

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO.1042/2024 (S.B.)**  
**WITH**  
**CIVIL APPLICATION NO.504/2024**

Rajesh Samptrao Jankar,  
Aged 57 years, Occ. Service,  
R/o Amravati, Distt. Amravati.

... **APPLICANT**

**// V E R S U S //**

- 1] The State of Maharashtra,  
Through its Secretary,  
Department of Agriculture,  
Mantralaya, Mumbai.
- 2] The Commissioner, Agriculture,  
Office of Commissionerate for Agriculture,  
Maharashtra State, Pune.
- 3] The Divisional Joint Director of Agriculture,  
Amravati Region, Amravati.
- 4] Nitin Shrikisanrao Lokhande, Technical Officer,  
Agriculture Department, Akola.

... **RESPONDENTS**

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**Shri N.R. Saboo, learned counsel for the Applicant.**

**Shri M.I. Khan, learned P.O. for the Respondent Nos.1 to 3.**

**Shri J.M. Gandhi, learned counsel for Respondent No.4.**

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**Coram    :-    Hon'ble Shri Justice M. G. Giratkar,**  
**Vice Chairman.**

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**J U D G M E N T****Judgment is reserved on 02/01/2025.****Judgment is pronounced on 07/01/2025.**

Heard Shri N.R. Saboo, learned counsel for the Applicant, Shri M.I. Khan, learned P.O. for the Respondent Nos.1 to 3 and Shri J.M. Gandhi, learned counsel for Respondent No.4.

2. Applicant has challenged the transfer order dated 14/10/2024. The case of the applicant in short is as under :-

Applicant has been working in the Respondent Department since 1992. Initially, applicant worked as an Agricultural Officer and was posted at various places, including Barshi Sub-Division, Solapur. After the applicant was promoted in the cadre of Technical Officer in September 2009, he was posted at Dahiwadi in Raidgad District and thereafter at Ahmadnagar in the month of December, 2018. Applicant joined in Amravati on 25/04/2022 as per the transfer order dated 30/08/2021 issued by Respondent No.1. Applicant was transferred at Amravati in place of Narendra Barapatre by an order dated 30/08/2021. Narendra Barapatre filed O.A. No.680/2021 challenging his transfer order dated 09/08/2021. In view of the interim order in favour of

Narendra Barapatre, applicant was in hanging position. After repeated representations, applicant was not permitted to resume service either at Amravati or Ahmadnagar. It is only after the order dated 20/04/2022 passed by this Hon'ble Tribunal in O.A. No.680/2021, which rejected the O.A. filed by Narendra Barapatre. Applicant was permitted to join duty at Amravati on 25/04/2022. Thus, it is apparent that applicant has not completed his tenure at Amravati. On 10/04/2024, Respondent No.2 notified a list of Technical Officers as well as vacant posts for transfer. In the said list, neither the name of applicant nor the name of Respondent No.4 appears. Even in the list of vacant places, post occupied by applicant at Amravati was not notified. There is no reason to transfer the applicant from the post of Technical Officer (Quality Control) Amravati.

**3.** The name of Respondent No.4 was recommended by political leader i.e. MLA Sau. Shweta Mahale for transfer in place of applicant at Amravati. Applicant has submitted a representation on 26/08/2024, bringing to the notice of Respondent No.1 & 2 that he is due for retirement in the month of June, 2025 i.e. within 9

months. He also appraised the authority that he has not yet completed his tenure as Technical Officer (Quality Controller).

4. Respondent Nos.1 & 2 were well aware of the fact that applicant had not completed 3 years tenure as a Technical Officer (Quality Control), Amravati and also within a span of 9 months he was due for retirement. As per the proposal requesting the transfer of Respondent No.4, the office had already endorsed that, in the absence of vacancy in the Quality Control Branch at Amravati, such a request could not be accepted. Despite this, the Respondent No.1 transferred Respondent No.4 in place of applicant vide transfer order dated 11/10/2024. It is a mid-term transfer and therefore the applicant has filed the present O.A. for the following reliefs:-

*“9i) To quash and set aside impugned order of transfer of applicant as well as respondent No. 4. dated 14.10.24. annexed to the O.A. at Annexure-A-5 & 5(a).*

*ii) To allow the O.A. and direct the respondent to permit the applicant to complete his tenure as Technical Officer (Quality Control), Amravati.*

*10.iii) Pending disposal of O.A. stay effect and operation of impugned order of transfer of applicant as well as respondent No. 4, dated 14.10.24.”*

5. The respondents have filed their reply. Respondent No.4 has submitted that the applicant was transferred from one table to another within the same office and therefore it is not a transfer. The applicant has completed 3 years from the date of transfer order and he was due for a transfer. It is submitted that the O.A. itself is not maintainable because the posting of the applicant from one table to another does not amount to a transfer, hence, the O.A. is liable to be dismissed.

6. Respondent Nos.1 to 3 also submitted that the applicant was transferred to Amravati as per the transfer order dated 30/08/2021 in place of Narendra Barapatre. Narendra Barapatre challenged the said transfer order before this Tribunal in O.A. No.680/2021, therefore, the applicant could not join on the said post. Applicant joined in Amravati on 25/04/2022. Therefore, from the date of the transfer order, it is clear that applicant was due for transfer. It is further submitted that applicant was transferred from one table to another within the same office and therefore it is not a transfer.

7. During the course of submission, learned Advocate for applicant Shri N.R. Saboo pointed out the Government Resolution

dated 11/02/2015. He has pointed out the definition of 'Transfer' and 'Posting' as defined under Section 2 (g) & (i) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "The Transfers Act, 2005").

8. Learned Advocate for applicant Shri N.R. Saboo submitted that Respondent No.4 was due for transfer and was transferred on the recommendation of MLA Sau. Shweta Mahale as per the letter dated 19/06/2024. There was no any administrative exigency and the transfer was not in the public interest, therefore, there is no compliance of Section 4 (5) of the Transfers Act, 2005. He has also submitted that this Tribunal has granted stay to the impugned transfer order on 16<sup>th</sup> October, 2024. The Respondent Nos.1 to 3 have complied the order of this Tribunal. The applicant is still working on the same post. The impugned transfer order is malafide, as it was made based on the recommendation of MLA Sau. Shweta Mahale of Chikhali. Applicant was not due for transfer, but he was transferred only because of the letter / recommendation of MLA Sau. Shweta Mahale to accommodate respondent No.4. Learned Advocate for

applicant has pointed out the Judgment of the Hon'ble Bombay High Court in Writ Petition No.8987/2018 in the case of ***Balasaheb Vitthalrao Tidke VS State of Maharashtra and Another***. He has submitted that the direction was given by the Hon'ble High Court not to make any transfer under the influence of political persons. He has also pointed out the Judgment of the Maharashtra Administrative Tribunal, Principal Bench at Mumbai in O.A. No.664/2020 in the case of ***Shri Chandrakant Jagannath Jadhav VS Commissioner of Police and Others*** and the Judgment of the Maharashtra Administrative Tribunal, Bench at Nagpur in O.A. No.218/2016 in the case of ***Pratiksha D/o Mahadeorao Damke VS The State of Maharashtra and Others***. As per his submission, transfer from one post to another amounts to a transfer, even though it is in the same premises. At last, submitted that the impugned transfer order is malafide, hence, liable to be quashed and set aside.

9. Heard learned P.O. Shri M.I. Khan. He has submitted that the applicant was transferred to Amravati as per the transfer order dated 30/08/2021. However, he could not join the said post in Amravati because of filing of O.A. No.680/2021 by Narendra

Barapatre. After the rejection of said O.A. by this Tribunal, applicant joined in Amaravati on 25/04/2022. Hence, he was due for transfer as per transfer order dated 30/08/2021. The applicant is transferred within the same office and therefore it is not a transfer. Hence, the O.A. is liable to be dismissed.

**10.** Respondent No.4 has submitted that the applicant was due for transfer order, and therefore, he was transferred within the same office. Moreover, the impugned transfer order does not amount to a transfer as defined under the Transfers Act, 2005. The applicant was transferred within the same office and Respondent No.4 was posted in place of the applicant. Hence, it is not a transfer, therefore, O.A. is liable to be dismissed. In support of his submission, Respondent No.4 has pointed out the decision of the Hon'ble Bombay High Court, Bench at Nagpur in W.P. No.4368/2014 in the case of *Chandrakant S/o Umajirao Mehetre Versus State of Maharashtra and Others*, decided on 20/01/2015 and the Judgment passed by the Maharashtra Administrative Tribunal, Bench at Nagpur in O.A. No.26/2018 in the case of *Chandrakant Umajirao Mehetre Versus State of Maharashtra and Others*, decided on 15/06/2018.



**11.** There is no dispute that the applicant is still working on the same post because of the stay granted by this Tribunal on 16/10/2024. There is no dispute that the applicant was transferred to Amravati as per the order dated 30/08/2021, but he could not join the said post. He was transferred to Amravati in place of Narendra Barapatre as per the order dated 30/08/2021. Narendra Barapatre challenged the said transfer order in O.A. No.680/2021. Because of the stay granted by this Tribunal, the applicant could not join the post at Amravati. The said O.A. was dismissed on 20/04/2022. Thereafter, the applicant has joined at Amravati on 25/04/2022. Therefore, it is clear that on the day of transfer order, the applicant was not due for transfer because the applicant actually took charge at Amravati on 25/04/2022.

**12.** Whether the impugned transfer order is malafide is to be seen. The applicant was not due for transfer, Respondent No.4 was also not due for transfer. Even though Respondent No.4 was transferred in place of applicant because of the recommendation made by MLA Sau. Shweta Mahale as per letter dated 19<sup>th</sup> June, 2024. The said letter is reproduced below:

“ मा.ना.श्री. धनंजयजी मुंडे साहेब,  
मंत्री कृषि व पदुम विभाग,  
महाराष्ट्र राज्य, मुंबई-32

विषय- श्री. नितीन श्रीकिसनराव लोखंडे यांच्या पदोन्नतीने  
तंत्र अधिकारी (वर्ग-2) या पदावर झालेल्या  
पदस्थापने मध्ये अंशतः बदल करणेबाबत...

आदरणीय महोदय,

वरिल विषयानुसार माझ्या चिखली विधानसभा मतदार  
संघातील श्री, नितीन श्रीकिसनराव लोखंडे यांची पदोन्नतीने तंत्र  
अधिकारी (वर्ग-2) उप विभागीय कृषि अधिकारी कार्यालय,  
अकोला, यापदावर पदस्थापना झालेली आहे.

त्यांच्या उपरोक्त झालेल्या पदस्थापने मध्ये अंशतः बदल  
करून त्याची पदस्थापना तंत्र अधिकारी (गु.नि.) कार्यालय  
विभागीय कृषि सहसंचालक अमरावती, विभाग आमरावती  
यापदावर करणेसाठी संबंधितांना आपल्या स्तरावरून निर्देश  
करावेत अशी विनंती आहे.

सदर आदरपूर्वक  
धन्यवाद।

सौ. श्वेता महाले  
आमदार, चिखली “

Thereafter, the impugned transfer order dated  
18/06/2024 was issued by the Government of Maharashtra. The  
material part of the Government order is reproduced below:-

“ शासन आदेश:-

महाराष्ट्र कृषि सेवा, गट-ब (कनिष्ठ) या संवर्गातून  
महाराष्ट्र कृषि सेवा, गट-ब या संवर्गात तात्पुरत्या पदोन्नतीसाठी

या विभागामार्फत तयार करण्यात आलेल्या सन २०२३-२४ च्या निवडसूचीस सामान्य प्रशासन विभागाने सहमती दिली आहे. सदर सहमतीस अनुसरून, खालील नमूद अधिकाऱ्यांना महाराष्ट्र कृषि सेवा, गट-ब (कनिष्ठ) (वेतनश्रेणी एस-१५ : रु.४१८०० - १३२३००) संवर्गातून सार्वजनिक सेवेच्या हितार्थ व प्रशासकीय सोईच्या दृष्टीने महाराष्ट्र कृषि सेवा, गट-ब (वेतनश्रेणी एस-१६ : रु.४४९०० - १४२४००) या संवर्गात निव्वळ तात्पुरत्या पदोन्नतीने खालीलप्रमाणे पदस्थापना देण्यास या शासन आदेशान्वये मान्यता देण्यात येत आहे.”

अ. क्र.	गट-ब (कनिष्ठ) ज्ये. क्र.	निवड सूची क्र.	अधिकाऱ्याचे नाव	प्रवर्ग	विभागीय संवर्ग वाटप नियमावली नुसार मिळालेला महसूल विभाग	पदोन्नतीने पदस्थापना
११	८२७	७८	श्री. नितीन श्रीकिसनराव लोखंडे	खुला	अमरावती	तंत्र अधिकारी, उपविभागीय कृषि अधिकारी, अकोला (रिक्त पदी)

13. The name of applicant is at Serial No.11. He is transferred from Akola to Amravati. There is no dispute that Respondent No.4 was not due for transfer and the applicant was also not due for transfer. Therefore, it is clear that Respondent No.4 was transferred because of the recommendation of MLA Sau. Shweta Mahale. No any reason is mentioned in the order dated 18/06/2024. After the order dated 18/06/2024, the Respondent - Authorities issued transfer orders of applicant and Respondent

No.4 on 14/10/2024. These orders are under challenge in this O.A. The impugned transfer orders dated 14/10/2024 are mid-term transfer orders. Guidelines are given not to make any mid-term transfers. Section 4 of the Transfers Act, 2005 is very clear. As per Section 4 (5) of the Transfers Act, 2005. There was no any recommendation for the transfer of the applicant and Respondent No.4. No any special reasons are mentioned in the impugned transfer orders. Section 4 (5) of the Transfers Act, 2005 is reproduced below:-

*“5. Extension of tenure.*

*(1) The tenure of posting of a Government servant or employee laid down in section 3 may be extended in exceptional cases as specified below, namely:-*

- (a) the employee due for transfer after completion of tenure at a station of posting or post has less than one year for retirement;*
- (b) the employee possesses special technical qualifications or experience for the particular job and a suitable replacement is not immediately available; and*
- (c) the employee is working on a project that is in the last stage of completion, and his withdrawal will seriously jeopardies its timely completion.*

*(2) Notwithstanding anything contained in section 3 or any other provisions of this Act, to ensure that the Government work is not adversely affected on account of large scale transfers of Government servants from one single Department or office, not more than thirty per cent of the employees shall be transferred from any office or Department at a time, in a year.”*

In the Government order also, no any reason is mentioned about the transfer of Respondent No.4 from Akola to Amravati. Therefore, it is clear that Respondent No.4 managed to get transferred to Amravati with the help of MLA Sau. Shweta Mahale. Therefore, it is clear that the transfer order is malafide and was made only because of the recommendation of MLA Sau. Shweta Mahale. The Hon'ble Bombay High Court has given guidelines not to issue any such transfer order under the influence of political leaders. The Hon'ble Bombay High Court, in the case of ***Balasaheb Vitthalrao Tidke VS the State of Maharashtra and Another (cited supra)*** has recorded its findings in para 2 as under:-

*“ 2. In the order dated 3<sup>rd</sup> December, 2018, we have recorded the assurance of the State that it will be ensured that the process of transfers will not be influenced by the recommendations made by elected representatives of people and the Hon'ble Ministers who are not concerned with the process of transfers. In terms of the said statement, Mr. Dinesh Kumar Jain, the Chief Secretary of the Government of Maharashtra has filed an Affidavit. The*

*Affidavit dated 12<sup>th</sup> December, 2018 is taken on record and marked 'A' for identification. Paras-1 and 2 of the said Affidavit reads thus:*

***"1. I submit that I am filing the present Affidavit for the limited purpose of stating that the process of transfer at the level of the Government will not be influenced by any recommendations made by any political leaders, members of political parties or any Hon'ble Ministers who are not part of the process of transfers.***

***2. I submit that all authorities who are competent to effect the transfers will be advised to strictly follow the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 while issuing transfer order."***

*2. We accept the statements made in paragraphs 1 and 2 of the said affidavit quoted above as the Undertakings given on behalf of the State of Maharashtra. Now there is a clear assurance that all transfers will be effected strictly in accordance with the provisions of the said Act of 2005 and none of the transfers will now be influenced by the recommendations of the political leaders including the Hon'ble Ministers (who are not a part of the process of transfers). We direct that the statements made in para-1 of the said Affidavit are brought to the notice of all the concerned who have to exercise powers of transfer under the said Act of 2015 so that there will not be any attempt to make any recommendations thereby influencing the process of transfers of the Government Servants. "*

14. The Definition of ‘Post’ and ‘Transfer’ as defined under Section 2(g) and (i) of the Transfers Act, 2005 are reproduced below:-

“2. *Definition*

(g) "**Post**" means the job or seat of duty to which a Government servant is assigned or posted,

(i) "**Transfer**" means posting of a Government servant from one post, office or Department to another post, office or Department;”

15. In the case of *Chandrakant Umajirao Mehetre*, the Bombay High Court has held that the applicant who is transferred at the distance of 47.5 metres from the room in which he was earlier working cannot be said to be a transfer. In the present case, the post of the applicant is changed, he is transferred from the post of Technical Officer, Divisional Agricultural Director Office, Amravati whereas Respondent No.4 is transferred as a Technical Officer (Quality Control). Therefore, it is clear that the post of applicant is changed. As per the definition of ‘Transfer’ as defined under the Transfers Act, 2005 it amounts to a transfer. The Principal Bench of the Maharashtra Administrative Tribunal, Bench at Mumbai in O.A. No.664/2020 in the case of

***Chandrakant Jagannath Jadhav VS Commissioner of Police***

***(cited supra)*** has held in para 40 as under:-

*“40. Thus considering the ratio laid down in the various cases as discussed above, as placed before me, it appears that no law is laid down conclusively on Section 2(6A) of the said Act by the Bombay High Court and this Tribunal has taken a view consistently that any shifting from post, posting, office, department to other post, posting office, department under same Commissionerate amounts to transfer under Section 2(6A) of the said Act. Moreover, the Respondents-State did not challenge the orders of this Tribunal cancelling the transfers of the Police Officers by applying definition under Section 2(6A) of the Maharashtra Police Act. Thus it appears that the Respondents-Government has also accepted the view expressed in many matters on the point of Section 2(6A) of the Maharashtra Police Act. I take the same view and hold that the shifting of the applicant from Shil-daighar Police Station to Special Branch amounts to transfer.”*

This Tribunal in the Maharashtra Administrative Tribunal, Bench at Nagpur in O.A. No.218 of 2016 in the case of ***Pratiksha D/o Mahadeorao Damke VS The State of Maharashtra and Others (cited supra)*** decided on 16/06/2016 has also held in para 3 as under:-

*“3 Shri R.M. Bhangde, Id Counsel for the applicant reiterated the submissions of the applicant in the O.A. He submitted that shifting of the applicant from one Police Station to another within the city of Nagpur is clearly a case of transfer In Sanjeev Bhagwanrao Kokil Vs State of Maharashtra [2013 (1) All M R 40] hon'ble the High Court had held that such local shifting amounts to transfer. Thus,*



*R/3 has erred in assuming that the impugned order is not a order of transfer and hence as the applicant is shifted mid-term, the respondents are required to follow the procedure as laid down in Section 22 (N) of the amended Maharashtra Police Act”.*

Therefore, the cited Judgements by the side of respondents are not applicable.

**16.** The Government of Maharashtra has issued G.R. in respect of mid-term transfer dated 11/02/2015. The applicant was not due for transfer and Respondent No.4 was also not due for transfer. The material part of the G.R. is reproduced below:-

“६. मनासे (वर्तणूक) नियम, १९७९ मधील नियम २३ नुसार कोणताही शासकीय कर्मचारी, त्याच्या शासकीय सेवेसंबंधीच्या कोणत्याही बाबीच्या संबंधात कोणत्याही वरिष्ठ प्राधिकाऱ्यावर कोणताही राजकीय किंवा इतर बाह्य दबाव आणणार नाही किंवा तसा प्रयत्न करणार नाही, अशी तरतुद करण्यात आलेली आहे. ज्या प्रकरणात एखादा अधिकारी/कर्मचारी मा. लोकप्रतिनिधींमाफत एखाद्या विशिष्ठ पदाच्या मागणीकरीता बदली प्राधिकाऱ्यावर दबाव टाकत असल्यास सदरची तरतुद संबंधीत शासकीय अधिकारी/कर्मचाऱ्याच्या निदर्शनास आणून द्यावी व आवश्यकता असल्यास संबंधीत अधिकारी / कर्मचाऱ्या विरोधात शिस्तभंगाची कारवाई सुरु करण्यात यावी.

७. तीन वर्षापेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचाऱ्याच्या पदावर एखाद्या अधिकारी/कर्मचाऱ्याने मागणी केल्यास वा सदरहू अधिकारी/कर्मचाऱ्याने मा. लोकप्रतिनिधी माफत मागणी केल्यास, ३ वर्षापेक्षा कमी

कालावधी असलेल्या अधिकारी/कर्मचाऱ्याची मध्यावधी बदली करण्यात येऊ नये, सदहू ३ वर्षापेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचाऱ्याची माहे एप्रिल किंवा मे महिन्यातील सामान्य बदल्यांच्या कालावधीत देखील बदली करण्यात येऊ नये. तसेच ३ वर्षापेक्षा अधिक कालावधी झालेल्या अधिकारी/कर्मचाऱ्याची बदली, माहे एप्रिल किंवा मे महिन्यांव्यतिरिक्त अन्य महिन्यामध्ये विशिष्ट कारण व लगतच्या सक्षम प्राधिकाऱ्याची मान्यता घेतल्याखेरीज करू नये. केवळ ३ वर्षापेक्षा अधिक कालावधी झाला आहे या कारणास्तव माहे एप्रिल किंवा मे महिन्यांव्यतिरिक्त अन्य महिन्यामध्ये बदली करू नये.”

17. Applicant is due for retirement in the month of June, 2025. He had made representation requesting not to transfer him. Respondent has not considered the same. It was the duty of respondent to see to the provision of Section 5 of the Transfers Act, 2005. Section 5(1)(a) is reproduced below:-

“5. *Extension of tenure.*

(1) *The tenure of posting of a Government servant or employee laid down in section 3 may be extended in exceptional cases as specified below, namely:-*

(a) *the employee due for transfer after completion of tenure at a station of posting or post has less than one year for retirement.”*

18. It is clear that Respondent No.4 was not due for transfer and the Applicant was also not due for transfer.

Respondent No.4 managed to get transfer from Akola to Amravati as per the recommendation of MLA Sau. Shweta Mahale. Hence, it is malafide transfer. Therefore, the following order is passed:-

**O R D E R**

- (i) O.A. is allowed.
- (ii) The impugned transfer order dated 14/10/2024 of applicant as well as Respondent No.4 is hereby quashed and set aside.
- (iii) C.A. is disposed of.
- (iv) No order as to costs.

**(Justice M.G.Giratkar)**  
**Vice Chairman.**

**Dated :- 07/01/2025.**  
**PRM.**

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Piyush R. Mahajan.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 07/01/2025