

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.317 OF 2018**

**DISTRICT : RAIGAD**

Shri Balasaheb Vitthalrao Tidke )  
Age 45 years, Sub Divisional Officer, )  
Mangaon Sub Division, District Raigad )  
R/o Sub Divisional Officer Quarter, Kacheri Road, )  
Mangaon, District Raigad )..Applicant

Versus

1. The State of Maharashtra, )  
Through Principal Secretary (Revenue), )  
Revenue & Forest Department, )  
Mantralaya, Mumbai 400032 )

2. Smt. Prashali Dighavkar, )  
Deputy Collector (SGY), Mumbai Suburban )  
District, having office at the office of the )  
District Collector, Mumbai Suburban, )  
Bandra (East), Mumbai 400051 )..Respondents

Shri A.V. Bandiwadekar – Advocate for the Applicant

Shri N.K. Rajpurohit – Presenting Officer for Respondents No.1

Shri M.D. Lonkar – Advocate for Respondent No.2

CORAM : Shri P.N. Dixit, Member (A)

RESERVED ON : 26<sup>th</sup> July, 2018

PRONOUNCED ON : 1<sup>st</sup> August, 2018

**J U D G M E N T**

1. Heard Shri A. V. Bandiwadekar, learned Advocate for the Applicant, Shri N.K. Rajpurohit, learned Presenting Officer for Respondent No.1 and Shri M.D. Lonkar, learned Advocate for Respondent No.2.

2. Admitted facts:

*The Applicant was posted at Mangaon Sub-Division as SDO on 09.01.2017 (Exb. 'B', page 19). Accordingly, he joined at this post on 12.01.2017. He was transferred out from this place on 03.02.2018 by Respondent No.1 (Exb. 'A', page 18). On 03.04.2018, the Respondent No.2 was posted in his place from Deputy Collector, Mumbai (Exb. 'H', page 38). The Applicant is challenging his transfer out and posting of Respondent No.2 in his place.*

3. The Applicant has challenged the impugned orders on following grounds:-

*“6.7] As per Rule 8[1][a] of the Rules of Allotment of Divisional Cadre, 2010 and 2015, Petitioner being Group-A officer became entitled to be in Konkan Division for 6 years being direct recruit.*

*6.8] The Respondent No.1 is not legally competent to transfer the Petitioner to any other Division including Konkan-II. In view of this, the impugned order dated 3.2.2018 is without jurisdiction.*

*6.9] As per the General Administration Department Circular dated 24.9.2015 the Competent Transferring Authority is mandated to record reason if the recommendation of the Civil Services Board are not being accepted. But it is not complied in the present case.*

6.10] *There has been no consultation of the Competent Authority with the Respondent No. 1 before passing both the impugned orders.*

6.11] *There is a prima facie breach of section 3 of the R.O.T. Act, 2005, when the Petitioner is entitled for normal tenure of 3 years. Thus this is a pre-mature, mid-term and mid-tenure transfer of the Petitioner and that of the Respondent No.2 [though not mid-term].*

6.12] *The impugned order refers to the reason for transfer of the Petitioner to be only the administrative ground without further elaborating as to what that administrative ground is which would constitute the special case, special reason and exceptional circumstances.*

6.13] *The Petitioner has reason to believe that the impugned orders are passed by the Respondent No. 1 mala fide, arbitrarily and illegally with bias and prejudiced mind against the Petitioner, so as to over oblige the Respondent No. 2 at the cost of the Petitioner with undue accommodation.*

6.16] *There has been no proposal about the transfer of the Petitioner for any reason, from the office of the Divisional Commissioner, Konkan Division or even from the office of the Respondent No.1 to the Competent Transferring Authority.*

6.21] *The Respondent No. 2 seems to have managed her transfer to the post of the Sub Divisional Officer, Mangaon Sub Division, Dist. Raigad.*

4. Advocate for the Applicant submits that the Applicant never approached any authority with request to transfer. He confirms the same in his Affidavit-in-Rejoinder which reads as under:-

*“3. I say that it is not the case of the Respondent No. 1 that I ever made any request application to the Respondent No. 1 or to the Hon'ble Minister or the Hon'ble Chief Minister for my transfer from the present place of posting namely Sub Divisional Officer, Mangaon,*

*Dist. Raigad either separately or along with the recommendations of the elected representatives namely Smt. Manisha Choudhary, M.L.A. and Shri Girish Mahajan, the Hon'ble Minister.*

4. *I say that I am not at all acquainted with the aforesaid two elected representatives. That neither I knew them nor they know me. That they are neither from any of the constituencies from Dist. Raigad or from Dist. Beed which is my native District. That there is no request being made on my behalf by any other person or elected representative to the aforesaid Smt. Manisha Choudhary, M.L.A. and Shri Girish Mahajan, the Hon'ble Minister.*

7. *I say that in fact before issuing the impugned order it was the duty of the Respondent No. 1 to confirm whether really I did make any such request application or request through the elected representatives.*

5. According to the Advocate for the Applicant, Minister In charge of the Department or Public Representative of that particular constituency certainly have right in looking into the grievance and communicating the same. However, the facts in the present case are different.

6. Advocate for the Applicant contends that it will not be correct to say that he is not aggrieved person as he came to know about the transfer as Respondent No 2 came to take his charge on 06.04.2018 and not before.

7. Advocate for the Applicant reiterates that the requests by the Government officer should be examined by the competent authority as mentioned in the Government Circular dated 11.02.2015 (Para No.5 page 50 of the O.A.). According to him, the judgments mentioned by the Advocate for the Respondent No.2 are not relevant because the facts are different and they are pertaining to unmodified practices regarding transfer policy.

8. Advocate for the Applicant contends that the appropriate course for transferring the officer would be to have request of the officer and route the same through CSB, put it up before the competent authority and then to the superior authority as the case may be.

9. Advocate for the Applicant states that the letters of requests made by the Public Representative including the Minister did not originate at his behest. Moreover, he was not posted to the places where the letters referred to. According to the learned Advocate, the Public Representatives have not been made party, since no mala fide is alleged against them nor any relief sought against them. He contends that as per judgment of the Hon'ble Supreme Court (2006) 5SCC 558 burden of proof lies on the party to substantiate the claim. According to him, as per the Divisional Cadre Allotment Rule, 2015 (Page No.30) Rule 8(1) A, "in group "A" cadre the person has to complete minimum six years in the allotted revenue Division." He, therefore, contends that he should not have been transferred to Konkan -I as per the amended rule. (Exb.G, page 33).

10. Shri Lonkar, learned Advocate for the Respondent No.2 contests the claim made by the Applicant and refers to his Affidavit-in-Reply para no.4 and 5, page no.62 of the O.A., which reads as under:-

*"4. It is not open for the Petitioner to seek exception to my order of transfer dated 3.4.2018. Any attempt to challenge the said order amounts to Public Interest Litigation, for which this Hon'ble Tribunal does not possess the power and authority.*

*5. Another aspect needs to be considered is that although the order of transfer is dated 3.2.2018, which was within the knowledge of the Petitioner and the Original Application is filed only on 5.4.2018. It appears that the Petitioner with the help of the politicians was keen to obtain posting of his choice. The Petitioner was hopeful that through political influence, the Petitioner would be posted in the post*

*of his choice. Unfortunately, it did not happen in view of the fact that by order dated 3.4.2018, another incumbent came to be posted in the post of Resident Dy. Collector, Thane. It is only thereafter, the Petitioner has chosen to approach this Hon'ble Tribunal by way of present Original Application.”*

11. Learned Advocate for the Respondent No.2 refers to date of filing of the O.A. According to him, the O.A. was filed on 05.04.2018, therefore, the contention of the learned Advocate for the Applicant that he was not aware about the transfer is factually incorrect. The rejoinder filed by the learned Advocate on page no.73, para 11 states that he became aware on 03.04.2018. According to the Advocate for the Respondent No.2, his contentions in para 5 and 9, page 62 and 64 have not been contested or replied by the learned Advocate for the Applicant.

12. Advocate for the respondent no.2 relies on the following judgments in support of his arguments:

(1) *Dr. Duryodhan Sahu & Ors. Vs. Jitendra Kumar Mishra & Ors, 1998 SCC (L&S) 1802.*

(2) *Shri Dadabhau N. Kale Vs. The State of Maharashtra & Ors. Writ Petition No.8447 of 2009 decided by Hon'ble Bombay High Court on 17.11.2009.*

(3) *National Hydro-Electric Power Corporation Ltd. Vs. Shri Bhagwan & Anr. 2001 LLR 1222 Supreme Court of India.*

(4) *Union of India & Ors. Vs. S.L. Abbas JT 1993(3) SC 678.*

(5) *Dalip Singh & Ors. Vs. State of Haryana, JT 1993(3) SC 682*

(6) *Shankarrao Narayan Jadhav Vs. State of Maharashtra 2011(1) Mh.L.J. 210.*

(7) *Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo & Ors, Civil Appeal No.9872 of 2013 decided on 1.11.2013 by Hon'ble Supreme Court.*

(8) *Ashok Kumar Pandey Vs. The State of West Bengal & Ors., Writ Petition (CRL) No.199 of 2003 decided on 18.11.2003 by Hon'ble Supreme Court.*

(9) *Shri Shankarrao Narayanrao Jadhav Vs. State of Maharashtra & Ors, OA No.214 of 2009 decided on 30.4.2010 by this Tribunal.*

13. Ld. PO admits name of the applicant was not placed before the Civil Services Board. However, his name was included by the Hon'ble Chief Minister at the behest of the two letters received from Hon'ble MLA Smt. Manisha Choudhary and another from Hon'ble Minister Shri Girish Mahajan. Both the letters are annexed at Exhibit R-1 and R-2 at page 57-58. Both the letters mention that the applicant had approached the Hon'ble MLA and the Hon'ble Minister and requested to transfer him as SDO, Thane. Ld. PO contends that therefore the Hon'ble Chief Minister included the name of the applicant for transfer to Thane. Ld. PO cited letters from Hon'ble Minister Shri Girish Mahajan dated 2.5.2018 requesting him for posting at Thane. Ld. PO states that even after the OA was filed this request was made and the letter was issued.

14. Ld. PO relies on para 8 page 85 of the sur-rejoinder dated 22.6.2018 filed on behalf of respondent no.1 which is as under:

*"8. With reference to contends of paragraph nos.1 to 5, it is submitted that the Applicant himself through Hon'ble responsible representatives sought transfer to Thane and the same has been considered by the competent authority. After issuing the transfer order another letter received from Hon'ble responsible representative dated 2.5.2018 regarding minor change in the transfer of the applicant. It is respectfully submitted that the applicant has*

*miserably failed to demonstrate that no request was made for and on his behalf through Hon'ble representatives for transfer to Thane. Contentions so raised by the applicant about the denial of having approached the aforesaid Hon'ble responsible representatives can certainly be tested only upon applicant impleading the said Hon'ble responsible representatives as party respondent in the Original Application. In that event the applicant would certainly be exposed. Conclusion is therefore evident that applicant tried to secure posting of his choice and moment realised that another officer is posted in the post of his choice in Thane vide order dated 3.4.2018 has approached this Hon'ble Tribunal."*

(Quoted from page 85 of OA)

15. Ld. PO states that GR dated 24.9.2015 at Exhibit I page 39 pertains to request transfer and therefore is not relevant.

16. Learned P.O. for the Respondents has filed Additional-Affidavit-in-Reply on behalf of the Respondent No.1. Paragraph Nos.2 and 3, page No.303 of the same states as under:-

*"2. It is submitted that the Petitioner came to be selected and appointed as Probationary Dy. Collector with effect from 02.05.2014. Taking into consideration Divisional Cadre Allotment Rules, the Petitioner came to be allotted Amravati Division and was sent for training accordingly on 05.09.2015. Subsequently in view of Government Regulations dated 08.06.2010, consequent upon completion of training period, the Petitioner came to be allotted Nagpur Division. But the Petitioner not join his duties in Nagpur Division.*

*3. It is submitted that the Petitioner submitted representation dated 30.08.2016 mentioning therein that the Petitioner is physically handicapped person and residing at Thane and therefore requested the departmental authorities to consider his case for transfer to Konkan Division. In pursuance of Divisional Cadre Allotment Rules, the Petitioner came to be posted in Konkan Division from Nagpur*



*Division. I shall crave leave to refer to and rely upon the official record and documents in that regard, as and when produced and the same shall be made available for the perusal of this Hon'ble Tribunal at the time of hearing of the Original Application.”*

17. According to the Respondents, the Applicant is physically handicapped and the resident of Thane. Hence, his order of posting at Thane was considered. Even then, the Applicant is having a grievance about the order of transfer.

*“9. In the premises aforesaid, as the Petitioner is physically handicapped and residing at Thane, effective posting is rendered in favour of the present Petitioner vide order dated 03.02.2018. It is indeed surprising that still the Petitioner is making grievance about the order of transfer. At any rate, it is respectfully submitted that no judicial interference is warranted in the facts and circumstances of the present case. It further appears that although the order of transfer is dated 03.02.2018, the Petitioner has not yet reported for duties at the transferred place.”*

18. According to the learned P.O. at the behest of the Public Representatives, the applicant has been transferred and posted at Thane. Learned P.O. contends that the Original Application has no merit and may be dismissed.

19. The issue for consideration is as under:-

*Whether the order issued is arbitrary, mala fide and, therefore, illegal?*

Discussion about facts and findings with reasons:

20. Applicant is a resident of Thane. He was appointed as Deputy Collector, Class I, on 20/4/2014 and was initially allotted to Nagpur

Division and subsequently to Amravati Division and was working at Buldhana. Following representation from the Applicant that he is handicapped person and resident of Thane, his request for transfer to Konkan Division was conceded. Representatives of people recommended the department to post him as SDO Vasai or RDC at Thane. As there was no vacancy in the said places, Applicant was posted as SDO Mangaon in Raigad district on 9/1/2017. On 11/12/2017, MLA Smt Manisha Ashok Chowdhary wrote letter to Hon CM that Applicant has requested her for transfer due to family difficulties and she recommends sympathetic consideration and post him as SDO Thane. On 2/1/2018, Minister Girish Mahajan wrote to Hon CM that the Applicant has requested him to transfer the Applicant as SDO Thane since Applicant has completed three years at Mangaon. The Minister therefore requested Hon CM to issue necessary instructions accordingly. Following this, Hon CM directed Principal Secretary Revenue to post Applicant as Deputy Collector (General) in the office of District Collector Thane. Accordingly order was issued on 3/2/2018 (Exhibit A, p.18). On 6/4/2018, District Collector, Raigad ordered Applicant to hand over his charge to Respondent No 2 who was working on the post of SDO Mangaon earlier and had proceeded on maternity leave, and had returned to the district from her posting as SDO (Sanjay Gandhi Yojana), Mumbai suburban. The Applicant handed over the charge accordingly. On 2/5/2018, Minister Girish Mahajan wrote to Minister Revenue, "Applicant has requested to post him as SDO Thane instead of Deputy Collector, General in the office of District Collector." The Minister, therefore, recommended that Applicant should be appointed as SDO Thane.

21. Meanwhile, Applicant filed OA No.317 of 2018 on 6/4/2018 before this Tribunal and prayed for quashing the transfer order dated 3/2/2018 as well as order of 3/4/2018 asking Applicant to hand over charge to Respondent No.2. (P.15 of the O.A.)

22. Applicant challenges the impugned order on various grounds. These are summarized as under. Applicant mentions that his name did not figure in the recommendations of Civil Services Board to competent authority. He did not complete necessary six years in the allotted Division. No reasons have been mentioned while transferring him. The transfer is done to favour Respondent No.2. The Applicant was ignorant about transfer order till he was asked to hand over the charge on 6/4/2018. Applicant claims there is no request application by him on record and he never requested Minister or MLA to recommend his transfer. According to him, someone else particularly Respondent No.2 might have given false facts to the Minister to transfer him.

23. The applicant has produced several judgments by Hon. Supreme Court and this Tribunal to state that if the name of the transferred officer does not figure in the recommendations by CSB, it is illegal to include the same by Competent Authority or Superior Authority. He also cites GRs by the government stating that record needs to be maintained of the requests by officers before acting on the same by the public representatives.

24. Respondent No.2 submits that the impugned order is not issued to favour her. The Applicant was transferred out as per his personal request. However, he failed to get posting of his choice as SDO, Thane and hence he is baselessly accusing her of displacing him to favour her. The transfer of the Applicant was done more than two months earlier, when he handed over charge to her.

25. Respondent No 1 draws attention to the fact that the Applicant got his Division changed from Nagpur to Konkan in 2015. Public representatives wrote letters to Hon CM to transfer him to Vasai or Thane, but as there was no vacancy, he was posted at Mangaon. The public

representatives again wrote to Hon. CM to post him as SDO Thane. Thus, the public representatives have written to favour him and mentioned that the Applicant has requested for the same. The Applicant seems to have conveniently bypassed the CSB, fearing that it would be rejected as it was premature. The CSB had no occasion to consider his representation. Therefore the legal contentions furthered by him are not relevant.

26. Thus this is a case where, the public representatives including the Minister from other department have issued letters to Hon CM and Minister Revenue stating that the Applicant is requesting them to post as SDO Thane in view of his family difficulties. However in spite of the same, the Applicant is posted as Deputy Collector, General in the office of District Collector Thane. As the Applicant does not perceive it suitable for doubtful reasons, he has prayed this Tribunal to interfere in the same.

27. Had this been a case where the Applicant is transferred due to a reason to accommodate someone else, it would have required consideration. Various legal submissions made on his behalf would have furthered that cause. But in the present case the Applicant is approaching the Tribunal to interfere in the order as he did not get posting of his choice. This is certainly not going to meet the ends of justice. The tendency of getting letters from public representatives for a particular 'Executive' posting needs to be decried as it certainly is interference in routine administration against all established norms of good governance by favouring those who are not eligible. This is more dangerous when apparently no trail is left behind as there is no request letter to CSB from the Applicant. There is no reason to disbelieve the public representatives, when they mention more than once that the Applicant has requested them for transfer. The argument is farfetched and baseless when the Applicant contends that 'Respondent No.2 must have approached these public representatives to issue letters in favour of the Applicant'.

28. The Applicant is a resident of Thane. He is handicapped. He has been posted at Thane. I find no reason to interfere with the order which has been issued to accommodate his interests to the maximum. I find no substance in the imagined claim that he is transferred to accommodate Respondent No.2 in his place. There is no documentary proof to justify the same. The judgments and GR referred by him are not relevant, as the facts in the present case are different.

29. There is no merit in the O.A. and hence I dismiss the same without any order to costs.

**Sd/-**  
**(P.N. Dixit)**  
**Member (A)**  
**1.8.2018**

Dictation taken by: S.G. Jawalkar.