

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1340 OF 2024

**DISTRICT: RATNAGIRI
SUBJECT: TRANSFER**

Shri Sharadchandra Kantiram Sanap)
Age: 47 years, Occ: Service,)
R/o. H. No. 1944, Mitra Nagar, Lakshar Wadi,)
At post Jalgaon, Taluka Dapoli)
District Ratnagiri- 415 715) **... Applicant**

Versus

- 1) The State of Maharashtra,)
Though its Secretary Revenue and)
Forest Department, Maharashtra State,)
Mantralaya, Mumbai-32.)
- 2) Divisional Commissioner, Konkan Division)
1st floor, Konkan Bhavan, CBD Belapur)
Navi Mumbai 400 614.)
- 3) The Collector Ratnagiri)
Collector Office, Ratnagiri)
- 4) Residential Deputy Collector,)
Collector Office, Ratnagiri)
- 5) Tahsildar, Dapoli)
Tahsildar's office, Dapoli, Dist. Ratnagiri)
- 6) Balasaheb Ramkrushna Karad)
Age: Major, Occ: Service)
R/o. Collector Office, Pune) **.... Respondents**

Shri M.D. Lonkar, learned Advocate for the Applicant.

Shri A.D. Gugale, learned Presenting Officer for the Respondents.

CORAM : DEBASHISH CHAKRABARTY, MEMBER (A)

DATE : 18.12.2024.

J U D G M E N T

1. The Applicant has challenged 'Order' dated 11.10.2024 issued by 'RDC, Ratnagiri' with approval of 'District Collector, Ratnagiri' regarding transfer of Applicant from post of 'Circle Officer Burondi; Tahsil Dapoli, District Ratnagiri' to post of 'Deputy Accountant; Tahsil Office Rajapur, District Ratnagiri' by invoking provisions of 'Section 19' of 'The Administrative Tribunal Act, 1985'.

2. The learned Advocate for Applicant drew attention to contents of report submitted by 'SDO; Dapoli Sub Division, District Ratnagiri' on 26.03.2024 to 'District Collector, Ratnagiri' about reasons for delay in certification of 'Mutation Entry No.2491' of 'Village Murud' as well as 'Mutation Entries 6651' of 'Village Karde' under direct charge of 'Circle Officer Burondi; Tahsil Dapoli, District Ratnagiri'.

3. The learned Advocate for Applicant emphatically mentioned that the proposal for transfer of Applicant from post of 'Circle Officer, Burondi; Tahsil Dapoli, District Ratnagiri' was submitted by 'RDC, Ratnagiri' to 'Divisional Commissioner, Konkan Division, Navi Mumbai' on 04.10.2024 based only on certain 'Oral Instructions' given by 'District Collector, Ratnagiri' and not after recommendation had been made by 'CSB'. Further, it was strongly contended that although 'Divisional Commissioners' may have been delegated 'Statutory Powers' of next 'Superior Transferring Authority' under 'Section 4(4)(2) and Section 4(5)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' by way of 'Government Order dated 12.08.2024 of Revenue and Forest Department;' yet from strict perspective of law these being inherent 'Statutory Powers' vested with 'Hon'ble Minister-in-Charge' of 'Revenue Department'; they could not have been delegated under 'Section 6' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

4. The transfer of Applicant from post of 'Circle Officer Burondi; Tahsil Dapoli, District Ratnagiri' to post of 'Deputy Accountant, Tahsil Office Rajapur, District Ratnagiri' was based on report submitted by 'SDO; Dapoli, Sub Division, District Ratnagiri' on 26.03.2024 which had recommended to 'District Collector, Ratnagiri' that following course of action be taken about Applicant:-

“वरील तक्रार अर्जाच्या अनुषंगाने तहसिलदार दापोली यांचेकडील अहवाल, मंडळ अधिकारी यांचा खुलासा तसेच तक्रारदार यांचे म्हणणे या सर्व बाबींचा विचार केला असता मंडळ अधिकारी बुरोंडी यांनी सदर प्रकरणी जाणीवपूर्वक विलंब केल्याचे दिसून येत आहे. तसेच भविष्यात अशा प्रकारच्या तक्रारी प्राप्त न होणेबाबत त्यांचे विरुद्ध महाराष्ट्र नागरी सेवा शिस्त व अपिल नियम १९७९ मधील भाग ३ मध्ये नमूद केलेनुसार किरकोळ शिक्केबाबत आपलेस्तरावरून पुढील आदेश होणेस विनंती आहे.”

5. The learned P.O. per contra stated that due procedure had been observed by 'Divisional Commissioner, Konkan Division, Navi Mumbai' based on 'Government Order dated 12.08.2024 of 'Revenue & Forest Department' to approve 'Mid-Term and Mid-Tenure Transfer' of Applicant on 11.10.2024 under 'Section 4(4)(2)' and 'Section 4(5)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

6. The learned P.O. stressed that in place of Applicant; one Shri Balashaheb Ramkrishna Karad was transferred as 'Circle Officer Burondi; Tahsil Dapoli, District Ratnagiri' based on approval granted on 11.10.2024 by 'Divisional Commissioner, Konkan Division, Navi Mumbai' and that as he who is 'Respondent No.6' had since taken charge of this post because no 'Interim Relief' came to be granted to Applicant on 16.10.2024.

7. The 'Show Cause Notice' issued on 12.08.2024 to Applicant by 'RDC Ratnagiri' was based on report of 'SDO; Dapoli, Sub Division District Ratnagiri'. The Applicant replied to it on 09.09.2024 explaining that there was no undue delay in certification of 'Mutation Entry No.2491' of 'Village Murud' and 'Mutation Entry No.6651 of Village Karde' claiming that these were done within about 'One Month'.

8. The proposal submitted to 'Divisional Commissioner, Konkan Division, Navi Mumbai' by 'RDC Ratnagiri' on 04.10.2024 for transfer of Applicant on grounds of delay in certification of 'Mutation Entry No.2491' of 'Village Murud' and 'Mutation Entry No.6651 of Village Karde' from post of 'Circle Officer, Burondi; Tahsil Dapoli, District Ratnagiri' to post of 'Deputy Accountant, Tahsil Office Rajapur, District Ratnagiri' indicates that it was based on certain 'Oral Instructions' given by 'District Collector Ratnagiri' and makes reference to 'Government Order dated 12.08.2024 of Revenue & Forest Department' by which 'Statutory Powers' of 'Minister-in-Charge' of 'Revenue Department' as next 'Superior Transferring Authority' under 'Section 4(4)(2)' and 'Section 4(5)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' have been delegated to 'Divisional Commissioners' in respect to some cadres of 'Group C' which includes 'Circle Officers' & 'Awal Karkuns'.

9. The reasons for 'Mid-Term' & 'Mid-Tenure' transfer of Applicant relates to purported delay in certification of 'Mutation Entry 2491' of 'Village Murud' & 'Mutation Entry 6651' of 'Village Karde' under change of 'Circle Officer Burondi; Tahsil Dapoli, District Ratnagiri'. The timely cognizance by 'Tahsildar Dapoli, District Ratnagiri' of undue delay on part of Applicant had even resulted in 'Strict Warning' being given to Applicant by 'Tahsildar Dapoli, District Ratnagiri' as reflected in report of 'SDO; Dapoli Sub Division, District Ratnagiri' dated 08.04.2024 submitted to 'District Collector, Ratnagiri'. Hence, against this backdrop it must be observed that if at all it was so very expedient for 'District Collector Ratnagiri' to immediately transfer Applicant for delay in certification of 'Mutation Entry No.2491' of 'Village Murud' and 'Mutation Entry No.6651 of Village Karde'; then specific proposal should have been placed for due consideration of 'CSB'. Further; proposal for 'Mid Term' & 'Mid Tenure' transfer of Applicant submitted by 'RDC Ratnagiri' to 'Divisional Commissioner Konkan Division, Navi Mumbai' on 04.10.2024 is not inclusive of any other serious deficiencies observed in performance

of various duties & responsibilities assigned to Applicant while serving on post of 'Circle Officer Burondi; Tahsil Dapoli, District Ratnagiri'. Hence, it is yet another classic instance of dis-appropriate action taken for 'Administrative Delay'. The Applicant had already been given 'Strict Warning' by 'Tahisildar Dapoli, District Ratnagiri' and course of action to be taken against Applicant had also been recommended by 'SDO, Dapoli, Sub Division District Ratnagiri' under 'Rule 3' of 'MCS (D & A) Rules 1979'.

10. The 'District Collector Ratnagiri' for fairer assessment of the report of 'SDO Dapoli, Sub Division, District Ratnagiri' dated 08.04.2024 could have easily obtained 'Supplementary Information' to determine exact nature of delinquency of Applicant by bench marking delay in certification of 'Mutation Entry No.2491' of 'Village Murud' and 'Mutation Entry No.6651 of Village Karde' against possibly even longer delays ascribable to other 'Circle Inspectors' serving under 'Tahsildar Dapoli; District Ratnagiri'. Hence, the action taken by 'District Collector, Ratnagiri' in respect of Applicant was impromptu without complete assessment of relative delays which may have occurred in certification of 'Mutation Entries No.2491' of Village Murud' as well as about 'Mutation Entries 6651' of 'Village Karde' and if these would still be lesser than average period taken by other 'Circle Inspectors' serving under 'Tahsildar, Dapoli District Ratnagiri' or those serving under wider jurisdiction of 'SDO; Dapoli Sub Division, District Ratnagiri'. Further availability of such data may have also helped 'District Collector, Ratnagiri' establish whether it was an isolated instance or outcome of habitual behavior on part of Applicant.

11. The 'Oral Instructions' given by 'District Collector Ratnagiri' infracts the mandatory pre-requisites of obtaining recommendation of 'CSB' and side steps elaborate 'Policy Guidelines' about 'Mid-Term' & 'Mid Tenure' transfers contained in 'G.A.D. GR dated 11.02.2015'.

12. The 'Divisional Commissioner, Konkan Division, Navi Mumbai' on other hand was certainly expected to be more vigilant about these nuances of law especially when proposal submitted by 'RDC, Ratnagiri' on 04.10.2024 in respect of Applicant was without recommendation of 'CSB', and based on 'Oral Instructions' given by 'District Collector Ratnagiri'. The approval which had been sought from 'Divisional Commissioner, Konkan Division, Navi Mumbai' was as next 'Superior Competent Authority' under 'Section 4(4)(2)' and 'Section 4(5)' of the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'; subsequent to delegation of 'Statutory Powers' of 'Hon'ble Minister-in-Charge' of 'Revenue Department' by 'Government Order' dated 12.08.2024 of 'Revenue & Forest Department'.

13. The 'Divisional Commissioner, Konkan Division, Navi Mumbai' was undoubtedly required to be circumspect before taking decision to approve 'Mid-Term' & 'Mid-Tenure' transfer of Applicant; so as to ensure that it would not be vulnerable and liable to be held subsequently as invalid in 'Eyes of Law'; when subject to stringent scrutiny in 'Judicial Review' based on principles laid down in catena of Judgments of 'Hon'ble Supreme Court of India' and 'Hon'ble Bombay High Court'.

14. The 'Hon'ble Supreme Court of India' in *T.S.R. Subramanian and Ors. Vs. Union of India & Ors.* in '(2013) 15 SCC 732 had espoused the reasons for setting up of 'CSB'. The paragraphs of this judgment reproduced below emphasizes vulnerability of 'Government Servants' to frequent transfers particularly those serving in 'State Governments' :-

"We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also

prioritize various social and economic measures intended to implement for the poor and marginalized sections of the society.”

15. The Hon’ble High Court of Bombay in Writ Petition No.5465/2012 decided on March 07, 2013 (Shri Krishor Shridharrao Mhaske Vs. Maharashtra OBC, Finance & Development Corporation & Ors. has explained the role of ‘Competent Transferring Authority’ and next ‘Superior Transferring Authority’ with respect to ‘Mid-Term’ & ‘Mid Tenure’ transfers of ‘Government Servants’ by observing that:-

“Section 4(5) which begins with the non-obstante clause obligate the Competent authority to seek prior approval of the competent transferring authority as indicated in Section 6 of the Act and also to record reasons in writing in special case of the mid-term or pre-mature transfer of any Government servant who has not completed three years of normal tenure on particular post. Section 6 of the Act lays down the categories of the Government servants in column no (1) of the table who may be transferred by the competent transferring authorities as mentioned in column (2) of the table.”

“The mid-term or pre-mature special transfer has to be strictly according to law, by a reasoned order in writing and after the due and prior approval from the competent transferring authority concerned for effecting such special transfer under the Act. The exercise of exceptional statutory power has to be transparent, reasonable and rational to serve objectives of Act, as far as possible, in public interest. Mandatory requirements of the provision under Section 4(5) of the Act cannot be ignored or bye-passed. The exceptional reasons for the special mid-term or pre-mature transfer ought to have been stated in writing. Vague, hazy and meager expression such as "on administrative ground" cannot be a compliance to be considered apt and judicious enough in the face of mandatory statutory requirements. The impugned order of the transfer in the absence of mention of special and exceptional reasons was passed obviously in breach of the statutory obligations and suffers from the vices as above.”

16. The Hon’ble High Court of Bombay in W.P. (L) No. 1940 of 2011 decided on January 24, 2012 (Shri S.B. Bhagwat V/s. State of Maharashtra & Ors.) had further elaborated upon exact nature of precautions to be taken when implementing provisions of law under ‘Section 4(4)(ii)’ and ‘Section 4(5)’ of ‘Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005’ by observing that :-

“An employee who has not completed his normal tenure of three years may yet be subjected to transfer, as provided in sub-section (5) of section 4. Sub-section (5) of section 4 begins with an overriding non-obstante provision, but requires that reasons have to be recorded in writing in a

special case for transferring an employee even prior to the completion of tenure. Merely calling a case a special case does not constitute a sufficient reason. The rationale why the legislature has required that reasons be recorded in writing for transferring an employee even before completing his tenure is to bring objectivity and transparency to the process of transfers. Indeed, the matter of transfers has been brought within a regulatory framework laid down in the statute enacted by the State legislature. Section 4(5) permits as an exceptional situation, a transfer to be carried out, notwithstanding anything contained in section 3 or in section 4. The exceptional power must be exercised strictly in accordance with sub-section (5) of section 4. It is a settled position in law that when a statutory power is conferred upon an authority to do a particular thing, that exercise has to be carried out in the manner prescribed by the statute.”

17. The Hon’ble Supreme Court of India in *East Coast Railway & Another Vs. Mahadev Appa Rao & Ors. (2010) 7 SCC 678* has explained the importance of ‘Application of Mind’ by ‘Public Authority’ when they happen to exercise ‘Statutory Powers’ by observing as follows:-

“There is no precise statutory or other definition of the term “arbitrary”. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making an order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable.”

18. The proposal to transfer Applicant from post of ‘Circle Officer Burondi; Tahsil Dapoli, District Ratnagiri’ had been submitted by ‘RDC’ Ratnagiri to ‘Divisional Commissioner, Konkan Division, Navi Mumbai’ on 04.10.2024 not only based on ‘Oral Instructions’ of ‘District Collector, Ratnagiri’ without recommendation of ‘CSB’ but also by completely side stepping ‘G.A.D. G.R. dated 11.02.2015’ which gives detailed ‘Policy Guidelines’ about how proposals of ‘Mid-Term’ & ‘Mid Tenure’ transfers are required to be carefully examined even when there are ‘Public Complaints’ against the concerned ‘Government Servant’; as is the case with Applicant in which there happens to be letter written by an ‘Advocate’ to ‘SDO, Dapoli, Sub Division District Ratnagiri’ on

08.01.2024 incorporated in proposal submitted by 'RDC, Ratnagiri' to Divisional Commissioner, Konkan Division; Navi Mumbai on 04.10.2024. Hence; based on above explained infirmities which relate to (a) 'Non Diligence in Evaluation of Facts' (b) 'Non Application of Mind' and 'Recording of Reasons' (c) 'Non Cognizance of Policy Guidelines' regarding exercise of Statutory Powers under 'Section 4(4)(ii)' and 'Section 4(5)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' and brazen apathy displayed towards implementation of 'Policy Guidelines' in 'G.A.D. G.R. dated 11.02.2015'; the well considered conclusion is that 'Order' dated 11.10.2024 of 'District Collector, Ratnagiri' regarding transfer of Applicant from post of 'Circle Officer Burondi; Tashil Dapoli, District Ratnagiri' to post of 'Deputy Accountant, Tahsil Office Rajapur, District Ratnagiri' cannot be sustained in 'Eyes of Law'. Therefore it is quashed and set aside; along with directions that Applicant be posted back to earlier post of 'Circle Officer Burondi; Taluka Dapoli, District Ratnagiri' within period of 'Two Weeks' by 'District Collector, Ratnagiri'.

ORDER

- 1) The Original Application No. 1340 of 2024 is Allowed
- 2) No Order as to Costs.

Sd/-

(Debashish Chakrabarty)
Member (A)

Place: Mumbai
Date: 18.12.2024
Dictation taken by: N.M. Naik.
Uploaded on: _____