

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 930 OF 2024

DISTRICT : PARBHANI

Sunil Panditrao Zinge,)
Age : 35 years, Occu. : Govt. Service)
Presently working as Talathi, Sajja-Murumba,))
Tq. & Dist. Parbhani.) **APPLICANT**

V E R S U S

01. **The Divisional Commissioner,**)
Aurangabad Division, Aurangabad.)
02. **Deputy Collector,**)
Parbhani, Dist. Parbhani.)
03. **Dipak Tupsamindre,**)
Age : Major, Occu: Govt. Service)
Presently working as Talathi, Sajja-Gaur,))
Ta. Purna, Dist. Parbhani.) ... **RESPONDENTS**

APPEARANCE : Shri Jiwan Patil, Counsel for the Applicant.

: Shri D.M. Hange, Presenting Officer for
respondent authorities.

: None present for respondent No. 3, though
duly served.

CORAM : **Shri A.N. Karmarkar, Member (J)**

RESERVED ON : **05.03.2025**

PRONOUNCED ON : **20.03.2025**

O R D E R

1. By filing the present Original Application, the applicant has prayed for declaration that the impugned transfer

order dated 15.08.2024 is in violation of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short “the Transfer Act 2005”) and has also prayed for quashing and setting aside the said order.

2. According to the applicant, he came to be transferred from the post of Talathi Bhogaon to Murumba vide order dated 27.08.2021 on request. Detailed procedure is laid down in respect of effecting transfers by counseling of the employee in G.R. dated 09.04.2018. As per the order of Government dated 12.08.2024, the orders of Awwal Karkoon, Circle Officer, Stenographer, Talathi etc. are to be made by the Divisional Commissioner of the respective divisions. The applicant has raised ground that the transfer of the applicant is mid-term and mid-tenure. The impugned order of the applicant is not only inconsistent with the order of State Government dated 12.08.2024, but also contrary to the provisions of Transfer Act, 2005. Normal Tenure of the employee as per proviso to Section 3 of the Transfer Act, 2005 for Group-C Non-secretariat cadre is of two full tenures of three years each. The impugned order of transfer does not reflect any reason for transfer. Respondent No.2 has not published the list of vacant post. The respondent

No. 2 has issued transfers of 51 Talathis transferring without giving any reasons. So the said order is passed in mechanical manner.

3. Respondent Nos. 1 and 2 have filed their affidavit in reply. According to them, the order of transfer dated 27.08.2021 is passed by the Sub-Divisional Officer, Parbhani. The applicant was initially appointed as Talathi in Sub-Division Office, Parbhani. The applicant was allotted Sajja Dhasadi, Tq. Parbhani on 16.10.2012. Then he was transferred at Daithana, Bhogaon, Murumba, which were under Tahsil Office, Parbhani and the concerned Tahsildar is the controlling officer / Drawing and Disbursing Officer. As per G.R. dated 18.09.2023 issued by the Revenue and Forest Department, the establishment of Talathi Cadre (Group-C) is under the District Collector in the district. So the appointing authority for the said post of Talathi is District Collector and the person appointed on the post of Talathi is liable for transfer within district.

In view of Section 3 of the Transfer Act, 2005, respondent has called information vide letter dated 12.02.2024 from all Deputy Collectors, Sub-Divisional Officer Parbhani, Selu, Gangakhed, Pathari and from all Tahsildars within Parbhani

district. The said information was in respect of the details of employees, who have completed three years of service on the same post and six years in the same office. These respondents have published list of employees working in the cadre of Naib Tahsildar, Awwal Karkoon, Circle Officer, Revenue Assistant, Talathi etc. who have completed three years' service on the same post and completed six years' service within the same office. The present applicant has submitted his preferences for transfer within Parbhani, Purna, Manwat, Selu, Sonpeth, Pathari and Gangakhed Taluka. Meeting of Civil Services Board was held on 12.08.2024. The CSB (Civil Services Board) forwarded recommendations to the Collector, Parbhani for transfer of eligible employees. The Divisional Commissioner has given approval for proposal of transfer vide letter dated 15.08.2024. According to these respondents, the applicant was working on the post of Talathi since 16.10.2012 to 31.05.2024 within Parbhani Taluka. As such, the applicant has completed near about two tenures i.e. 12 years within Parbhani Taluka and Parbhani Sub-Division. So the applicant has no right to challenge the impugned order. The applicant is transferred from Talathi Sajja Murumba, Tq. Parbhani to Talathi Sajja Pachalegaon, Tq. Jintur.

According to these respondents, Sajja means a group of villages in a Taluka and concerned Tahsildar is the controlling officer, as well as, Drawing and Disbursing Officer for the concerned Talathi appointed / working on Sajja. So the Sujja is not independent office for Talathi, but it is work place allotted to employees. It is also reiterated that one Dipak Tupsamindre is already joined as Talathi Sajja Murumba, Tahsil Office, Parbhani and the present applicant is also joined as Talathi Sajja Pachalegaon, Tahsil Office, Jintur. Thus the respondents have prayed for dismissal of present Original Application.

4. I have heard Shri Jiwan Patil, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities. Both the parties have submitted as per their respective contentions.

5. Learned counsel for the applicant has submitted that the tenure on the "Post" of Talathi is to be considered. The applicant has not served for three years on the post at Murumba. It is submitted that this order can be said to be mid-term or mid-tenure. He has submitted that in view of order of State Government dated 12.08.2024, powers are with the Divisional Commissioner to transfer the applicant.

On the other hand, learned Presenting Officer has submitted that the present applicant is Class-III non-secretariat employee. So far as the contention of the applicant that applicant has not served for two tenures of three years each is concerned, learned Presenting Officer has relied on the decision of the Hon'ble High Court of Bombay, Bench at Aurangabad in a case of **Santosh Nandalal Dalal Vs. State of Maharashtra and Ors. in W.P. No. 8813/2014**. According to learned P.O., the applicant is serving since October, 2012 on the post of Talathi within Parbhani Taluka. So he has completed two tenures. According to him, the detailed information as per G.R. dated 09.04.2018 was called by the Collector and the present applicant has given options for transfer.

6. During the course of arguments in reply learned counsel for the applicant has relied on the judgment of Principal Seat of this Tribunal at Mumbai in a case of **Smt. Rachita Subrat Ratho Vs. The State of Maharashtra in O.A. No. 1143/2022, dated 06.04.2023** and the judgment of Hon'ble Supreme Court in a case of **B.A. Linga Reddy and Others Vs. Karnataka State Transport Authority and Others, (2015) 4 Supreme Court Cases 515** and submitted that the impugned order of transfer can be said to be arbitrary.

On the other hand, learned Presenting Officer has relied on the decision in a case of **State of Maharashtra Vs. Ashok Ramchandra Kore and Another, 2009 (4) Mh.L.J. 163.**

7. It is undisputed fact that the applicant was initially appointed as Talathi in Sub-Division Office, Parbhani and subsequently allotted Sajja Dhasadi, Daithana, Bhogaon and Murumba and according to the respondents, all these Sajjas are under the control of Tahsildar Parbhani. After rehearing, learned Presenting Officer has submitted that the impugned transfer order is issued under Section 4(4)(ii) of the Transfer Act, 2005 and this transfer is not the general transfer. On perusal of the impugned order, it is clear that this is a mid-term transfer of the applicant. Section 4(4)(ii) of the Transfer Act, 2005 says that where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons transfer may be made after recording the same in writing and with the prior approval of the next higher authority.

It is specifically contended by the applicant in the present Original Application that he joined the services in the cadre of Talathi in Parbhani District on the establishment of Collector, Parbhani. According to learned counsel for the

applicant, tenure on the post of Talathi should have been considered by the respondents. Learned counsel has invited my attention to Annexure R-2 (page No. 63 of paper book), which shows that the information of the employees who have completed three years on the post or six years in office was sought. He has invited my attention to page No. 72 of paper book, which shows that the word 'Post' is used on which two tenures are over. He has invited my attention to Annexure-B (page no. 18 of paper book) dated 27.08.2021, which shows that he was transferred on request at Sajja Murumba since August, 2021 and has not completed his tenure of three years.

On the other hand, respondents have contended that the applicant is working on the post of Talathi since 16.10.2012 to 31.05.2024 within Parbhani Taluka and as such, he has completed about 12 years of his service in Parbhani Taluka and Parbhani Sub-Division. The respondents have also contended that Sajja means a group of villages in a Taluka and concerned Tahsildar is the controlling officer or Drawing and Disbursing Officer for the concerned Talathi. As such, the Sujja is not independent office for Talathi, but it is work place allotted to employees. The information furnished by the applicant in Annexure A-4 (page No. 77 of paper book) also shows that the

applicant is working as Talathi in Parbhani Tahsil Office since 2012 till 06.05.2024. So far as the contentions of the respondents are concerned, there is no rejoinder or counter affidavit by the applicant. Learned Presenting Officer has relied on the decision in a case of **Santosh Nandalal Dalal Vs. State of Maharashtra and Ors. in W.P. No. 8813/2014** and particularly para Nos. 13 to 16, which are as under :-

“13) The provision of section 4(5) shows that even before completion of the tenure of the post, a government servant can be transferred by the competent authority but the authority is expected to show that it is a special case and reasons need to be recorded for making such transfer. Prior approval of immediate superior authority of the transferring authority needs to be obtained for such transfer. In section 6 of the Act various competent authorities with their subordinations are mentioned.

14) The proviso of section 4(2) shows that the competent authority is expected to prepare list of government servants who will be due for transfer in the month of April or May of the year and that list needs to be prepared in the month of January of that year. It is not disputed that in the present case that such list was prepared and both, present petitioner and respondent No.3, were shown in the said list. Provision of section 4(4) of the Act shows that transfers of government servants shall ordinarily be made only once in a year and they are to be made in the month of April or May. Such transfers can be called as 'annual general transfers'. The provision of section 4(4)(ii) shows that, after the annual general transfers if competent authority is satisfied that transfer is essential for special reasons then after recording reasons in writing and getting prior approval of the next higher authority such transfers, mid-term transfers, can be effected.

15) In the present matter admittedly 69 Inspectors were due for transfer in the year 2013. Out of these 69 Inspectors, only 22 Inspectors were transferred in the month of May. There is the record to show that the Minister of the concerned Department interfered and asked to effect transfers of remaining 47 Inspectors also. The reason is given by the Minister that it was

not advisable to allow the Inspectors to work on the same post, at the same station for the period of 4 years as it was Enforcement Department. There is correspondence showing that the Minister expressed that such orders can be made in view of the provisions of Section 4(5) of the Act. In the order issued by the Chief Controller, there is mention that the order dated 5-9-2013 was issued under section 4(5) of the Act. Though reason is not there in the orders issued by the Chief Controller, the reason is there in the order made by the Minister of the Department. In the present matter the order may fall under section 4(4) (ii) of the Act but the procedure and intention behind this provision and section 4(5) are the same.

16) In aforesaid sections necessity of compulsory transfer of a public servant can be found. The Court/ Tribunal is not expected to act as an appellate authority in such cases. Possibility of creation of vested interests by public servant at a particular station or on the post when he is allowed to work for longer period needs to be kept in mind and that can be a good reason for mid term transfer. If transfers are made on such grounds it needs to be presumed that the transfers are made in public interests.”

So it is held by the Hon'ble High Court that in view of provision of section 4(5) a Government servant can be transferred by the competent authority even before completion of the tenure of the post, but it has to record reasons.

8. Learned counsel for the applicant has invited my attention to the minutes of Civil Services Board meeting, in which only reason of administrative ground is mentioned in it. It appears from document at Annexure R-2 (page no. 63 of paper book) that the Collector, Parbhani has sought information from Sub-Divisional Officer and Tahsildar in Parbhani District to inform details of employees, who have completed their tenure. It

appears that the applicant has already forwarded information along with options. So it can be said that the applicant was aware that he has completed his tenure. Even if it is accepted for a moment that the applicant has not completed tenure of three years, then it is to be seen as to whether there are reasons for transfer. For that purpose minutes of meeting of Civil Services Board are material.

The minutes of Civil Services Board has particularly mentioned that due to Code of Conduct pertaining to Elections, the general transfers are not effected and so the process of transfer under Section 4(4) of Transfer Act, 2005 is to be conducted. Another ground is mentioned that the employees, who have served for maximum period, are to be considered. It is apparent from the chart placed on record by respondents that the present applicant has served for more than 11 years in Tahsil Parbhani. So by referring the minutes of Civil Services Board, the applicant was transferred on administrative ground.

9. By impugned transfer order dated 15.08.2024, there were 51 Talathis were transferred on administrative ground. According to learned counsel for the applicant, except administrative reason, no other reasons in detail are mentioned

in the transfer order. However, it cannot be ignored that there is specific mention in minutes of Civil Services Board that since there were no general transfers in view of the Code of Conduct pertaining to Elections, the employees who have completed maximum period are to be transferred. Learned Presenting Officer seems to have rightly relied on para No. 16 of the judgment in a case of **Santosh Nandalal Dalal** (cited supra). Considering the tenure of the applicant in Parbhani Tahsil, it can be said that the transfer was in public interest.

10. Learned counsel for the applicant has submitted about arbitrariness on the part of respondents and referred the judgment of Hon'ble Supreme Court in a case of **B.A. Linga Reddy and Others** (cited supra). It is already mentioned that there are reasons mentioned in the minutes of Civil Services Board meeting. So this judgment is not helpful to the applicant. He has also relied on the judgment of this Tribunal in a case of **Smt. Rachita Subrat Ratho** (cited supra). In that case only on the letter forwarded by Principal, the applicant is transferred without bothering as to whether grievance raised by applicant could be the ground for such mid-term transfer. So the facts in that matter appear to be different and cannot be made applicable to the case of the applicant.

11. In view of Section 4(5) of the Transfer Act, 2005, the competent authority may, in special cases after recording reasons in writing and with the prior approval of the immediately superior transferring authority mentioned in the table of Section 6, transfer a Government servant before completion of his tenure of post. Learned P.O. has invited my attention to G.R. dated 12.08.2024 (Annexure D, page No. 41 of paper book), from which it appears that the powers under Section 6 of the Transfer Act, 2005 were given to the Divisional Commissioner, so far as the employees like Talathi and Revenue Assistant are concerned. The impugned order shows that the Divisional Commissioner has given approval to the transfers of the applicant.

The applicant has failed to show as to how there was arbitrariness on the part of respondents to transfer the present applicant, particularly when he has forwarded his detailed information along with his options. The order of transfer is pertaining to about 51 Talathis. So it is difficult to accept that there was any arbitrariness or mala fides on the part of respondents. Therefore, the learned Presenting Officer has relied on the decision of Hon'ble High Court in a case of **V.B. Gadekar Vs. Maharashtra Housing and Area Development Authority (MHADA) & Anr., 2008 (1) ALL MR 45**, in which it is held that in

absence of any patent mala fides or arbitrariness a decision taken for administrative reasons cannot be looked into by Court like an appellate authority.

12. For the reasons discussed in foregoing paragraphs, the present Original Application deserves to be dismissed. Hence, the following order :-

ORDER

The Original Application is dismissed. There shall be no order as to costs.

(A.N. Karmarkar)
Member (J)

PLACE : Aurangabad
DATE : 20.03.2025