

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.796 OF 2021

DISTRICT : Nasik

- 1) Shri Shital Rajdhar Savale,)
Working as Naib Tahsildar Sanjay Gandhi)
Yojana, Tahsil Office Baglan, Dist. Nasik.)
R/at Flat No.102, C-1, Brabhav Evana, Pathardi)
Gavalane Road, Nasik.) ... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through Principal Secretary, Revenue &)
Forest Department, (Revenue), Having Office)
At Mantralaya, Mumbai-400 032.)
- 2) The Divisional Commissioner (Revenue),)
Nasik Division, Nasik.)
- 3) Shri Sudhir Satpute, Naib Tahasildar Sanjay)
Gandhi Yojana, Tahasil Office, Nashik.)...**Respondents**

Shri Kishor Jagdale, Advocate for Applicant.

Shri Archana B.K., learned Presenting Officer for the Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 10.12.2021

JUDGMENT

1. The Applicant has challenged the transfer order dated 20.10.2020 as well as 22.09.2021 invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1984.

2. Shortly stated facts giving rise to Original Application are as under:-

The Applicant is serving in the cadre of Naib Tahsildar. By order dated 10.08.2020, he was transferred from Jalgaon to Nashik and consequently by order dated 24.08.2020, the Collector posted him as Naib Tahsildar, Sanjay Gandhi Yojana, Tahsil Office, Nashik. The Applicant claims to have normal tenure of three years. However, Government by order dated 20.10.2020 passed the order of transferring and posting Respondent No.3 from Sangamner in place of Applicant. Respondent No.3 seems not relieved, and therefore, the Applicant continued as Naib Tahsildar, Sanjay Gandhi Yojana, Tahsil Office, Nashik. Suddenly Respondent No.3 was relieved on 01.02.2021 and joined as Naib Tahsildar, Sanjay Gandhi Yojana, Tahsil Office, Nashik on 13.08.2021. The Applicant was directed to handover the charge to Respondent No.3. Consequently, the Applicant was left without any posting. He, therefore, made representation on 13.08.2021 to Collector, Nashik to look into the matter and to issue necessary posting order *inter-alia* contending that he has hardly completed one year tenure and transferred abruptly. Thereafter, belatedly the Government by order dated 22.09.2021 issued posting order of the Applicant as Naib Tahsildar, Sanjay Gandhi Yojana, Tahsil Office, Baglan, Dist. Nashik on vacant post.

3. It is on the above background, the Applicant has challenged the transfer order dated 20.10.2020 as well as transfer order dated 22.09.2021 *inter-alia* contending that transfer orders are in blatant violation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (herein after referred to as 'Act 2005' for brevity).

4. Affidavit-in-Reply has been filed by Shri Goraksha S/o Mahadeo Gadilkar, Deputy Commissioner (Revenue) serving in the office of Divisional Commissioner, Nashik and no separate reply is filed on behalf of the Respondent No.1- Government. Material to note that the Government by letter dated 27.10.2021 authorized the Divisional Commissioner, Nashik to file Affidavit on behalf of the Government.

5. Be that as it may, the reply filed by Shri Goraksha Gadilkar is totally silent on the legal pleas raised by the Applicant in his O.A. wherein the Applicant has contended that he is transferred without approval of Civil Services Board (CSB) as well as without compliance of provisions of Section 4(5) of 'Act 2005' which *inter-alia* empowers next preceding competent transferring authority to transfer a Government servant in a special case or for administrative exigencies mid-tenure. All that what is stated in reply is as under :-

" 2. I, say and submit that, I have gone through all the contents of the present Original Application. That I am filing this affidavit in reply on behalf of present respondent no.2 and on behalf of respondent no.1, on the basis of authorization letter dated 27.10.2021 and 28.10.2021. That on the basis of available office record, I am filing this affidavit in reply. That present respondent craves, leave to add, amend, delete or alter any of the grounds as submissions of this affidavit, if felt necessary. Annexure R-1 is the copy of authorization letter dated 27.10.2021 and 28.10.2021.

3. I say and submit that s per Government Order No.बदली-२०२०/प्र.क. १४२/ई-१ दिनांक २०.१०.२०२० respondent no.3 was transferred from the post of Naib Tahsildar, Sanjay Gandhi Yojana, Sangamner to the post of Naib Tahsildar, Sanjay Gandhi Yojana, Nashik Tahsil. But due to administrative difficulties respondent no.3 was not relieved from the post. Respondent No.3 was relieved from Sangamner vide Tahsildar Sangamner order dated 01.02.2021. After that he was on medical leave and joined at Tahsil Office Nashik on date 13.08.2021."

6. Suffice to say, the grounds specifically raised by the Applicant about non compliance of legal requirements is not at all contraverted. In Affidavit-in-Reply all that shows that Respondent No.3 was transferred from Sangmner in place of the Applicant and thereafter the Applicant is posted as Naib Tahsildar, Baglan, Dist. Nashik. This is only pleading about factual aspect of posting order of Respondent No.3 and the Applicant. The reply is totally silent as to what necessitated mid-tenure transfer of the Applicant from Nashik to Baglan.

7. Learned P.O. all that submits that the transfer of the Applicant as well as Respondent No.3 has been done after compliance of legal

requirements. Indeed, if there was any such necessity for mid-tenure transfer of the Applicant and the same was done with approval of Civil Services Board, it ought to have been specifically pleaded in Affidavit-in-Reply. However, it is not so.

8. This matter was taken up for hearing in the morning session but on request of learned P.O., it was adjourned to afternoon session to produce the file. However, no file is produced when the matter was taken up today for hearing at 03.15 pm.

9. In view of above, only inference is that there was no such special case or administrative exigency to transfer the Applicant from Nashik to Baglan. He has completed hardly one year as in present post i.e. at Nashik. The Respondent No.3 though posted in his place by order dated 20.10.2020, he did not join in place of the Applicant immediately after issuance of transfer order. He was continued to work at Sangmner. Abruptly, he was relieved from Sangmner and Tahsildar, Nashik got him joined by relieving the Applicant from his post. The Applicant was thus left without posting and belatedly by order dated 22.09.2021, he was given posting at Baglan, Dist. Nashik.

10. As stated above, since the Applicant has not completed normal tenure at Nashik, he could not have been transferred mid-tenure without making out special case or administrative exigencies that too with the approval of next preceding transferring authority (The Hon'ble Chief Minister) as contemplated under Section 4(5) of 'Act 2005' which is as follows :-

“Section 4(5): Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of immediately superior Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

11. In view of above, on the basis of pleading and material on record, there is no escape from the conclusion that impugned transfer order of the Applicant dated 22.09.2021 as well as posting order of Respondent No.3 dated 20.10.2020 in place of Applicant are *ex-facie* bad in law being in blatant violation of 'Act 2005'. Both these transfer orders are, therefore, required to be quashed and set aside. Hence the following order :-

ORDER

- (A) The Original Application is allowed partly.
- (B) Transfer Order of the Applicant dated 22.09.2021 as well as order of posting of the Respondent No.3 dated 20.10.2020 in place of the Applicant are quashed and set aside.
- (C) The Respondents are directed to repost the Applicant as Naib Tahsildar, Sanjay Gandhi Yojana, Tahsil Office, Nashik within two weeks from today.
- (D) The Respondents are at liberty to pass suitable order of posting of Respondent No.3.
- (E) No order as to cots.

**Sd/-
(A.P. KURHEKAR)
Member-J**

Place : Mumbai
Date : 10.12.2021.
Dictation taken by : VSM