

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 170 OF 2020

DIST. : AHMEDNAGAR

Shri Piraji s/o Laxman Sormare,)
Age: 58 years, Occu. : Service)
(as Addl. Collector, A'Nagar),)
R/o : Nagar Niwas 2, Near Collector)
Banglow, Ahmednagar,)
Dist. Ahmednagar.) **.. APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through its Addl. Chief Secretary,)
Revenue & Forest Department,)
M.S. Mantralaya, Mumbai - 32.)
- 2) **The Divisional Commissioner,**)
Nashik, Government Colony,)
Nashik - 422101.)
- 3) **The Collector,**)
Ahmednagar, GPO, Hatampura,)
Ahmednagar - 414001.)
- 4) **Mr. Dattatraya Borude,**)
Additional Collector,)
Sardar Sarovar Project,)
Nandurbar, Dist. Nandurbar.) **.. RESPONDENTS**

APPEARANCE :- Shri Avinash S. Deshmukh, learned
Advocate for the applicant.
: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondent nos. 1
to 3.
: Shri V.B. Wagh, learned Advocate for
respondent no. 4.

CORAM : Hon'ble Shri B.P. Patil, Vice Chairman

DATE : 3rd September, 2020

ORAL - ORDER

1. The applicant has challenged the orders dated 30.4.2020 passed by the respondent no. 1 by which he has been transferred from the post of Additional Collector, Ahmednagar to the post of Additional Collector, Sardar Sarovar Project, Nandurbar and posting the respondent no. 4 Shri Dattatraya Borude at his place, by filing the present O.A.

2. The applicant initially entered the Government service on 9.5.2992 as a directly recruited Tahsildar. He was promoted as a Deputy Collector in the month of November, 1998. Thereafter in the month of August, 2014 he was further promoted to the cadre of Additional Collector and since then he is working in the same cadre. He is going to retire on 31.3.2021 on attaining the age of superannuation.

3. When the applicant was working as a Additional Collector, Aurangabad the respondent no. 1 was pleased to issue an order of his transfer transferring him to Ahmednagar under the respondent no. 3 on 20.2.2019. It is his contention that in pursuance of the said transfer order he had joined on the post of Additional Collector, Ahmednagar and since then he is working there. He has hardly completed 1 year and 1 month tenure at

Ahmednagar. He was not due for transfer as he has not completed 3 years' tenure on the said post as per the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005).

4. It is contention of the applicant that the Government of India imposed national lockdown in the country w.e.f. 25.3.2020 due to Corona Virus i.e. COVID-19 pandemic. The Government of Maharashtra has also issued G.R. dated 29.3.2020 in that regard introducing the methodology for providing shelter and food to those affected persons by the lockdown. On 30.3.2020 the respondent no. 3 the Collector, Ahmednagar issued an order constituting a District Level Monitoring Committee and appointed the Additional Collector, Ahmednagar as the Joint President of the said Committee. It is his contention that on 20.4.2020 the respondent no. 3 has issued another order and appointed the applicant as the Nodal Officer for performing various duties under the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005 for preventing further spread of COVID-19 pandemic. It is his contention that the respondent no. 3 has taken the said action in pursuance of the Government Notification dated

14.3.2020 under which the State Government has framed the Maharashtra COVID-19 Regulations Act, 2020.

5. On 30.4.2020 the respondent no. 1 has issued 2 separate orders transferring the applicant from the post of Additional Collector, Ahmednagar to the post of Additional Collector, Sardar Sarovar Project, Nandurbar and posting the respondent no. 4 Shri Dattatraya Borude at his place. It is contention of the applicant that the said orders are in violation of the provisions of the Transfer Act, 2005. The mandatory requirements of Transfer Act, 2005 has not been complied with and therefore the impugned orders are illegal.

6. It is contention of the applicant that the respondent no. 4 has previously worked in Ahmednagar District and he hails from the same District. He was very well interested in being posted in Ahmednagar District. It is his contention that the impugned order transferring him from Ahmednagar to Nandurbar has been issued by the respondent no. 1 to accommodate the respondent no. 4 at Ahmednagar. It is his contention that the respondent no. 4 has not completed his tenure of posting at Nandurbar. In spite of that he has been transferred in place of the applicant. It is his contention that the respondent no. 1 has issued the transfer orders in violation of the provisions of the Transfer Act, 2005,

Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005. It is his contention that the respondent no. 1 has not made out the exceptional circumstances and the special case for issuing the impugned transfer orders. Therefore, the applicant challenged the impugned orders by filing the present O.A.

7. The respondent nos. 1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have admitted the fact that the impugned orders are midterm and mid tenure transfer orders. It is their contention that the Government employee can be transferred midterm and mid tenure by following the provisions of Transfer Act, 2005. The Government has issued the G.R. dated 29.3.2020 introducing the methodology for providing shelter and food to shelter-less persons, displaced labourers and stranded labours of other State being affected on account of lockdown due to outbreak of COVID-19 pandemic and whereby the State Level and District Level Monitoring Committees were formed to carry out the said function in more effective manner. They have admitted the fact that the respondent no. 3 has established Ahmednagar District Monitoring Committee and appointed the applicant as a Nodal Officer in respect of sugarcane cutting labourers and sugarcane transporting labourers and their families to send them back to their original villages. They have

admitted the fact that the impugned orders have been issued by the respondent no. 1 by which the applicant has been transferred from the post of Additional Collector, Ahmednagar to the post of the Additional Collector, Sardar Sarovar Project, Nandurbar and the respondent no. 4 Shri Dattatraya Borude has been placed in his place at Ahmednagar. The said orders have been issued in view of the seriousness of the pandemic and to take preventive steps for preventing the spread of the COVID-19 pandemic. They have not disputed the fact that the applicant is going to retire on 31.3.2021 on attaining the age of superannuation. It is their contention that Nandurbar District was in Green Zone so far COVID-19 patients are concerned till May, 2020 and thereafter it was less prone area to the epidemic disease of COVID-19 as compared to Ahmednagar District. Therefore the applicant has been transferred from the post of Additional Collector, Ahmednagar to the post of Additional Collector, Sardar Sarovar Project, Nandurbar and the respondent no. 4 has been posted at his place to strike the balance between the well-being of employees and to take care that necessary administrative function is not being adversely affected in the most needed time. It is their contention that the provisions of section 4(4) and 4(5) of the Transfer Act, 2005 have been followed while issuing the transfer orders of the applicant and the respondent no. 4. The transfer

orders have been issued in the exceptional circumstances by recording the special reasons. It is their contention that because of the exceptional circumstances of COVID-19 pandemic the impugned orders have been issued. It is their contention that the impugned orders have been issued on account of administrative exigency by following the provisions of the Transfer Act, 2005. The said orders have been issued considering the health of the applicant and the situation of the COVID-19 pandemic in Ahmednagar District and Nandurbar District.

8. It is contention of the respondent nos. 1 to 3 that the meeting of the Civil Services Board has been held on 14.3.2020. They considered the situation of COVID-19 pandemic in the State of Maharashtra and thereafter recommended the transfer of the applicant. They have admitted the fact that the provisions of section 72 of the Disaster Management Act, 2005 have overriding effect on other Laws. It is their contention that the applicant is likely to retire on 31.3.2021 i.e. within a period of less than one year. It is their contention that as Ahmednagar District being more prone to the COVID-19 pandemic as compared to Nandurbar District, the respondents have decided to post the respondent no. 4 at Ahmednagar as the Officer on the said post has to work round the clock and to face constant risk of being contaminated.

It is their contention that as the applicant is on the verge of retirement, the respondents decided to post the respondent no. 4, who is younger and senior, in Ahmednagar District to handle the COVID-19 pandemic situation. There is no illegality in the impugned orders. Therefore they prayed to reject the O.A.

9. The respondent no. 4 has filed his affidavit in reply and resisted the contentions of the applicant. It is his contention that he joined as Additional Collector, Sardar Sarovar Project, Nandurbar on 17.11.2017. He has completed 2 years service on the said post. He submitted a representation to the respondent no. 1 on 1.2.2020 and opted for posting at Ahmednagar as per G.Rs. dated 11.7.2000 and 6.8.2002 as he has completed 2 years tenure in Tribal area. It is his contention that he suffered heart attack in November, 2018 at Nandurbar and had undergone angioplasty at Ruby-Hall Clinic, Pune. Therefore he has sought his transfer in Ahmednagar District. It is his contention that the respondent no. 1 had effected the transfer of the applicant by following the due provisions of the Transfer Act, 2005 and thereafter posted him on the vacant post of the applicant in view of the aforesaid Circular and G.R. considering his representation. It is his contention that the impugned order has been issued in the public interest and on account of administrative exigency and

there is no illegality. He has denied the fact that the impugned orders had been issued to accommodate him at Ahmednagar. It is his contention that he has been relieved on 3.5.2020 from Nandurbar and on 4.5.2020 he has submitted his joining report to the Collector, Ahmednagar. There is no illegality in the impugned order. Therefore he prayed to reject the O.A.

10. The applicant has filed rejoinder affidavit to the affidavits in replies filed by the respondent nos. 1 to 3 and 4. It is his contention that he has been appointed as Nodal Officer for performing various duties under the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005 for preventing further spread of COVID-19 pandemic. Without withdrawing the said order the impugned order has been issued, which is in violation of the provisions of Disaster Management Act, 2005. He has denied that there are exceptional circumstances for his transfer and special reasons have been recorded while issuing his transfer order. He has denied that the respondent no. 4 is senior Officer and therefore he is posted in his place at Ahmednagar. The applicant entered in the cadre of Additional Collector in the year 2014, whereas the respondent no. 4 had been promoted in that cadre in the year 2017. Therefore the applicant has challenged the impugned transfer order and prayed to allow the O.A.

11. I have heard the arguments advanced by Shri A.S. Deshmukh, learned Advocate for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent nos. 1 to 3 and Shri V.B. Wagh, learned Advocate for respondent no. 4. I have also gone through the documents placed on record.

12. Admittedly the applicant entered the Government service on 9.5.1992 as a directly recruited Tahsildar. In the month of November, 1998 he was promoted to the post of the Deputy Collector. Thereafter in the month of August, 2014 he was further promoted from the cadre of Deputy Collector to the cadre of Additional Collector and since then he is working in the same cadre. Admittedly, he has been posted as a Additional Collector at Ahmednagar by the order dated 20.2.2019 and since then he is working there. He has hardly completed 1 year and 1 month tenure on the post of Additional Collector at Ahmednagar. He was not due for transfer. The respondent no. 4 is working as a Additional Collector in Sardar Sarovar Project, Nandurbar since November, 2017. He was also not due for transfer. Admittedly the impugned transfer orders are midterm and mid tenure transfer orders. Admittedly the applicant is going to retire w.e.f. 31.3.2021 on attaining the age of superannuation. Admittedly the Government has issued Notification dated 13.3.2020 and decided

to invoke the provisions of Epidemic Diseases Act, 1897 from the date of issuance of the said Notification. Accordingly the Notification dated 14.3.2020 has been issued by the State Government framing the regulation namely the Maharashtra COVID-19 Regulations Act, 2020. Admittedly the respondent no. 3 issued the order dated 30.3.2020 and constituted a District Level Monitoring Committee and appointed the Additional Collector, Ahmednagar as the Joint President of the said Committee. Thereafter the respondent no. 3 has issued another order dated 20.4.2020 and appointed the applicant as the Nodal Officer for performing various duties under the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005 for preventing further spread of COVID-19 pandemic.

13. Learned Advocate for the applicant has submitted that the applicant has hardly completed 1 year and 1 month at Ahmednagar. He has not completed the tenure on that post as provided under section 3 of the Transfer Act, 2005. But he has been abruptly transferred by the impugned order from the post of Additional Collector, Ahmednagar to the post of Additional Collector, Sardar Sarovar Project, Nandurbar without following the provisions of section 4(4) and 4(5) of the Transfer Act, 2005. He has submitted that in view of the Notification dated 14.3.2020 and

the provisions of the Maharashtra COVID-19 Regulations Act, 2020 published vide Notification dated 14.3.2020 the applicant has been appointed as a Joint President of District Level Monitoring Committee, Ahmednagar and also appointed as a Nodal Officer. He has submitted that the provisions of section 72 of the Disaster Management Act, 2005 for preventing further spread of COVID-19 pandemic shall have overriding effect on any Laws. He has submitted that since the applicant is appointed as the Nodal Officer and Joint President under the said Act he could not have been transferred without withdrawing the duties assigned to him under the said Act. But the respondent no. 1 issued his transfer order without withdrawing the said order. Therefore the impugned transfer order is against the provisions of section 72 of the Disaster Management Act, 2005.

14. Learned Advocate for the applicant has submitted that the applicant had not made any request for his transfer. The Department has not proposed his transfer, but the competent transferring authority made his transfer only to accommodate the respondent no. 4 in his place at Ahmednagar. Therefore, the impugned order is illegal. He has submitted that the mandatory requirements of sections 4(4) and 4(5) of the Transfer Act, 2005 has not been complied by the respondents while effecting his

transfer. The respondent no. 4 has previously worked in Ahmednagar District and he hails from the said District. Therefore, to accommodate the respondent no. 4 in place of the applicant at Ahmednagar, the impugned transfer order has been passed. The competent transferring authority had not made exceptional circumstances for his transfer as well as the transfer of the respondent no. 4 and the competent authority had not recorded any special reasons for their transfer. Therefore the impugned transfer orders are in violation of the provisions of section 4(4) and 4(5) of the Transfer Act, 2005. Therefore, he has prayed to quash the impugned orders.

15. Learned C.P.O. for respondent nos. 1 to 3 has submitted that the applicant is on the verge of retirement. He has submitted that Ahmednagar District being more prone to the COVID-19 pandemic as compared to Nandurbar District. Therefore the competent authority after considering the age of the applicant and his health status decided to transfer him to Nandurbar and to post the respondent no. 4, who is younger and senior, in place of applicant at Ahmednagar as the Officer on the said post where-on has to work round the clock and to face the constant risk of being contaminated. He has submitted that the competent authority had decided to effect the transfers of the applicant and the

respondent no. 4 considering the conditions of COVID-19 pandemic and for better administration in Ahmednagar district. He has submitted that the competent authority accordingly passed the order after approval of the next / higher transferring authority. There is no illegality in the impugned orders. Therefore, he justified the impugned orders. He has submitted that the impugned orders have been issued in the public interest and on account of administrative exigency in view of the provisions of section 4(4) and 4(5) of the Transfer Act, 2005. Therefore, he justified the orders and prayed to dismiss the O.A.

16. Learned Advocate for respondent no. 4 has submitted that the respondent no. 4 is serving in Nandurbar district, which is a tribal area, since November, 2017 and he has completed 2 years tenure at Nandurbar. Therefore, in view of the provisions of Circular dated 11.7.2000 and G.R. dated 6.8.2002 he had requested the competent transferring authority to transfer him in Ahmednagar district. He has argued that the competent transferring authority decided to transfer the applicant from Ahmednagar on account of administrative exigency and for the exceptional circumstances and effected his transfer by the impugned order dated 30.4.2020. The Competent Transferring Authority considered the request of the respondent no. 4 and

posted him at the place of the applicant at Ahmednagar by issuing another transfer order dated 30.4.2020. He has submitted that the impugned order has been issued in view of the provisions of Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005 for preventing further spread of COVID-19 pandemic in the State of Maharashtra. Special reasons have been recorded by the competent transferring authority while effecting the transfer of the applicant. Therefore, there is no illegality in the impugned orders. He has submitted that as the transfers have been effected after invoking the provisions of Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005 for preventing further spread of COVID-19 pandemic, the same cannot be treated as illegal. Therefore, he has justified the impugned orders by which the applicant has been transferred from Ahmednagar to Nandurbar and the respondent no. 4 has been posted at his place at Ahmednagar. Consequently, he has prayed to dismiss the O.A.

17. In support of his submissions the learned Advocate for respondent no. 4 has placed reliance on the judgment of Hon'ble High Court of Judicature at Bombay in the case of **Shankarrao Narayanrao Jadhav Vs. State of Maharashtra and Others** reported at **2011 (1) Mh.L.J. 210**, wherein it is observed as follows :-

“8. -- -- -- -- --
 Undoubtedly, the transfers on promotion, on request or on administrative exigencies would be mid term transfers as well. The Transfer Act does not contemplate transfers on account of the directions issued by the Election Commission, but they may fall in the category of special transfers / midterm transfers.”

18. He has also placed reliance on the judgment of Hon’ble High Court of Judicature at Bombay, Bench at Aurangabad in **writ petition No. 6051/2017 (Mahendra s/o Eknath Mali Vs. the State of Maharashtra & Ors.)** and other writ petitions decided on 4.4.2018, wherein similar principles has been laid down.

19. He has also placed reliance on the judgment of Hon’ble High Court of Bombay in the case of **State of Maharashtra Vs. Ashok Ramchandra Kore and Another reported at 2009(4) Mh.L.J. 163**, wherein it is observed as follows :-

“The lacunae noticed in the work of the 1st respondent, by the Secretary Water Conservation Department, the remarks made by the Minister Water Conservation and Minister Water Resources, provides sufficient reasons and make out a special case for midterm transfer as contemplated by the Transfer Act. In the nature of the things it is humanly impossible for High Court to assess the niceties of the administrative needs and requirements of the situation concerned. These decisions must be best left to the administrative heads. High Court cannot substitute its opinion for that of the competent authorities of the State. Court will only have to examine whether there are reasons making out a special case. Interference would be warranted only if the order is issued malafide. Except stating that the State Government

wanted to favour the 2nd respondent and commenting on the conduct of the 2nd respondent no foundation is laid by the 1st respondent to support allegation of malafide. It is not even suggested that either the Minister for Water Resources or the Minister for Water Conservation or the Chief Minister were vitally interested in the 2nd respondent and they entertained animus against the 1st respondent. Vague allegations of favouritism are made. The entire case rests on conjectures and surmises and alleged fabrication of record. Allegation of malafides must be based on concrete materials and cannot be entertained on the mere making of it or on consideration borne out of conjectures and surmises. The above tests are not answered by the 1st respondent in this case. Except for strong and convincing reasons it is not possible for us to interfere with a transfer order by inferential reasoning based on conjectures and surmises. Unless firm factual matrix of malafides is laid the transfer order cannot be set aside. In the present case, mala fides have not been established. The MAT should not have, therefore, acted as an Appellate Authority. The MAT exceeded its jurisdiction and therefore, its impugned order must be set aside and accordingly is set aside.”

20. He has also placed reliance on the judgment of Hon’ble High Court of Judicature at Bombay in the case of **V.B. Gadekar Vs. Maharashtra Housing and Area Development Authority and another** reported at **2008(2) Mh.L.J. 640**, wherein it is observed as follows :-

“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter, which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfers could be due to exigencies of service or due to administrative reasons. The petitioners

in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power. The authorities concerned have made a class of persons against whom disciplinary action is contemplated. In fact, it has been stated in the reply filed by the respondents in no uncertain terms that they are taking disciplinary action in accordance with the opinion of the Vigilance Department against these Officers for irregularities committed in the special and current repairs in the transit camps all over Mumbai. If the authorities have taken a view that they need to transfer the Officers upon whom show cause notices were served and disciplinary action is contemplated that decision cannot be termed as arbitrary or mala fide. It is a decision obviously taken for administrative reasons and there is no occasion for the Court to go behind the order and examine, like an Appellate Authority, whether or not such order needs to be passed. The expressions "exceptional circumstances" or "special circumstances" have to be read ejusdem generis provided that transfer may be made any time in the year in question under the circumstances stated in those provisions. The expression "exceptional circumstances" has been explained in Black's Law Dictionary, Sixth Edition, as conditions, which are out of the ordinary course of events, unusual or extraordinary circumstances. The Shorter Oxford English Dictionary on historical principles, Vol.1 A- Mark worthy explains the word "exceptional" - of the nature of or forming an exception, unusual. The discretion is vested in the authorities to make an exception of tenure of two and three years wherever special circumstances exist. Special circumstances should be understood in the concept of service jurisprudence and not in its literal sense. Conditions of service make transfer as a necessary incidence of service. The Rules give protection to an employee to stay at the place of posting for three years but this is subject to the exception that, where in the wisdom of the authority concerned, he should, for administrative and exceptional circumstances, even be transferred during that period. In the present case there is no fault in exercise of such power. There are no patent mala fides or arbitrariness in exercise of power by the respondents." (Para 7)

21. He has also placed reliance on the judgment of Hon'ble Supreme Court in the case of **Union of India and others Vs. S.L. Abbas** reported at **AIR 1993 SC 2444**, wherein it is observed as follows :-

“While ordering the transfer of Government employee, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject, but the said guidelines do not confer upon the Government employee a legally enforceable right. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation any statutory provisions, the Court cannot interfere with it.

7. Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of statutory provisions, the Court cannot interfere with it. There is no doubt that, while ordering the transfer the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, the husband and the wife must be posted at the same place. The said guideline, however, does not confer upon the government employee a legally enforceable right.”

22. I have gone through the decisions referred by the learned Advocate for respondent no. 4. I have no dispute regarding the settled legal principles laid down therein. I have to decide the present case keeping in mind the above said legal principles and facts in this case.

23. On perusal of record it reveals that the applicant has not completed his normal tenure of posting in Ahmednagar district. He was not due for transfer. Likewise the respondent no. 4 has also not completed his normal tenure of posting at Nandurbar and he was also not due for transfer. The impugned order is mid tenure transfer order of the applicant. No doubt, in view of the provisions of section 4(4) and 4(5) of the Transfer Act, 2005, the competent transferring authority is empowered to transfer the Government employee before completion of his tenure in the special & exceptional circumstances by recording reasons in writing. There is no dispute about the fact that the Government of Maharashtra has issued Notification dated 13.3.2020 and decided to invoke the provisions of Epidemic Diseases Act, 1897 from the date of issuance of the said Notification and thereafter by the Government Notification dated 14.3.2020 the State Government has also framed the Maharashtra COVID-19 Regulations Act, 2020. The provisions of the Disaster Management Act are also invoked on the ground of COVID-19 pandemic. Admittedly the respondent no. 3 issued the order dated 30.3.2020 and constituted a District Level Monitoring Committee and appointed the Additional Collector, Ahmednagar as a Joint President of the said Committee. Thereafter the respondent no. 3 has issued another order dated 20.4.2020 and appointed the applicant as the

Nodal Officer for performing various duties under the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005 for preventing further spread of COVID-19 pandemic.

24. On perusal of original record produced by the learned C.P.O. for the respondent nos. 1 to 3 regarding promotions and transfers of the Government officers in the cadre of Additional Collectors it reveals that initially the proposal regarding promotion and posting of the Officers has been prepared on 29.1.2020. Thereafter it was placed before the Civil Services Board on 14.3.2020. It reveals from the record that the Civil Services Board recommended the transfers and promotions of the Officers and thereafter the concerned Minister has approved the said proposal with certain changes / modifications. In the original proposal there was no proposal regarding transfer of the applicant and respondent no. 4. But thereafter the competent transferring authority decided to make the transfer of some of the Officers whose names have not been mentioned in the earlier proposal and recommendations made by the Civil Services Board. In that proposal the transfer of the applicant has been proposed from Ahmednagar to Nandurbar and the respondent no. 4 has been proposed to be posted at the place of applicant at Ahmednagar. On perusal of the another proposal prepared by the Department, it reveals that no exceptional circumstances have been made out for transfer of the

applicant as well as the respondent no. 4. The said proposal has been approved by the competent transferring authority and thereafter it has been placed before the next higher / superior transferring authority i.e. the Hon'ble Chief Minister for his approval. It was approved on 27.4.2020 and thereafter the impugned order has been issued. These documents show that no proposal regarding the transfer of the applicant and the respondent no. 4 has been initially submitted by the department. But all of a sudden, the competent authority had decided to transfer the applicant on 18.3.2020. The said proposal has not been placed before the Civil Services Board for its recommendations. No doubt, the competent authority is empowered to make the transfers of the employees at any time by following the provisions of section 4(4) and 4(5) of the Transfer Act, 2005 that too in exceptional circumstances and by recording the special reasons in writing. But the competent transferring authority neither mentioned the exceptional circumstances nor recorded the special reasons in writing for transfer of the applicant from Ahmednagar to Nandurbar before completion of his normal tenure. The competent transferring authority has not followed the mandatory provisions of sections 4(4) and 4(5) of the Transfer Act, 2005 while making the transfer of the applicant. There is no mention in the recommendation made by the

transferring authority regarding administrative exigency while effecting the transfer orders of the applicant and the respondent no. 4. Therefore, in my view the impugned orders are in violation of the provisions of section 4(4) and 4(5) of the Transfer Act, 2005. Therefore the impugned transfer order by which the applicant has been transferred from Ahmednagar to Nandurbar is not sustainable in the eye of law.

25. Learned C.P.O. for respondent nos. 1 to 3 has argued that the respondent no. 4 is senior and experienced Officer in the cadre of the Additional Collectors than the applicant. But the record shows that the respondent no. 4 is junior to the applicant and is also having less experience. Therefore I find no substance in the contention of the respondent nos. 1 to 3 in that regard. The respondent nos. 1 to 3 have filed the affidavit raising false contentions in that regard.

26. Considering the above said facts, in my opinion, the impugned transfer orders of the applicant and the respondent no. 4 are in violation of the provisions of section 4(4) and 4(5) of the Transfer Act, 2005. The said orders are issued only to accommodate the respondent no. 4 in the place of applicant at Ahmednagar.

27. In view of the discussions in foregoing paragraphs, the O.A. stands allowed. The impugned orders dated 30.4.2020 passed by the respondent no. 1 transferring the applicant from the post of Additional Collector, Ahmednagar to the post of Additional Collector, Sardar Sarovar Project, Nandurbar and the order of posting the respondent no. 4 Shri Dattatraya Borude in place of the applicant at Ahmednagar are quashed and set aside. The respondent no. 1 shall repost the applicant at his earlier place of posting i.e. at Ahmednagar immediately. There shall be no order as to costs.

(B.P. PATIL)
VICE CHAIRMAN

Place : Aurangabad
Date : 3rd September, 2020

ARJ-O.A. NO. 170-2020 BPP (TRANSFER)