

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 582 OF 2015**

**DISTRICT : MUMBAI**

Shri Ashok Mahadeo Sanap,	)
Working as Naib Tahsildar,	)
Election Branch, Sewree, Mumbai.	)
R/o: Government Colony,	)
Bandra [E], Mumbai 400 051.	)
Add for service of notice	)
R/o: Government Colony,	)
Bandra [E], Mumbai 400 051.	)... <b>Applicant</b>

**Versus**

- |                              |   |
|------------------------------|---|
| 1. The Deputy Collector,     | ) |
| [Encroachment & Removal],    | ) |
| And the Competent Authority, | ) |



- Colaba Division, )  
Having office at Old Custom )  
House, S.B Marg, )  
Mumbai 400 001. )
2. The Divisional Commissioner, )  
Konkan Division, having office )  
At Konkan Bhavan, )  
Navi Mumbai 400 614. )
3. The District Collector, )  
Mumbai City, having office at )  
Old Custom House, S.B. Marg, )  
Mumbai - 1. )
4. Smt N.C Pednekar, )  
Occ : Naib Tahsildar, )  
[Election Branch], )  
Sewree, Mumbai. )...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents no 1 to 3.

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Smt Punam Mahajan, learned advocate for Respondent no. 4.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**DATE : 21.01.2016**

**ORDER**


1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant, Shri A.J Chougule, learned Presenting Officer for the Respondents no 1 to 3 and Smt Punam Mahajan, learned advocate for Respondent no. 4.

2. This Original Application has been filed by the Applicant challenging the order dated 24.2.2015 passed by the Respondent no. 1 posting the Respondent no. 4 as Naib Tahsildar as per order dated 27.1.2015 issued by the Respondent no. 2. The Applicant has also challenged order dated 26.2.2015 posting him as Naib-Tahsildar (Election) in Colaba Assembly Constituency and subsequent order dated 25.6.2015 posting him in Sewree A.C, both in Mumbai.

3. Learned Counsel for the Applicant argued that the Applicant was posted by order dated 31.5.2013 as Naib Tahsildar (Encroachment), Colaba, Mumbai on promotion by the Respondent no. 3 (Collector, Mumbai).



As a Group 'B' Officer, he has a tenure of 3 years in that post. However, he was relieved by order dated 24.2.2015 by the Respondent no. 1 from that post, pursuant to the order dated 27.1.2015 issued by the Respondent no. 2 (Commissioner, Konkan Division) posting the Respondent no. 4 in his place. The Applicant was posted by order dated 26.2.2015 as Naib Tahsildar (Election) in Colaba A.C. which was modified by order dated 25.6.2015 to Sewree A.C. Learned Counsel for the Applicant filed written arguments and argued that the post of Naib Tahsildar (Encroachment) is filled by deputation, as it is on the establishment of the Housing Department, and not on the establishment of Revenue Department. Such deputation is governed by the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. There is fine distinction between deputation and transfer as held by Hon'ble Supreme Court. Learned Counsel for the Applicant argued that even the post of Naib Tahsildar (Election) are deputation posts, which are within the jurisdiction of Commissioner, while the post of Naib Tahsildar (Encroachment) is within the jurisdiction of Collector, Mumbai. As the Applicant was occupying the post of Naib Tahsildar (Encroachment) by order of Collector, Mumbai, the Respondent no. 2 had no authority to post the Respondent no. 4 in that post, displacing the Applicant. Learned Counsel for the Applicant argued that ordinarily when there is no change




in headquarters, posting of a Government servant may not amount to a transfer under the Maharashtra Government Servants (Regulation of Transfers and Prevention of Delays in Discharge of Official Duties), Act, 2005 (the Transfer Act), in view of various judgments of Hon'ble High Court. However, if the transfer orders are issued to accommodate another Government servant, even transfer within the same headquarters may amount to transfer. Learned Counsel for the Applicant cited judgment of this Tribunal dated 19.3.2015 in O.A no 69/2015. Learned Counsel for the Applicant argued that the order of the Respondent no. 2 dated 27.1.2015 is bad in law. The Applicant could not have been transferred before completion of his tenure as per the terms of deputation and therefore subsequent orders dated 26.2.2015 and 25.6.2015 are also bad in law.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent nos 1 to 3 that the post of Naib Tahsildar is a Group 'B' post. It is filled by the Divisional Commissioner. The Respondent no. 4 was posted as Naib Tahsildar (Encroachment) by the Respondent no. 2 by order dated 27.1.2015, treating the post as vacant. Learned Presenting Officer argued that the Applicant was posted as Naib Tahsildar (Encroachment) by order of the Respondent no. 3 dated 31.5.2013 who immediately sent a report to the Respondent no. 2 on 7.6.2013 that the Applicant was posted as temporary arrangement.

Learned P.O argued that the Competent Authority to fill the post of Naib Tahsildar is Divisional Commissioner and the temporary posting given to the Applicant by the Respondent no. 3 was till the post was filled by the Respondent no. 2. Learned Presenting Officer argued that the Applicant's headquarters has remained the same and as such provisions of the Transfer Act are not attracted.

5. Learned Advocate Mrs Punam Mahajan, argued on behalf of the Respondent no. 4, that the Applicant has no authority to challenge the order of the Respondent no. 4, which has been issued by the Competent Authority viz., the Respondent no. 2. Learned Advocate Mrs Mahajan contended that the order dated 31.5.2013 was a temporary arrangement made by the Respondent no. 3, who is not the competent authority to decide the postings of Naib Tahsildars. At the most that order can be treated as giving temporary charge of the post to the Applicant. The Respondent no. 2 has posted the Respondent no. 4 as Naib Tahsildar (Encroachment), Colaba, Mumbai, treating the post as vacant as his office has not posted anyone on that post. Learned Advocate Mrs Mahajan argued that the Applicant had not pleaded in O.A that the post of Naib Tahsildar (Encroachment) was filled by deputation under Maharashtra Civil Services (Joining Time, and Payments during Suspension, Dismissal and Removal) Rules, 1981. He



cannot take that plea at the time of arguments, taking the Respondents by surprise. Learned Advocate Mrs Mahajan stated that this plea of the Applicant has to be ignored. The Original Application is not maintainable on the following counts:-

- (i) The Applicant is seeking plural remedies, which cannot be done as per Rule 10 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1968.
- (ii) The Applicant has accepted his transfer by order dated 26.2.2015 to the post of Naib Tahsildar (Elections) in Colaba A.C, Mumbai. He did not challenge it. Only after he was posted to Sewree A.C (which is in the same office) by order dated 25.6.2015, he had filed the present O.A. He is estopped from challenging order dated 26.2.2015 and earlier orders.
- (iii) As the Applicant has not pleaded in the O.A that he was posted on deputation as N.T (Encroachment) his shifting from the post of N.T (Encroachment) has to be examined in the light of the provisions of the Transfer Act. As his transfer from the post of N.T (Encroachment) does not entail change of headquarters, it is not a transfer under the Transfer Act.

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Learned Advocate Mrs Mahajan argued that it is not a case where the Applicant was shifted to accommodate the Respondent no. 4. In fact, the Respondent no. 4 was posted as Naib Tahsildar (Encroachment) by the Respondent no. 2 in normal course of business as his office has never filled that post. The order issued by the Respondent no. 3 posting the Applicant to that post, at the most can be termed as entrusting temporary charge of that post to the Applicant. The order of this Tribunal in O.A no 69/2015, is therefore, not applicable in the facts of the present case.

6. On careful perusal of the Original Application, especially paras 6.6. to 6.9, it is quite clear that the Applicant has challenged his transfer as mid-term and mid-tenure transfer and has sought relief claiming that the provisions contained in section 4(4)(ii) and 4(5) of the Transfer Act were not fulfilled. There is no mention that the post of Naib Tahsildar (Encroachment) was a deputation post, and the Collector, Mumbai, is competent authority to fill that post. Even in the affidavit in rejoinder filed by the Applicant on 17.11.2015, in para 12, it is stated that the Applicant was sent on deputation to Election Branch. There is no mention of the post of N.T (Encroachment).

7. The claim of the Applicant that posting in Election Branch is on deputation does not have any basis

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as the posts created for Election related work in various Collectorate are on the establishment of the Collectors only and there is no question of any Government servant working in the Collectorate being on deputation to Election Branch. The Applicant has not placed any material on record in support of his claim. In any case, if the post of Naib Tahsildar (Election) is to be filled by deputation, that will not effect the validity of posting order of the Respondent no. 4. The claim of the Respondent no. 4 that the Applicant had never raised the issue that the post of Naib Tahsildar (Encroachment) is filled by deputation in his O.A is correct, and he cannot raise this issue at the stage of arguments. All along the case of the Applicant has been that he has been transferred in violation of the provisions of the Transfer Act. It is seen that the Applicant was posted by order dated 31.5.2013 by the Respondent no. 3 as Naib Tahsildar (Encroachment) in the office of the Collector, Mumbai. By order dated 26.2.2015, he has been posted as Naib Tahsildar (Election) for Cobaba A.C in the office of Collector, Mumbai. By order dated 25.6.2015, the Applicant remains in the office of the Collector, Mumbai looking after work of Sewree A.C. There is no change of Headquarters of the Applicant. As held by Hon'ble Bombay H.C in W.P no 8898/2010 by judgment dated 30.11.2010 in the case of Shri R.S Kalal and others, these are not transfer under the Transfer Act. The



Applicant is not entitled to any relief on the ground that provisions of the Transfer Act have been violated.

8. The Applicant had relied on the judgment of this Tribunal dated 19.3.2015 in O.A no 69/2015. In that case, the private Respondent was sought to be posted in place of the Applicant, though he was not eligible to be so posted. In the present case, the Respondent no. 4 is fully eligible to be posted as Naib Tahsildar (Encroachment). The Applicant claims that the Respondent no. 3 is the competent authority to fill this post. The basis of this assertion is not known. In fact, in his report dated 7.6.2013, the Respondent no. 3 has clearly admitted that the post of Naib Tahsildar (Encroachment) are filled by the Respondent no. 2. There appears to be no doubt that the Respondent no. 2 is the Competent Authority to fill all posts of Naib Tahsildar. In some exceptional circumstances, in public interest Collector may make some temporary arrangements. However, such orders issued by Collector, will have to be treated as temporary arrangement and not as proper orders. As such, the challenge of the Applicant to order dated 27.1.2015 posting the Respondent no. 4 as Naib Tahsildar (Encroachment) Colaba, must fail.

9. The Applicant has relied on judgment of Hon. Supreme Court and Bombay High Court about deputation. As the issue regarding the post of Naib



Tahsildar (Encroachment) being a deputation post was never raised and his claim that the post of Naib Tahsildar (Election) is a deputation post stands rejected, there is no need to consider those judgments.

10. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Mumbai**

**Date : 21.01.2016**

**Dictation taken by : A.K. Nair.**