

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 1429 OF 2024

DISTRICT:- JALGAON

Mr. Pramod Bhaskar More,)
Age:- 54 Years, Occ. Service as Naib)
Tahsildar (Revenue) Tahsil Office, Pachora,))
R/o:- Ashirwad, Dream City, Pachora,)
Tq. Pachora, District Jalgaon.) **...APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Principal Secretary,)
Revenue and Forest Department,)
Mantralaya Mumbai-400032.)
- 2. The Additional Commissioner,**)
Nashik Division, Nashik)
- 3. The Collector, Jalgaon,**)
District Jalgaon.) **...RESPONDENTS**

APPEARANCE : Shri S.R. Barlinge, learned counsel for
the applicant.

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

CORAM : **SHRI A.N. KARMARKAR, MEMBER (J)**

RESERVED ON : **24.03.2025.**

PRONOUNCED ON : **01.04.2025.**

O R D E R

By filing this Original Application, the applicant has
prayed for setting aside the impugned order dated 29.09.2024

issued by respondent No.2, thereby transferring the applicant from the post of Naib Tahsildar (Revenue), Tahsil Office Nandgaon, District Nashik to the post of Naib Tahsildar (Revenue), Tahsil Office Pachora, District Jalgaon. He has also prayed for direction to the respondents to consider the applicant for transfer to the post of Naib Tahsildar (Revenue) Nandgaon, District Nashik.

2. According to this applicant, he is transferred under misconception that directions of the Election Commission of India (for short 'ECI') requires that the Naib Tahsildar is to be transferred as Assistant Election Returning Officer (in short 'AERO'). The applicant has also informed vide letter dated 13.08.2024 to the Collector, Nashik to delete his name in the proposal submitted by him for transfer. He has submitted the representation dated 19.08.2024. Earlier he was transferred from the post of Supply Inspector Officer, Malegaon to Naib Tahsildar (Revenue) Nandgaon vide order dated 09.08.2021. Though this applicant has joined to the post of Naib Tahsildar (Revenue), Tahsil Office, Pachora, he has filed this application with a request to retransfer him to Nandgaon after election duty is over. He has challenged the impugned order on the ground of misconception that directions of E.C.I. require his transfer.

According to the applicant for the purpose of mid-term transfer, certain procedure is to be followed. But the respondent has not followed the same.

3. The respondent No. 2 has filed his affidavit in reply (page No. 38). This respondent has denied the contention about alleged misconception that the directions of ECI require that the Naib Tahsildar is to be transferred as A.E.R.O. According to this respondent as per guidelines of E.C.I. dated 31.12.2023, this applicant is transferred for conducting free, fair and transparent Election process as the post on which the present applicant transferred is notified post as per the notification of ECI. So it can be said that the transfer is on administrative ground. Another contention is that there is no provision or guideline of E.C.I. relating to re-transfer of employee/officer who is transferred for the purpose of election.

4. The post from which the applicant was transferred by impugned order is notified as per the notification of ECI, due to which this impugned order is passed. Necessary procedure is followed by this respondent for his transfer and the transfer of some other officers. The Civil Services Board was established and on the basis of their recommendation, approval was also

taken from the Competent Authority before passing of impugned order. There is no malafide intention to transfer the applicant. There is no provision for retransfer of the applicant on earlier post.

5. The applicant has not filed any rejoinder affidavit.

6. I have heard Shri S.R. Barlinge, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondents. Both the parties have submitted as per their respective contentions.

7. According to learned counsel for the applicant, he has challenged the impugned order only on the ground that though he has not completed his tenure, he was transferred without adopting necessary procedure. Earlier the applicant was transferred from the post of Supply Inspection Officer, Malegaon to the post of Naib Tahsildar (Revenue), Nandgaon as per order dated 09.08.2021.

According to respondents, the post on which the applicant was working is notified post as per the notification of Election Commission of India. This fact is not disputed by the applicant by filing rejoinder affidavit. The applicant has placed

on record his representation dated 13.08.2024 (page No. 15 of paper book) and he has given reference of Notification of Election commission of India dated 22.11.2021. In the said representation, the applicant himself has contended by referring the said notification that the said post of Naib Tahsildar, Nandgaon is notified post as Additional Assistant Voter Registration Officer.

Clause No. 3 of Guidelines of Election Commission of India dated 31.07.2024 shows that the Commission has decided that no officer concerned directly with elections shall be allowed to continue in the present district (revenue district) of posting (i) if she / he is posted in her/ his home district (ii) if she / he has completed three years in that district during last four years or would be completing three years on or before 30.11.2024 for Maharashtra. So as per the earlier transfer order dated 09.08.2021, it can be said that the applicant was completing three years before 30.11.2024.

8. Learned counsel for the applicant has submitted that one of the employees was transferred along with the present applicant vide impugned order dated 29.09.2024 had filed O.A. No. 1210/2024 before this Tribunal. The said O.A. was allowed.

According to him, in para No. 14 of the said judgment, it is discussed that the reason of election is also not sustainable and the applicant does not fall in those guidelines. The case of the present applicant is not covered under Section 4(4)(ii) and 4(5) of the Transfer Act, 2005. The applicant has also submitted in his application that now the results are declared. So he deserves to be re-transferred to Nandgaon.

Learned Presenting Officer submits that the present applicant was transferred on the cause of free, fair and transparent Election process, as the post on which the applicant was transferred is notified post according to the notification of Election Commission of India. He has also invited my attention to the minutes of Civil Services Board meeting by placing it on record, which shows the grounds for transfer of the present applicant. According to him, the applicant cannot be reposted as contended in the present Original Application in view of the recent judgment of Hon'ble High Court of Bombay in a case of **the State of Maharashtra and Ors. Vs. Pramila Vitthal Kawale & Others in W.P. No. 11740/2024 and other connected W.Ps.**

9. The impugned order shows that there is reference of communication of Election Commission of India, letter of

Revenue and Forest Department, Transfer Act, 2005 and minutes of Civil Services Board meeting. This order shows that the powers were given to the Divisional Commissioner for transfer of the officers, who were working on the post of Naib Tahsildar in view of the Notification of Election Commission of India. Same fact is mentioned by the respondents in para No. 5 of their affidavit in reply. The minutes of Civil Services Board also shows that as per the letter of Election Commission of India dated 31.07.2024, it is necessary to transfer the officers, who are working on the post of Assistant Election Returning Officer (AERO). So the approval is given by the competent authority for transfer of such officer considering the Assembly Election 2024.

The Civil Services Board seems to have taken into consideration the criteria as fixed by the Election Commission of India regarding officers, who are to be transfer and other details etc. The impugned order shows that the powers are given to the Divisional Commissioner for approval to the recommendation regarding transfer of the officers working on the post of Naib Tahsildar. So it is apparent that the respondents have adopted the necessary procedure for mid-term transfer of the present applicant. It is clear from the impugned order and minutes of Civil Services Board meeting that the impugned order was

passed due to administrative exigencies and public interest and also for free, fair and transparent Election.

10. The applicant has also prayed for direction to re-transfer as Naib Tahsildar, Nandgaon. According to learned counsel for the applicant, the said post is still vacant. In connected matter O.A. No. 1278/2024 one of the grounds was that O.As. were filed before Principal Seat of this Tribunal at Mumbai and vide order dated 19.07.2024 allowed the said O.As. According to the said applicant, the Tribunal has directed the authority concerned to reconsider the transfer made at the time of Parliamentary Election. On that basis the applicant has prayed for his retransfer at earlier place. It appears that the said order dated 19.07.2024 was challenged before the Hon'ble High Court of Bombay in W.P. No. 11740/2024 along with other W.Ps. Learned P.O. has also relied on this judgment during the arguments. In the said matter, order of Tribunal dated 19.07.2024 is quashed and set aside. It is necessary to reproduce para No. 10 of the said judgment, which is as under :-

“10] Perusal of the minutes of the PEB dated 25/02/2024 indicates that reference has been made to the Circular dated 21/12/2023 issued by the ECI as well as the communication dated 22/02/2024 issued by the State Election Commission. On that basis requisite information from the concerned superior police authorities was called. After considering

the Circular dated 21/12/2023 and communication dated 22/02/2024 referred to above, the power conferred by Section 22-N(2) of the Act of 1951 was invoked and seventy three officers came to be transferred. Since the transfers in question have been effected only in view of the directives of the ECI, it cannot be said that there is absence of any public interest or absence of any exceptional case in transferring the concerned officers. The Circular dated 21/12/2023 issued by the ECI being binding on the State Government, it cannot be said that the PEB by transferring the concerned officers after taking recourse to the said Circular was not entitled to do so. Once it is found that the directives of the ECI were binding on the State Government, steps taken to comply with the same in public interest would be sufficient to invoke the power conferred by Section 22-N(2) of the Act of 1951 and effect transfers accordingly. On that count we do not find that any fault can be found with the orders of transfer.”

In view of this fact and observations of the Hon'ble High Court in the above referred judgment, it can be said that the transfer of the applicant was effected in view of the directions of Election Commission of India and it cannot be said that there was absence of public interest or absence of administrative exigency. Secondly, the impugned order does not indicate that it was to remain in effect only till such time the elections were to conclude. So this order of transfer has to be treated as order of mid-term transfer not limited for any particular period.

11. Learned counsel for the applicant has also referred the judgment of this Tribunal in O.A. No. 1210/2024 of this Tribunal. According to learned counsel for the applicant, the

applicant in that matter was also transferred along with the present applicant. The said judgment does not reveal any reference of placing on record the copy of minutes of Civil Services Board meeting. In that matter it was discussed that Government has come with a stand that the transfer of that applicant was not restricted to the purpose of election. Even it was submitted by learned counsel for the applicant in that matter that initial proposal dated 27.09.2024 sent by the State Government regarding the transfer does not bear the name of applicant as proposed transferry. The applicant's ensuing retirement in proximity in that matter was also considered by the Tribunal. Hence, the said judgment cannot be said to be of much help to the applicant.

12. In view of the discussions in foregoing paragraphs, the present Original Application deserves to be dismissed. Hence, the following order :-

ORDER

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

(A.N. Karmarkar)
Member (J)

PLACE : Aurangabad

DATE : 01.04.2025

KPB S.B. O.A. No. 1429 of 2024 ANK Transfer