion from the Block Development Officers who have rendered five years regular service in that cadre and on the basis of merit as per the seniority. According to the said Rules, the select list for the year 2018-2019 on the post of Dy. Chief Executive Officers (Selection Grade) by promotion has been prepared. Thereafter, necessary information has been called by letter dated 05.10.2018. After receiving the Confidential Report, Departmental Inquiry, Assets Liability Information and other relevant information, the Departmental Promotion Committee's meeting was held on 27.02.2019 and thereafter the Government had prepared the select list of Dy. Chief Executive Officer (Selection Grade) for the year 2018-2019 and took the approval of General Administration Department. Thereafter, the options had been called for regarding allotment of Revenue Division for promotion in the cadre of Dy. Chief Executive Officers (Selection Grade). The Respondent No.3 had given option for Aurangabad, Revenue Division. Therefore, Aurangabad, Revenue Division has allotted to him as per the Revenue Allotment Rules. On 12.06.2019, the meeting of the Civil Service Board was held and in the meeting the board recommended the posting of the Respondent No.3 as Deputy Chief Executive Officer (GAD), Zilla Parishad, Beed. But the Competent Authority has not accepted the recommendation of the CSB and decided to post the Respondent No.3 as Dy. Chief

Executive Officer (GAD), Zilla Parishad at Nanded. Therefore, the Government issued promotion order of the Respondent No.3 as Dy. Chief Executive Officer (GAD), Zilla Parishad, Nanded by impugned order dated 03.08.2019.

10. It is his contention that one Shri Prakash Khopkar was working on the post of Dy. Chief Executive Officer (Gram Panchayat) Dist. Raigad though he was not Selection Grade Officer. One Smt. Sheetal Pund who is Dy. Chief Executive Officer (Selection Grade) was working at Panchayat Samiti, Vasai, Dist. Palghar on non Selection Grade post. Smt. Pund, challenged the order of the Maharashtra Administrative Tribunal dated 04.05.2018 before the Hon'ble High Court of Judicature at Bombay by filing the Writ Petition St.No.15201 of 2018. The Hon'ble High Court ordered for posting of Smt. Pund at Dy. Chief Executive Officer (Gram Panchayat), Zilla Parishad, Raigad by order dated 24.07.2018.

11. It is his contention that one Mr. Sontakke had filed Original Application No.771 of 2019 before the Principal seat of this Tribunal at Mumbai. Mr. Sontakke was Non-Selection Grade Officer and he was working on Selection Grade Post. The Respondent No.1 posted Mr. Ghorpade on promotion at the place of Mr. Sontakke. The facts in that case are similar to the facts in



the present case. This Tribunal dismissed the Original Application by order dated 01.10.2019. It is his contention that the present case of the Applicant is squarely covered by the said decision.

12. It is his further contention that the Applicant is not belonging to Dy. Chief Executive Officer (Selection Grade) Cadre. The post of Dy. Chief Executive Officer (GAD), Zilla Parishad, Nanded is ear-marked post of Dy. Chief Executive Officer (Selection Grade). Therefore, he has no right to claim posting on the ear-marked post of Dy. Chief Executive Officer (GAD), Zilla Parishad, Nanded. It is his contention that on the basis of recommendation of the Civil Services Board, the transfer of the Applicant has been proposed and his posting has been approved by the Competent Authority. But because of the interim relief granted in the Original Application, his transfer order has not been issued. It is his contention that the Applicant will be posted as per the direction of this Tribunal. He has denied that the impugned order has been issued without giving posting to Applicant. It is his contention that the Respondent No.3 has been relieved to join the promotional post on 19.08.2019 and he is waiting for joining the post of Dy. Chief Executive Officer (GAD), Zilla Parishad, Nanded. It is his contention that there is no violation of the provision of Transfer Act, 2005 and therefore, he supported the impugned order and prayed to reject the Original Application.

13. The Respondent No.3 appeared in the matter but has not filed his affidavit-in-reply.

14. I have heard Shri Avinash S. Deshmukh, learned Advocate for the Applicant, Shri M.P. Gude, learned Presenting Officer for the Respondent No.1 and Shri Anant R. Devakate, learned Advocate for the Respondent No.3. I have perused the documents on record.

15. Admittedly, the Applicant joined the service as Agriculture Officer in Zilla Parishad, Aurangabad in June, 1996. In the year 2008, he has entered in the State Cadre of Child Development Project Officers (CDPO). In the year, 2014 he has been promoted to the cadre of Blok Development Officers/ Deputy Chief Executive Officers (BDOs/Dy. CEOs) and since then he is in the said cadre. In the month of June, 2017 i.e. on 21.06.2017, the Applicant has been transferred from Osmanabad to Nanded on the post of Dy. Chief Executive Officer (GAD), Zilla Parishad, Nanded. Accordingly, he joined the said post on 27.06.2017 and since then he is working there. Admittedly, the Applicant is not a Selection Grade, Block Development Officer. The post of Dy. Chief Executive Officer(GAD), Zilla Parishad, Nanded is ear-marked post for Selection Grade Block Development Officers/Dy. Chief Executive Officers. Admittedly, the Respondent No.3 has been promoted by

the Respondent No.1 on the post of Dy. Chief Executive Officer (Selection Grade) in view of the Maharashtra Development Group 'A' Service Rules and accordingly, he has been posted as Dy. Chief Executive Officer (GAD) Zilla Parishad, Nanded by impugned order dated 03.08.2019. Admittedly, the Respondent No.3 has been relieved from his earlier posting on 19.08.2019.

16. Learned Advocate for the Applicant has submitted that the Applicant is aggrieved by the impugned order by which the Respondent No. 3 has been posted at his place. He has submitted that the Respondent No.1 has not issued any shifting or posting order of the Applicant while posting the Respondent No.3 at his place. The impugned order giving posting to the Respondent No.3 at his place resulted in his mid-term and mid-tenure transfer. He has submitted that the Applicant is serving on the post of Dy. Chief Executive officer (GAD), Zilla Parishad, Nanded since 27.06.2017. He has submitted the Applicant has completed only two years and one month in the said post. He was not due for transfer. But because of the impugned order, he will be transferred and the said transfer would be in contravention of the provision of Section 4(4) and 4(5) of the Transfer Act, 2005.

17. He has submitted that in the State of Maharashtra at several places, the officers belonging to Block Development Officer

Cadre who are not in Selection Grade Cadre have been posted on the post of ear-marked posts for BDO/ Dy. CEO (Selection Grade). But the Respondent has intentionally issued the order to displace the Applicant from the post of Dy. Chief Executive Officer (GAD), Zilla Parishad, Nanded. He has submitted that the posting of the Respondent No.3 on the post which is occupying by the Applicant is illegal as there was no clear vacancy while issuing impugned order and therefore, he prayed to quash the impugned order. He has submitted that the impugned order has been issued in violation of the provisions of Transfer Act, 2005 and therefore, he prayed to quash the impugned order by allowing the Original Application.

18. Learned P.O. and learned Advocate for the Respondent No.3 have submitted that the Government ear-marked some posts of BDOs for Selection Grade BDOs/Dy. CEOs. The post of Dy. Chief Executive Officer(GAD), Zilla Parishad, Nanded is one of the ear-marked post for the Dy. Chief Executive Officer (Selection Grade). They have submitted that as the Selection Grade BDOs/Dy. CEPs were not available, the Government decided to appoint the BDO, who are not possessing Selection Grade by G.R. dated 06.08.2016, on the posts earmarked for Dy. Chief Executive Officers, as temporary arrangement and accordingly, the Applicant has been posted on the post of Dy. Chief Executive Officer(GAD),

Zilla Parishad, Nanded. He has submitted that in the year 2018-2019, the Government prepared the select list of promotion on the post of Dy. Chief Executive Officer and selected 70 officers of Selection Grade and thereafter, postings have been given to them. The Respondent No.3 was one of them. The matter regarding giving posting to those officer has been placed before the Civil Service Board. The Civil Services Board made recommendation regarding their posting on the basis of Revenue Division Allotment Rules. The Civil Services Board recommended transfer of the Respondent No.3 at Deputy Chief Executive Officer (GAD), Zilla Parishad, Beed. But the Competent Authority had not accepted the recommendation of the Civil Services Board so far as the Respondent No.3 is concerned and decided to post him as Dy. Chief Executive Officer (GAD), Zilla Parishad, Nanded at the place of Applicant and accordingly, the impugned order has been issued.

19. They have submitted that the department submitted proposal regarding transfer and posting of the Applicant in view of the posting of the Respondent No.3 made at his place. The matter was placed before the Civil Services Board and the Civil Services Board recommended accordingly. The Competent Authority has also approved the said recommendation but the order has not been issued because of the interim relief granted by this Tribunal in present case. They have submitted that the transfer order of the

Applicant will issue in due course after decision of this Original Application.

20. Learned P.O. and learned Advocate for the Respondent No.3 have submitted that the Applicant has no right to remain on the post which is ear-marked for BDOs/Dy.CEOs (Selection Grade) and his appointment has been made on that post temporarily because of the non-availability of sufficient number of BDOs/ Dy. CEOs (Selection Grade). They have submitted that once the sufficient officers in the cadre of Selection Grade are available, the Applicant has to vacate the said post and he has no right to claim retention in that post. They have submitted that the said issue has been decided by the **Hon'ble high Court of Judicature at Bombay in Writ Petition No. 15201/2018 in case of Smt. Sheetal Punde Vs. the State of Maharashtra & Ors. on 24.07.2018.**

21. They have further submitted that the similarly situated person has filed Original Application No.771 of 2019 before the principal seat of this Tribunal at Mumbai wherein this Tribunal has dismissed the Original Application. They have placed reliance on the judgement of this Tribunal in **O.A.No.771 of 2019 in case of Shri Ashok Vyankaji Sontakke Vs. the State of Maharashtra & Ors. decided on 01.10.2019.** They have

submitted that case of the present Applicant is squarely covered by the said decision and therefore, they prayed to reject the Original Application.

22. On perusal of documents on record it reveals that the Applicant is working in the cadre of BDO. Admittedly, he is not in the cadre of Dy. CEO/BDO (Selection Grade). By G.R. dated 04.07.2016, the Government published the modified staffing pattern of Maharashtra Development Service Cadre. The said cadre consisted of four cadre namely, Block Development Officers/Deputy Chief Executive Officers (Selection Grade), Additional Chief Executive Officers/ Project Director, District Rural Development Agency and Additional chief Executive officers (Selection Grade). According to the staffing pattern, 148 post for Dy. Chief Executive Officers had been sanctioned. In the year 2016, only 51 Dy. Chief Executive Officers (Selection Grade) were working in the cadre. Due to non-availability of the Dy. Chief Executive Officers (Selection Grade), the Government could not able to fill up the remaining posts out of sanctioned post of 148. Therefore, the Government issued G.R. dated 06.08.2016 stating that on account of stagnation arising out of lack of promotional avenues in the cadre of Deputy Chief Executive officers and Block Development Officers, the Government has proposed to award Selection Grade to such Officers and thereafter post them at

certain ear-marked posts. The G.R. further provides for awarding of selection grade to the officers in the cadre of Deputy Chief Executive Officers and Block Development Officers and to also ear-marked almost 148 posts on which such selection grade officers alone can be posted. It also provides that in case of non-availability of sufficient number of Dy. Chief Executive Officers (Selection Grade), the post can be filled up by Non-Selection Grade BDO.

23. As the sufficient numbers of Selection Grade Officer are not available, the Applicant was appointed on the post of Dy. Chief Executive Officer (GAD), Zilla Parishad, Nanded which is ear-marked post for the Dy. Chief Executive Officer (Selection Grade). This arrangement was made temporarily till the availability of the Selection Grade officer in the cadre of Dy. Chief Executive Officers/Block Development Officers. The G.R. further provides that Junior Grade Officers or non Selection Grade Officers can be posted at ear-marked posts only when there are no sufficient numbers of selection grade officers to man such ear-marked post and not otherwise. In the year 2018-2019, the Respondent No.1 after following the due procedure, promoted the Officer on the post of Dy. Chief Executive Officer (Selection Grade) and the Respondent No.3 is one of them. Thereafter, the Respondent No.1 had decided to give posting to them and accordingly, the options



regarding the allotment of Revenue Division have been called for. The Respondent No.3 had given option for Aurangabad, Revenue Division and accordingly, he was allotted the said Revenue Division. Thereafter, the department proposed to post those officers and accordingly the proposal was placed before the Civil Services Board. The Civil Services Board made recommendation regarding posting of those officers including the Respondent No.3 and recommended to post him at Deputy Chief Executive Officer (GAD), Zilla Parishad, Beed. But the Competent Authority had not accepted the recommendation of the Civil Services Board so far as the Respondent No.3 is concerned and decided to post the Respondent No.3 as Dy. Chief Executive Officer(GAD), Zilla Parishad, Nanded at the place of Applicant.

24. At the same time, the department sent proposal regarding transfer and posting of the Applicant. The proposal was placed before the Civil Services Board. The Civil Services Board had made recommendation in that regard and thereafter, the Civil Services Board approved it. The order has remained to be issued. But because of the interim relief granted by this Tribunal, the Respondent No.1 had not issued the transfer order. As per the G.R. dated 06.08.2016, the posting of the Applicant was made temporarily on the post of Dy. Chief Executive Officer (GAD) Zilla Parishad, Nanded due to lack of sufficient number of Selection

Grade Officers. But now the sufficient number of Selection Grade Officers is available. Therefore, the Respondent No.1 decided to post the Respondent No.3 at the place of the Applicant. There is no illegality in the impugned order giving posting to the Respondent No.3 at the place of Applicant as the post of Dy. Chief Executive Officer (GAD), Zilla Parishad, Nanded is ear-marked post for Selection Grade Officer BOD/Dy. CEO. No doubt because of the posting of the Respondent No.3, the Applicant has to be shifted/transferred from the post of Dy. Chief Executive Officer (GAD), Zilla Parishad, Nanded.

25. The Respondent No.1 has issued the order of the Respondent No.3 only and posted him at the place of the Applicant. Infact, the Respondents ought to have issued the transfer and posting order of the Applicant simultaneously. Without creating vacancy, the Respondent No.1 issued the order. This amounts irregularity in the impugned order but there is no illegality in the said order. The Applicant cannot claim his retention on the post of Dy. Chief Executive Officer which is ear-marked post for Selection Grade BDO/Dy. CEO though he is not Selection Grade BDO. Therefore, I do not find any substance in the contention of the Applicant in that regard.

26. The similar issue was involved in the Writ Petition No.15201 of 2018 before the Hon'ble High Court of Judicature at Bombay in case of **Sheetal Vishnu Pund Vs. The State of Maharashtra & Ors. decided on 24.07.2018.** In that case, the Hon'ble High court has held that the ear-marked post can be manned only by Selection Grade Officers and the person who is not possessing Selection Grade but appointed on the post has no right to claim his retention on that post. The principle laid down in the above said decision is appropriately applicable in the present case. Not only this, but the principal seat of this Tribunal at Mumbai has dealt with the similar issue in case of similarly situated person in **O.A.No.771/2019 in case of Shri Ashok Vyankaji Sontakke Vs. The State of Maharashtra & Ors. decided on 01.10.2019** and justified the posting of the Selection Grade Officer on the ear-marked post in place of person who was not Selection Grade Officer but holding the said post and dismissed the Original Application filed by BDO who was not in Selection Grade but occupying the post of Selection Grade Officer. The present case is squarely covered by the decision rendered by the principal seat of this Tribunal in O.A.No.771 of 2019.

27. As discussed above, the Applicant is not Selection Grade Officer. Therefore, he cannot claim retention on the post which is ear-marked for Selection Grade Officer as of right. He has

posted on the said post due to lack of sufficient number of Selection Grade Officer. Once the Selection Grade Officer is available, the Respondent No.1 has every right to appoint the Selection Grade Officer on the ear-marked post and to shift/transfer the Applicant, who is non-Selection Grade BDO, from that post. Therefore, I find no illegality in the impugned order. As contended by the Respondent No.1, the Applicant will be shifted from the said post in due course. Therefore, no prejudice will be caused to the rights of the Applicant. There is no merit in the Original Application. Consequently, the same deserves to be dismissed.

28. In view of the discussion in the foregoing paragraphs, the Original Application stands dismissed. The Respondent No.1 is directed to issue posting/transfer order of the Applicant forthwith. There shall be no order as to costs.

**(B.P. PATIL)**  
**ACTING CHAIRMAN**

**Place:- Aurangabad**

**Date :- 07.12.2019**

Sas. O.A.No.732 of 2019.Transfer. BPP