

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.810 OF 2023

With

ORIGINAL APPLICATION NO.911 OF 2023

DISTRICT:

Subject: Transfer

1. Shri Rajesh B. Vaishnav)
Age 52 years, working as Appar Tahsildar,)
NA Borivali.)
R/o Vinca CHS, 2/104, Cosmos Park,)
Ghodbundar Road,Thane West.)
2. Govind Petras Wakade, Age 32 Years,)
Occupation Service Assistant District)
Supply Officer, Raigad, Alibaug.)
Flat No.303, Savitri Perl Building,)
Bramhan Ali, Alibaug.)
3. Surendrasingh Thakur, Age 53 Years,)
Occupation Service Tulsi Complex, D Wing))
Block No.201, New D P Road, Katrap,))
Badlapur East, District Thane.)...Applicants

VERSUS

- 1) The State of Maharashtra, through)
Principal Secretary, Revenue &)
Forest Department, Mantralaya,)
Mumbai 400 032.)
- 2) Shri Ashwin Potdar, office at)
Tahsildar (Non Agricultural),)
Borivali - 1.)...Respondents.

ORIGINAL APPLICATION NO.911 OF 2023

Shri Vaibhav Pilare)
Age 53 years, Occupation Service,)
R/o Tahasildar Residence Tahasildar)
Motala, Dist. Buldhana.)

VERSUS

- 1) The State of Maharashtra, through)
Principal Secretary, Revenue &)
Forest Department, Mantralaya,)
Mumbai 400 032.)
- 2) Ms Rupali Redkar, Age : Adult)
Occupation Service Tahasildar Re-)
habitation,, office of District)
Collector, Kolhapur.)...Respondents.

Shri K. R. Jagdale, learned Advocate for the Applicants.

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

CORAM : Shri Debashish Chakrabarty, Member (A)

DATE : 01.07.2024

J U D G M E N T

1. The Applicants who belong to cadre of 'Tahsildar' have invoked provisions of 'Section 19' of 'The Administrative Tribunal Act 1985' to challenge their transfers from Konkan Division and Pune Division to Amravati Division and Nagpur Division by Government Orders dated 30.06.2024 of Revenue and Forest Department.

2. The learned Advocate for Applicants stated that contentions of Applicants is that their transfers from Konkan Division and Pune Division to Amravati Division and Nagpur Division by Government Orders dated 30.06.2024 of Revenue and Forest Department is outcome of 'Arbitrary Exercise' of 'Statutory Powers' under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

3. The learned Advocate for Applicants relied on 'Tabular Chart' prepared on basis of recommendations of 'CSB' and incorporated in 'Affidavit in Rejoinder' filed on 22.01.2024 by Applicants; to highlight that only 11 'Tahsildars' which includes Applicants have been transferred outside their 'Revenue Divisions' by Government Orders dated 30.06.2024 of Revenue and Forest Department. The 'Tabular Chart' is reproduced below:-

Candidates transferred within Allotted Division	Candidates who were transferred within own district or adjoining district	Candidates whose transfers were changed after recommendation of Hon'ble Minister	Candidates who were transferred outside their own/existing Allotted Division
Total 48	Total 2	Total 4	Total 11
Sr. Nos.1, 2, 3, 4, 5, 6, 7, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 30, 31, 32, 33, 35, 36, 37, 38, 41, 42, 43, 44, 45, 51, 53, 55, 56, 57, 58, 59, 60, 62, 63, 64, 65.	Sr. Nos. 12, 61	Sr. Nos. 39, 40, 46, 47	Officers Transferred Outside due to Anti-Corruption's pending action: Sr. Nos. 8, 9, 34, 52 Officers transferred outside who have challenged transfer Sr. Nos. 29, 48, 50, 54 Officers have accepted transfer Sr. No.27, 49 Officer transferred who has not joined as per hearsay information Sr. No.26

4. The learned Advocate for Applicants then drew attention to contents of 'Affidavit in Rejoinder' filed on 06.03.2024 by Applicants wherein 'Data Sets' have been specifically presented in respect of length of tenures completed by majority of 31 'Tahsildars' transferred in Konkan

Division and Pune Division by Government Orders dated 30.06.2023 of 'Revenue & Forest Department'.

5. The learned Advocate for Applicant contended that 'Tabular Chart' and 'Granular Data' brought on record by Applicants by way of 'Affidavit-in-Rejoinder' dated 22.01.2024 and 'Affidavit in Rejoinder' dated 06.03.2024 indicates that Applicants were transferred from Konkan Division and Pune Division to Nagpur Division and Amravati Division based on subjective considerations and prejudicial recommendations made by 'CSB' which came to be accepted by 'Competent Transferring Authority' under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'

6. The learned PO per contra relied on 'Affidavit in Sur Rejoinder' dated 28.02.2024 of Revenue & Forest Department to emphasize the fact that Applicants had served for substantial periods of time in Mumbai Suburban District; Thane District of Konkan Division and Kolhapur District of Pune Division when cadre of 'Tahsildar' was 'Divisional Cadre'. Subsequently by 'Revenue and Forest Department GR dated 10.05.2021'; cadre of 'Tahsildar' has been made 'State Cadre'. Thus, it was against this backdrop that Government Orders dated 30.06.2023 of 'Revenue & Forest Department' came to be issued to transfer 64 'Tahsildars' in Konkan/Pune/Nashik/ Chatrapati Sambhaji Nagar/ Amravati/ Nagpur Divisions including Applicants who were transferred from Konkan Division and Pune Division to Amravati Division and Nagpur Division.

7. The learned PO relied on 'Affidavit in Sur Rejoinder' dated 28.02.2024 to justify transfers of Applicants from Konkan Division and Pune Division to Amravati Division and Nagpur Division by highlighting facets of 'Gross Information' as reproduced below regarding transfers of 64 'Tahsildars' in Konkan/Pune/Nashik/ Chatrapati Sambhaji Nagar/ Amravati/ Nagpur Divisions by Government Orders dated 30.06.2023 of 'Revenue & Forest Department' :-

“(a) Konkan Division : 5 Tahsildars have been transferred out of Revenue Division; whereas, 14 Tahsildars have been transferred within Revenue Division.

(b) Amravati Division: 2 Tahsildars have been transferred out of Revenue Division; whereas, 6 Tahsildars have been transferred within Revenue Division.

(c) Aurangabad Division : 2 Tahsildars have been transferred out of Revenue Division; whereas, 8 Tahsildars have been transferred within Revenue Division.

(d) Nagpur Revenue Division: 2 Tahsildars have been transferred out of Revenue Division; whereas, 8 Tahsildars have been transferred within Revenue Division.

(e) Nashik Division : 1 Tahsildar has been transferred out of Revenue Division; whereas, 4 Tahsildars have been transferred within Revenue Division.

(f) Pune Revenue Division : 3 Tahsildars have been transferred out of Revenue Division, whereas, 9 Tahsildars have been transferred within Revenue Division.

8. The learned PO emphasized that Government Orders dated 30.06.2023 of 'Revenue & Forest Department' about transfer of 64 'Tahsildars' in Konkan/Pune/Nashik/ Chatrapati Sambhaji Nagar/

Amravati/ Nagpur Divisions were issued as per recommendations made by 'CSB' with minor changes made in respect of just 4 'Tahsildars' at level of 'Hon'ble Minister in Charge' of 'Revenue Department' as 'Competent Transferring Authority' under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'

9. The 'Gross Figures' of transfers of 64 'Tahsildars' in Konkan/Pune/Nashik/ Chatrapati Sambhaji Nagar/ Amravati/ Nagpur Divisions placed on record by way of 'Affidavit in Sur Rejoinder' dated 28.02.2024 by 'Revenue and Forest Department' and 'Granular Data' about length of tenures completed by majority of 31 'Tahsildars' transferred in Konkan Division and Pune Division also brought on record by Applicants by way of 'Affidavit in Rejoinder' dated 06.03.2024 is required to be cross matched and dispassionately evaluated so as to deduce if there was any 'Invidious Discrimination' against 'Applicants' resulting from 'Arbitrary Exercise' of 'Statutory Powers' by 'Competent Transferring Authority' under Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005

10. The Government Orders dated 30.06.2024 of Revenue and Forest Department about transfers of 64 'Tahsildars' are not uniformly worded. Interesting to note is the fact that while all these have been issued by invoking provisions of 'Section 4(4)' of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official

Duties Act, 2005; just few of them have been issued by co-relying on 'Rule 8' of the Maharashtra Government Allotment of Revenue Division for Appointment by Nomination and Promotion to the post of Group A and Group B (Gazetted and Non-Gazetted) Rules, 2021. Thus, it would be necessary to also ascertain as to why this was selectively resorted to only in respect of few amongst 64 'Tahsildars' including Applicants who have been transferred by Government Orders dated 30.06.2023 of Revenue and Forest Department.

11(a). **O.A. No.810/2023** : The Applicant No.1 was serving as 'Additional Tahsildar (NA) Borivali -1 Mumbai Suburban District' while Applicant No.2 was serving as 'Assistant District Supply Officer, Raigad District and Applicant No.3 was serving as 'Tahsildar (SG1) Municipal Corporation Area Kalyan Thane District' in Konkan Division before they came to be transferred to Amravati Division and Nagpur Division by respective Government Orders dated 30.06.2023 of 'Revenue and Forest Department'. The 'Granular Data' of length of tenures completed by majority of 19 'Tahsildars' transferred in Konkan Division was compiled painstakingly by Applicants and subsequently placed on record by way of 'Affidavit in Rejoinder' dated 06.03.2024 but this was not repudiated by 'Revenue and Forest Department'. Thus when subjected to 'Data Interpretation' it reveals that while many 'Tahsildars' who were retained in Konkan Division had served for periods of more than 10 years viz.(a) Smt. Asha Tamkhede (Sr. No.41 of MoM-CSB), (b) Smt Pritilata Kourathi (Sr. No.43 of MoM-CSB) (c) Smt Satvashila Shinde (Sr. No.44 of MoM-

CSB) (d) Smt. Jyoti Wagh (Sr. No.45 of MoM-CSB), (e) Shri Satish Kadam (Sr. No.53 of MoM-CSB), (f) Smt. Manisha Mohite (Sr. No.64 of MoM-CSB); some other 'Tahsildars' who were retained in Konkan Division had served for period of more than 5 Years but less than 10 Years viz (a) Smt. Archana Mule (Sr. No.37 of MoM-CSB), (b) Shri Umesh Patil (Sr.No.40 of MoM-CSB), (c) Shri Sachin Bhalerao (Sr. No.46 of MoM-CSB), (d) Shri Abhijit Adarkar (Sr. No.47 of Mom-CSB), (e) Shri Prashant Thakare (Sr. No.51 of MoM- CSB) and still other 'Tahsildars' who were retained in Konkan Division viz (a) Shri Suhas Thorat (Sr. No.36 of MoM-CSB) (b) Shri Ramesh Pawar (Sr. 42 of MoM-CSB), (c) Shri Vijay Vhatkar (Sr. No.60 of MoM-CSB), (d) Shri Atul Save (Sr. No.65 of MoM-CSB) had served for periods upto 5 Years.

11(b) **O.A.No.911 of 2023** : The Applicant in O.A.No.911 of 2023 was serving as 'Tahsildar Rehabilitation Kolhapur District' in Pune Division before being transferred to Amravati Division by respective Government Order dated 30.06.2023 of 'Revenue and Forest Department'. The 'Granular Data' of length of tenures completed by majority of 12 'Tahsildars' transferred in Pune Division was compiled painstakingly and subsequently placed on record by way of 'Affidavit in Rejoinder' dated 06.03.2024 but this was not repudiated by 'Revenue and Forest Department'. Thus, when subjected to 'Data Interpretation' it reveals that while some 'Tahsildars' who were retained in Pune Division had served for periods of more than 10 years viz (a) Smt. Shilpa Thokde (Sr. No.21of MoM-CSB), (b) Smt. Shilpa Oswal (Sr. No.25 of MoM-CSB),

(c) Smt. Sunita Nerlikar (Sr. No.28 of MoM-CSB) few other 'Tahsildars' who were retained in Pune Division had served for periods between 5 to 10 Years viz (a) Shri Amol Kadam (Sr.No.19 of MOM-CSB), (b) Shri Sunil Sherkhane (Sr.No.22 of MoM-CSB), and still other 'Tahsildars' who were retained in Pune Division viz (a) Shri Kiran Jamdade (Sr.No.18 of MoM-CSB) (b) Shri Sameer Yadav (Sr.No.23 of MoM-CSB) (c) Smt. Mina Nimbalkar (Sr. No.24 of MoM-CSB) (d) Smt. Saraswati Patil (Sr. No.30 of MoM-CSB) had served for periods upto 5 Years.

12. The Revenue and Forest Department so as to use it as an alibi to justify transfers of few 'Tahsildars' like Applicants out of their 'Revenue Division' has made brazen misapplication of Maharashtra Government Allotment of Revenue Division for Appointment by Nomination and Promotion to the post of Group A and Group B (Gazetted and Non-Gazetted) Rules, 2021'. The mention of 'Rule 8' in some Government Orders dated 30.06.2024 of Revenue and Forest Department was not only patently selective; but it also gives away the concealed intent behind transfers of few 'Tahsildars' out of their 'Revenue Divisions'. The Revenue and Forest Department has thus made covert attempt to somehow justify transfer of only few 'Tahsildars' like Applicants out of their 'Revenue Division'; knowing rather well that 'Rule 8' can be invoked only in specific context when new appointments are required to be made by (a) 'Nomination' or (b) 'Promotion'. The few 'Tahsildar' like Applicants who came to be transferred out of their 'Revenue Divisions' were by no stretch of imagination placed at stage of either (a) 'Nomination' or (b) 'Promotion'

in cadre of 'Tahsildar'; so as to make it necessary to subject them to provisions of 'Maharashtra Government Allotment of Revenue Division for appointment by nomination and promotion to the post of Group A and Group B (Gazetted and Non-Gazetted) Rules, 2021'. The transfers of few 'Tahsildars' including Applicants outside their 'Revenue Division' could have anyway been done by 'Revenue and Forest Department' upon recording of 'Exceptional Circumstances' or 'Specific Reasons' by 'Competent Transferring Authority' and next 'Superior Transferring Authority' in accordance with provisions of 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.

13. The 'Granular Data' of length of tenures completed by majority of 31 'Tahsildars' transferred in Konkan Division and Pune Division emphatically highlighted by 'Affidavit in Rejoinder' filed on 06.03.2024 by Applicants is being relied upon as these have been not expostulated by Revenue and Forest Department. The 31 'Tahsildars' who were transferred in Konkan Division and Pune Division who had completed different lengths of tenures ranging from more than 10 Years to less than 5 Years are placed randomly across the visualizable 'Spectrum of Tenures'. Further, even 'Minutes of Meeting' of CSB held on 26.06.2023 does not give better insight as to what were the distinctive reasons as to why in respect of only 8 'Tahsildars' including (a) 3 Applicants in O.A.No.810/2023 serving in Konkan Division and (b) 1 Applicant in O.A.911/2023 serving in Pune Division it became persuasively necessary

to recommend their transfers outside 'Revenue Divisions'. Thus, it is evident that no specific criteria had been adopted by 'CSB' to recommend transfers of 64 'Tahsildars' of Konkan/Pune/Nashik Chatrapati Sambhaji Nagar/ Amravati/Nagpur Divisions. Obviously, even classic criteria adopted for transfer's such as 'Length of Tenure' within 'Revenue Division' was not considered by 'CSB' in its meeting held on 26.08.2023 which consequently has resulted in majority of 31 'Tahsildars' of Konkan Division and Pune Division who are placed randomly across the now discernible 'Spectrum of Tenure' being arbitrarily retained; while concurrently few others including Applicants placed adjacent to them being transferred equally arbitrarily out of their 'Revenue Divisions'.

14. The Hon'ble Supreme Court of India in the case of ***East Coast Railway & Another Vs. Mahadev Appa Rao & Ors. (2010) 7 SCC 678*** has emphasized on importance of 'Application of Mind' and recording of reasons by 'Public Authority' by observing that :-

"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."

15. The Hon'ble Bombay High Court in ***Seshrao Nagarao Umap Vs. State of Maharashtra, (1985)II LL J 73(Bom)*** has summarized the law on the aspects of colourable exercise of powers to accommodate Government Servants for undisclosed reasons by observing that :-

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilize the services of its employees. However this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colorable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair."

16. The 'Hon'ble Minister-in-Charge' of 'Revenue Department' as 'Competent Transferring Authority' under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' without much circumspection granted approval to recommendations made by 'CSB' in its meeting held on 25.06.2023; which has resulted in Government Orders dated 30.06.2023 of Revenue and Forest Department regarding transfers of 64 'Tahsildars' including those of Konkan Division and Pune Division. The transfers of 64 'Tahsildars' in Konkan/Pune/Nashik/ Chatrapati Sambhaji Nagar/ Amravati/ Nagpur Divisions thus stand vulnerable on account of 'Arbitrary Exercise' of 'Statutory Powers' under Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.

17. The equitable conclusion which can be unpretentiously arrived at is that Applicants were infact 'Cherry Picked' for transfers out of Konkan Division and Pune Division to Nagpur Division & Amravati Divisions; not discounting the fact that it must also have been an onerous task

assigned to 'CSB' to fill up vacancies of Amravati Division and Nagpur Division. However, it could have been better accomplished not only by retaining those 'Tahsildars' who were already serving there as has in fact been done in Amravati Division and Nagpur Division but thereafter recommending transfers of only those amongst 31 'Tahsildars' who had completed maximum tenures in Konkan Division and Pune Division. Also, it is pertinent to observe that upon transfers of Applicants; none from amongst 33 'Tahsildars' who were transferred from other 'Revenue Divisions' were brought in to fill up their vacant posts in Konkan Division and Pune Division.

18. The 'Invidious Discrimination' which has evidently occurred against Applicants gets accentuated by the fact that most of 64 'Tahsildars' who came to be transferred by Government Orders dated 30.06.2023 of Revenue and Forest Department were in fact serving in Konkan Division and Pune Division. Amongst the 31 'Tahsildars' of Konkan Division and Pune Division who were transferred; 23 'Tahsildars' were retained and only 8 'Tahsildars' were transferred out but hardly any who had completed longer tenures than (a) 3 Applicants in O.A.No.810/2023 and (b) 1 Applicant in O.A.No.911/2023. Further, lament is that although Applicant No.3 in O.A.810/2023 has 'Son' who is afflicted by 'Autism'; yet he was transferred from Konkan Division to Nagpur Division. The casualness with which this recommendation to transfer Applicant No.3 in O.A.No.810/2023 was made by 'CSB' in its meeting held on 26.06.2023 stands out in classic example of non

'Application of Mind' and inadvertence to 'Legal Entitlement' of 'Care Givers' under provisions of 'Section 2(d)' of 'The Right of Persons With Disabilities Act 2016'. Hence, for reasons recorded above, Government Orders dated 30.06.2023 of Revenue and Forest Department in respect of Konkan Division and Pune Division are liable to be quashed and set aside qua (a) 3 Applicants in O.A.No.810/2023 and (b) 1 Applicant in OA No.911/2023.

ORDER

(i) The Government Order dated 30.06.2023 of Revenue and Forest Department in respect of Konkan Division and Pune Division are thus quashed and set aside qua (a) 3 Applicants in O.A.No.810/2023 and (b) 1 Applicant in O.A.No.911/2023.

(ii) The Applicant No.1 & Applicant No. 2 in O.A.810/2023 and Applicant in O.A.No.911/2023 are to be transferred back within 'Four Weeks' to available 'Cadre Post' of 'Tahsildar' in Konkan Division and Pune Division.

(iii) The Applicant No.3 in O.A.810/2023 is to be transferred back within 'Four Weeks' to 'Cadre Post' of Tahsildar in Thane District or with his prior consent to any 'Deputation Post' in Thane District; considering 'Legal Entitlement' of 'Care Giver' under 'Section 2(d)' of 'The Right of Persons With Disabilities Act 2016'.

(iv) No Order as to Cost.

Sd/-

**(Debashish Chakrabarty)
Member (A)**

