

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.623/2018**

**DISTRICT: NANDURBAR**

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Baban s/o. Nathu Patil,  
Age : 56 years, Occu. : Service  
(as Dist. Superintending Agri.  
Officer, Nandurbar)  
R/o. Vikharan, Tq. Nandurbar,  
Dist. Nandurbar.

...APPLICANT

**V E R S U S**

- 1) The State of Maharashtra,  
Through its Addl. Chief Secretary,  
Agriculture, Animal Husbandry,  
Dairy Development & Fisheries Department,  
M.S., Mantralaya, Mumbai – 400 032.
- 2) The Commissioner of Agriculture,  
Agriculture Commissionerate,  
M.S., Inputs & Quality Control  
Section, Central Building,  
2<sup>nd</sup> Floor, Pune – 01.
- 3) The Divisional Joint Director  
Of Agriculture, Nashik Division,  
Ashwini Barrack, Near Divisional  
Commissioner's Office,  
Nashik Road, Nashik.

...RESPONDENTS

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

:Smt. Priya Bharaswadkar, Presenting  
Officer for the respondents.

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CORAM : B. P. Patil, Member (J)  
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DATE : 14<sup>th</sup> March, 2019  
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**J U D G M E N T**  
**[Delivered on 14<sup>th</sup> day of March, 2019]**

1. By filing the present O.A. the applicant has challenged the impugned order dated 16-08-2018 by which he has been transferred from the post of District Superintending Agriculture Officer, Nandurbar to the post of Project Director, Agriculture Technology Management Agency (ATMA), Dhule by cancelling the earlier transfer order dated 27-07-2018.

2. The applicant entered in the service of Government of Maharashtra in Agriculture Department in 1991 as directly recruited Agriculture Development Officer. In July, 2016 he was promoted to the cadre of District Superintending Agriculture Officer and since then he is working in the said cadre. He is due to retire with effect from 31-05-2020. On 27-07-2018, he was working as Project Director, ATMA, Dhule. As he had completed his tenure on that post, respondent no.1 transferred him from Dhule to Nandurbar

on a vacant post as District Superintending Agriculture Officer by order dated 27-07-2018. In pursuance of the said order, he joined his new posting at Nandurbar on 30-07-2018 and started discharging his duties.

3. He had hardly completed 3 weeks on the post of District Superintending Agriculture Officer, Nandurbar. He had not completed his tenure of posting on that post but respondent no.1 had issued the impugned order dated 16-08-2018 and transferred him on the post of Project Director, ATMA, Dhule from Nandurbar by cancelling his earlier transfer order dated 27-07-2018. It is contention of the applicant that the impugned order of transfer is in contravention of provisions of Section 4(4)(ii) & 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ("Transfer Act" for short). The transfer order has been issued without the recommendation of the Civil Services Board and prior approval of the competent authority and therefore, it is illegal, arbitrary, high handed, irrational and illegal. No exceptional circumstances or special reasons have been recorded for his transfer and no special case was made out for his transfer. Therefore, it is in violation of

Section 4(4)(ii) and 4(5) of the Transfer Act. It is an illegal order and therefore, he has challenged the said order by filing the present O.A.

4. Respondent nos.1 to 3 have resisted contention of the applicant by filing their affidavit in reply. It is their contention that the applicant was working as Project Director, ATMA, District Dhule since 05-12-2015. He had not completed his normal tenure of posting on that post. He has hardly completed 2 years and 6 months on the post and at the time of general transfer of 2018 Dr. Vijay Kumar Gavit, MLA made request for his transfer at Nandurbar. Four departmental enquiries are pending against the applicant. Considering the said fact, Civil Services Board in its meeting dated 05-07-2018 decided not to recommend the transfer of the applicant. The recommendation of the Civil Services Board was placed before the Hon'ble Agriculture Minister i.e. the competent transferring authority but the competent transferring authority recommended transfer of the applicant from Dhule to Nandurbar on executive post and said recommendation was approved by the Hon'ble the Chief Minister. It is their contention that the applicant got himself transferred to

Nandurbar using political influence. Accordingly, respondents issued order dated 27-07-2018. On the basis of the said order, the applicant joined his new posting at Nandurbar on 30-07-2018.

5. It is their contention that, meanwhile, Hon'ble Minister, Employment Guarantee Scheme (EGS) & Tourism had requested the concerned Minister by his letter dated 27-06-2018 which was received to the office on 02-08-2018 that the applicant may not be given posting at Dhule or Nandurbar as there were allegations of irregularities against the applicant. On the basis of the said letter, department has placed a proposal before the Hon'ble Minister of Agriculture. Hon'ble Minister after considering the past record of the applicant recommended that the applicant be posted as Project Director, ATMA, Dhule by cancelling his earlier transfer order dated 27-07-2018. The recommendation of the Hon'ble Minister i.e. the competent transferring authority has been approved by Hon'ble the Chief Minister and accordingly the impugned order dated 16-08-2018 has been issued. It is their contention that the impugned order has been issued on administrative ground

in view of the provisions of the Transfer Act and there is no violation of any of the provisions of the Transfer Act.

6. It is their further contention that reasons have been recorded by the competent authority while making transfer of the applicant and the impugned order has been issued with the prior approval of the next higher competent authority i.e. Hon'ble the Chief Minister as provided under Section 4(4)(ii) and 4(5) of the Transfer Act. It is their contention that the impugned order has been issued by complying the mandatory provisions of Section 4(4)(ii) and 4(5) of the Transfer Act. There is no illegality in the impugned order and therefore they have prayed to dismiss the O.A.

7. I have heard Shri A.S.Deshmukh, Advocate for the Applicant and Smt. Priya Bharaswadkar, Presenting Officer for the respondents. Perused the documents placed on record by the parties.

8. Admittedly, the applicant entered the service of the Government of Maharashtra in Agriculture Department in the year 1991 as a directly recruited Agriculture Development Officer. He was promoted in the cadre of District Superintending Agriculture Officer in July, 2016

and he was posted as Project Director, ATMA, Dhule. Admittedly, he was serving at Dhule since 05-12-2015. Admittedly, in the year 2018, he was not due for transfer as he had not completed his normal tenure of posting at Dhule. There is no dispute about the fact that the applicant made request to the respondents by filing an application for transferring him from Dhule. Dr. Vijay Kumar Gavit, MLA as well as Dr. Subhash Bhamre, State Minister for Defense, Government of India had recommended for his transfer at Nandurbar from Dhule. Admittedly, the proposal regarding transfer of the applicant from Dhule to Nandurbar was placed before the Civil Services Board. The Civil Services Board in its meeting dated 05-07-2018 decided not to recommend transfer of the applicant but the competent authority i.e. Hon'ble Minister for Agriculture decided to transfer the applicant from Dhule to Nandurbar and the said decision of the competent transferring authority was approved by Hon'ble the Chief Minister i.e. the next higher transferring authority. Accordingly, transfer order dated 27-07-2018 had been issued. In pursuance of the said order, the applicant joined his new posting at Nandurbar on 30-07-2018.

9. Admittedly, Jaikumar Rawal, Minister for EGS & Tourism by his letter dated 27-06-2018 requested the competent authority i.e. Minister for Agriculture not to post the applicant in Nandurbar and Dhule Districts. Said letter was received to the concerned department on 02-08-2018. On the basis of said letter a fresh proposal regarding transfer of the applicant has been placed before the Civil Services Board and the competent authority decided to cancel his earlier transfer to Nandurbar and to repost him at Dhule as Project Director, ATMA. Accordingly, the impugned order has been issued by the respondents.

10. Learned Advocate for the applicant has submitted that the applicant has been transferred by order dated 27-07-2018 from Dhule to Nandurbar by competent transferring authority with the prior approval of the next higher transferring authority on administrative ground. He has submitted that accordingly the applicant has joined his new posting at Nandurbar on 30-07-2018 and started discharging his duties. He had hardly completed 3 weeks on the said post. He was not due for transfer but the respondents issued the impugned order dated 16-08-2018 and transferred the applicant from Nandurbar to Dhule as

Project Director, ATMA by cancelling the earlier transfer order dated 27-07-2018. He has submitted that the impugned order is in contravention of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act. No exceptional circumstances or special reasons have been mentioned while transferring the applicant by the competent authority. He has submitted that no special case for transfer of the applicant has been made out. He has submitted that the impugned order is mid-term and mid-tenure and the respondents had not followed the mandatory provisions of Section 4(4)(ii) and 4(5) of the Transfer. Therefore, the order is illegal and arbitrary.

11. Learned Advocate for the applicant has further submitted that the earlier order dated 27-07-2018 transferring the applicant from Dhule to Nandurbar has been implemented, and therefore, no question of cancelling the said order arise but the respondents have wrongly cancelled his earlier transfer order dated 27-07-2018. Therefore, he prayed to quash and set aside the impugned order.

12. Learned Advocate for the applicant has submitted that the entire service record of the applicant was available

with the competent authority and after perusal of the same the competent authority had decided to transfer the applicant from Dhule to Nandurbar and accordingly the transfer order dated 27-07-2018 had been issued. There was no just ground for transferring the applicant and posting him at Dhule but the competent authority without following the provisions of the Transfer Act issued the impugned transfer order on the basis of letter of Dr. Jaikumar Rawal, Minister for EGS & Tourism. Therefore, the said order is illegal and he had prayed to quash and set aside the same by allowing the O.A.

13. He has further argued that both the posts of District Superintending Agriculture Officer at Nandurbar and Project Director, ATMA, Dhule are executive posts, and therefore, the contention of the respondents that the applicant has been transferred on non-executive post at Dhule cannot be considered. Therefore, he has prayed to allow the O.A. and also prayed to quash and set aside the said order.

14. Learned P.O. has submitted that initially the applicant has been transferred from Dhule to Nandurbar on his request and on recommendations of MLA and Minister.

At the time of general transfer of 2108, applicant was not due for transfer. Four departmental enquiries are pending against him regarding irregularities committed by him in Dhule and Nandurbar Districts. Therefore, Civil Services Board in its meeting dated 05-07-2018 decided not to recommend name of the applicant for transfer but the competent authority i.e. Hon'ble Minister in charge decided to transfer the applicant and the said decision was approved by Hon'ble the Chief Minister. She has submitted that at that time letter dated 27-06-2018 sent by Shri Jaikumar Rawal, Minister for EGS & Tourism was not received to the department. It was received by the department on 02-08-2018 and thereafter it was placed before the competent transferring authority along with the proposal and recommendation of the Civil Services Board to take appropriate decision. The competent authority i.e. the Hon'ble Minister in charge verified the record of the applicant and decided to cancel the earlier transfer order dated 27-07-2018 and to repost the applicant at Dhule. Said decision of the competent authority has been approved by Hon'ble the Chief Minister and thereafter the impugned order has been issued. She has submitted that as earlier order dated 27-07-2018 had been implemented, the

impugned order has been issued. She has submitted that the reasons had been recorded by the competent transferring authority for transfer of the applicant and the applicant has been transferred on administrative ground with the prior approval of the next higher transferring authority. She has submitted that the mandatory provisions of Section 4(4)(ii) and 4(5) of the Transfer Act had been followed by the competent authority while making transfer of the applicant and there is no illegality in the impugned order. Therefore, she has prayed to dismiss the O.A.

15. On perusal of the record, it reveals that the applicant was serving at Dhule since 05-12-2015. At the time of general transfers of 2018 he was not due for transfer as he had not completed his normal tenure of posting. He had completed 2 years and 6 months on that post at that time. The applicant made request with the respondents for transferring him from Dhule to Nandurbar. Dr. Vijay Kumar Gavit, MLA and Dr. Subhash Bhamre, State Minister for Defense, Government of India recommended his transfer. On the basis of his application and recommendations, department prepared proposal in that

regard and placed it before the Civil Services Board. The Civil Services Board in its meeting dated 05-07-2018 decided not to recommend the transfer of the applicant from Dhule to Nandurbar as four departmental enquiries were pending against him and as he was not due for transfer but the competent transferring authority decided to transfer the applicant to Nandurbar and the said decision was approved by Hon'ble the Chief Minister. Accordingly, the applicant has been transferred to Nandurbar by order dated 27-07-2018. The applicant joined his new posting at Nandurbar on 30-07-2018. Thereafter, the department received the letter dated 27-06-2018 of Shri Jaikumar Rawal, Minister EGS & Tourism, Government of Maharashtra on 02-08-2018 in which it was requested that the applicant should not be transferred and posted in Dhule and Nandurbar Districts because of the complaints of severe nature filed against him. On the basis of said letter, department prepared another proposal for cancellation of transfer of the applicant and for reposting him at Dhule. Said proposal was placed before the Civil Services Board and thereafter before the Hon'ble Minister in charge i.e. the competent transferring authority. The competent transferring

authority after perusing the service record of the applicant decided to cancel earlier transfer order of the applicant dated 27-07-2018 and to repost the applicant as Project Director, ATMA, Dhule. Said decision of the competent authority has been approved by the next higher transferring authority i.e. Hon'ble the Chief Minister and accordingly the impugned order of transfer has been issued.

16. On perusal of the order passed by the competent authority, it is clear that the competent authority has considered the service record of the applicant and decided to transfer the applicant from Nandurbar to Dhule. The Civil Services Board has specifically mentioned that four department enquiries are pending against the applicant and there are serious allegations of irregularities committed by the applicant. Therefore, the competent authority decided to transfer the applicant from Nandurbar to Dhule on administrative ground. Next higher transferring authority i.e. Hon'ble the Chief Minister approved proposal of the competent transferring authority.

17. Documents on record show that the applicant got transferred himself from Dhule to Nandurbar by using political influence though he was not due for transfer. At

the time of his earlier transfer from Dhule to Nandurbar, letter dated 27-06-2018 of the Hon'ble Minister for EGS & Tourism, Government of Maharashtra was not before the department but when the said letter received by the department, the competent authority considered the proposal and after considering the nature of the allegations and the pending enquiries against the applicant decided to transfer the applicant from Nandurbar to Dhule. The competent authority has recorded reasons for the transfer of the applicant. Exceptional circumstances have been made out by the respondents for transfer of the applicant.

18. Considering the facts and circumstances on record, in my view, the respondents have made out a special case for transfer of the applicant and after recording reasons effected his transfer by cancelling earlier transfer order on account of administrative grounds. Respondents have followed the mandatory provisions of Section 4(4)(ii) and 4(5) of the Transfer Act. In view of these facts, in my view, there is no illegality in the impugned order as it is in accordance with the provisions of the Transfer Act.

19. The competent authority has rightly transferred the applicant to Dhule and posted him as Project Director,

ATMA, Dhule, which is a non-executive post from the executive post of District Superintending Agriculture Officer, Nandurbar considering the serious allegations against him and also considering the charges levelled against him in the departmental enquiries.

20. Therefore, in my view, the impugned order is in accordance with the provisions of the Transfer Act and there is no illegality in the same. Hence, no interference in the impugned order is called for. There is no merit in the O.A. Consequently, O.A. deserves to be dismissed.

21. In view of the discussion in the foregoing paragraphs, O.A. stands dismissed without any order as to costs.

**(B. P. PATIL)**  
**MEMBER (J)**

**Place : Aurangabad**  
**Date : 14-03-2019.**

***FARAD CONTINUATION SHEET***  
**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**  
**AURANGABAD BENCH, AURANGABAD**

**ORIGINAL APPLICATION NO.623/2018**  
**(Baban s/o. Nathu Patil V/s. State of Maharashtra & Ors.)**

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**OFFICE ORDER**

**TRIBUNAL'S ORDERS**  
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**CORAM : B. P. PATIL, MEMBER (J)**

**DATE : 14.03.2019**

**ORAL ORDER :**

Heard Shri A.S.Deshmukh learned Advocate for the applicant and Smt. Priya Bharaswadkar learned Presenting Officer for respondents.

2. Today, after the judgment is pronounced, learned Advocate for the applicant has submitted that in view of the interim relief granted by the Tribunal the applicant is working on the previous post before the transfer order was passed. He has submitted that the applicant intends to challenge the order of the Tribunal before the Hon'ble High Court. Therefore, he has prayed to extend the interim relief for 2 weeks in order to facilitate the applicant to approach the Hon'ble High Court.

3. Learned P.O. has submitted that as the O.A. is already dismissed on merit, interim relief granted to the applicant cannot be extended.

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O.A.NO.623/2018

4. Taking into consideration the submissions advanced by the learned Advocate for the applicant as well as the learned P.O., in my view, it is just and proper to direct the parties to maintain status quo as on today till Tuesday i.e. 19-03-2019.

**MEMBER (J)**

YUK ORAL ORDER 14-03-2019 bpp