

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 172 OF 2020

DIST. : OSMANABAD

Sudarshan s/o Sahebrao Pagar,)
Age. 47 years, Occu. Service,)
(as Superintending Engineer,)
Osmanabad Irrigation Circle, O'bad),)
R/o : Anand Nagar, Osmanabad,)
Dist. Osmanabad.) -- APPLICANT

VERSUS

1. The State of Maharashtra,)
Through its Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai - 32.)
2. The Chief Engineer,)
Irrigation Department,)
Sinchan Bhavan, Aurangabad.)
3. Mr. Manoj R. Awalgaonkar,)
Executive Engineer,)
Irrigation Research Division,)
Beacon Ship, Moledina Road,)
Camp, Pune - 01.) -- RESPONDENTS

APPEARANCE :- Shri Avinash S. Deshmukh, learned
Advocate for the applicant.
: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondent nos. 1
& 2.
: Shri Ajay S. Deshpande, learned Advocate
for respondent no. 3.

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

RESERVED ON : 30th June, 2020

PRONOUNCED ON : 8th July, 2020

ORDER

1. The applicant has challenged the orders dated 26.5.2020 passed by the respondent no. 1, the Principal Secretary, Water Resources Department, Mantralaya, Mumbai, thereby transferring him from the post of the Superintending Engineer, Osmanabad Irrigation Circle, Osmanabad to the post of Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya, Mumbai and posting the respondent no. 3 Shri Manoj R. Awalgaonkar on his post at Osmanabad, by filing the present O.A.

2. The applicant entered the service of the respondent no. 1 on 1.7.2000 as a directly recruited Assistant Executive Engineer upon his due selection and recommendation by the Maharashtra Public Service Commission. In the month of August 2004 he was promoted to the post of Executive Engineer. In the month of December, 2015 he was further promoted to the post of Superintending Engineer and since then he is working in the said cadre. By the order dated 1.4.2017 passed by the respondent no. 1, the applicant was transferred from the post of Superintending Engineer, Minor Irrigation (Water Conservation) Circle, Amravati to the post of Superintending Engineer, Osmanabad Irrigation Circle, Osmanabad. Accordingly, he has been relieved from the

post of Superintending Engineer, Minor Irrigation (Water Conservation) Circle, Amravati and he joined on the post of Superintending Engineer, Osmanabad Irrigation Circle, Osmanabad on 3.4.2017 and started discharging his duties. In the month of April, 2020 he has completed his normal tenure of 3 years on the present post. Prior to that, on 13.2.2019 the respondent no. 1 had issued the transfer order of the applicant from the post of Superintending Engineer, Osmanabad Irrigation Circle, Osmanabad to the post of Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya, Mumbai. The said transfer was midterm and mid-tenure and, therefore, the applicant challenged the said order before this Tribunal by filing O.A. no. 136/2019. This Tribunal allowed the said O.A. by the order dated 6.5.2019 and quashed and set aside the transfer order dated 13.2.2019. The Government challenged the said order of this Tribunal before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing writ petition No. 12758/2019. The said writ petition is still pending. It is his contention that the issue of posting of the applicant as a Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya, Mumbai is pending before the Hon'ble High Court.

3. It is further contention of the applicant that due to the pandemic COVID-19 situation the Government has issued the G.R. dated 4.5.2020 and took various decisions to curb and avoid the unnecessary expenditure affecting the financial position of the State. By the said G.R. the Government decided to impose ban on the new recruitments and transfers of the government employees working in all the cadres during the current financial year 2020-21. In spite of that, the respondent no. 1 issued the order dated 26.5.2020 and transferred him from the office of the Superintending Engineer, Osmanabad Irrigation Circle, Osmanabad to the post of Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya, Mumbai i.e. the said post on which the applicant was transferred by the earlier order dated 13.2.2019 and which was challenged by him before this Tribunal. It is his contention that the respondents issued separate order dated 26.5.2020 transferring and posting the respondent no. 3 in his place at Osmanabad.

4. It is his contention that the respondent no. 3 has been promoted to the cadre of Superintending Engineer by the order dated 1.2.2020. The respondent no. 3 has been posted as Superintending Engineer in Aurangabad Irrigation Circle, Aurangabad on the vacant post as per the option given by him.

But the respondent no. 3 has not joined the promotional post of Superintending Engineer at Aurangabad Irrigation Circle, Aurangabad and he has continued to work on the post of Executive Engineer, Irrigation Research Division, Pune. He is still working on the said post of Executive Engineer, Pune. On enquiry, the applicant learnt that the respondent no. 3 is interested in getting the posting at Osmanabad Irrigation Circle, Osmanabad i.e. at the place of applicant. Therefore he has not joined on the promotional post at Aurangabad Irrigation Division, Aurangabad.

5. It is his contention that the impugned transfer order of the applicant has been issued to accommodate the respondent no. 3. It is his contention that the impugned transfer order has been issued by the respondents in violation of the ban imposed by the Government on transfer as mentioned vide G.R. dated 4.5.2020. It is his contention that the provisions of section 4(5) of the Transfer Act, 2005 have not been followed by the respondents at the time of issuing the transfer order of the applicant. The proposal regarding the transfer of the applicant has not been approved by the Civil Services Board and, therefore, it is illegal and in violation of the provisions of the Transfer Act, 2005. Therefore, he approached this Tribunal by filing the present O.A.

and prayed to quash the impugned transfer order transferring him from the post of the Superintending Engineer, Osmanabad Irrigation Circle, Osmanabad to the post of Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya, Mumbai and posting the respondent no. 3, Shri Manoj R. Awalgaonkar on his post at Osmanabad.

6. The respondent nos. 1 & 2 have filed their affidavit in reply and resisted the contentions of the applicant. They have denied that the transfer of the applicant has been made in violations of the provisions of the Transfer Act, 2005 and in violations of the guidelines given by the Government in the G.R. dated 4.5.2020. In view of the provisions of the section 3 of the Transfer Act, 2005 the normal tenure on the post is 3 years. The applicant has completed his normal tenure of 3 years in the year 2020 and he was due for transfer in the month of April / May, 2020. Therefore the Department has prepared a proposal regarding his transfer and placed it before the Civil Services Board. The Civil Services Board on 8.5.2020 recommended the transfer of the applicant on administrative ground on the vacant post of Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya, Mumbai. As per the clause 15 of the G.R. dated 4.5.2020 issued by the Finance Department there was a ban on

the transfer of a Government employee from any cadre in the current financial year 2020-21 on account of COVID-19 pandemic, hence the respondent no. 1 made a reference to the Finance Department regarding the transfer of the applicant and the Additional Chief Secretary, Finance Department has accorded his approval to the transfer of the applicant. Thereafter the Competent Transferring Authority accepted the proposal of the transfer of the applicant. Thereafter the said proposal was placed before the highest / superior Competent Transferring Authority and on receiving the approval of that authority the impugned transfer order has been issued.

7. It is their contention that the applicant filed O.A. no. 136/2019 before this Tribunal challenging the earlier transfer order dated 13.2.2019 by which he was transferred from the post of Superintending Engineer, Osmanabad Irrigation Circle, Osmanabad to the post of Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya, Mumbai. It is their contention that this Tribunal allowed the said O.A. by the order dated 6.5.2019 and quashed and set aside the transfer order dated 13.2.2019. The Government challenged the said order of this Tribunal before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing writ petition No.

12758/2019. During the pendency of the said writ petition the applicant has completed his normal tenure of 3 years and, therefore, he has been transferred in the year 2020 by the impugned order dated 26.5.2020. They have further submitted that the pendency of the writ petition cannot be a ground for challenging the present transfer order.

8. It is contention of the respondent nos. 1 & 2 that because of the COVID-19 pandemic situation the Government issued the G.R. dated 4.5.2020 and banned the general transfers and it was decided that the G.A.D. will issue the detailed orders in that regard. It is their contention that because of the special reasons and exceptional circumstances the transfer of the applicant was proposed and it was approved by the Finance Department and, therefore, there was no violation of the directions given in the G.R. dated 4.5.2020. It is their contention that the transfer of the applicant has been made on the vacant post in the Mantralaya and it is made due to administrative exigency and the same has been made by following the provisions of the Transfer Act, 2005. Therefore, they justified the impugned transfer order and prayed to reject the O.A.

9. It is their contention that the respondent no. 3 has not been relieved from the post of Executive Engineer, Irrigation Research

Division, Pune, because of COVID-19 pandemic situation and, therefore, he could not join on the promotional post in view of the order dated 1.2.2020. As the respondent no. 3 has not been relieved from his earlier post due to COVID-19 Pandemic situation his posting order on promotion has been modified and he has been posted in place of the applicant at Osmanabad. The impugned order of the respondent no. 3 is in accordance with the rules and, therefore, they justified the impugned orders and prayed to dismiss the O.A.

10. The respondent no. 3 resisted the contentions of the applicant by filing his affidavit in reply. It is his contention that he is working as Executive Engineer in Water Resources Department at Pune. He has been promoted from the cadre of Executive Engineer to the cadre of Superintending Engineer by the order dtd. 1.2.2020 and was posted as a Superintending Engineer, Aurangabad Irrigation Circle, Aurangabad. However, due to personal reasons he could not join at Aurangabad on his promotional post immediately. It is his contention that he could not join on his promotional post of Superintending Engineer at Aurangabad in order to make necessary family arrangements and the educational facilities to be made available to his wards. Therefore, he continued to work as Executive Engineer in Water

Resources Department at Pune. He has not been relieved by his authorities and, therefore, he could not join on the promotional post. He could not relieve due to COVID 19 pandemic situation, therefore, he was prevented to join on his promotional post of Superintending Engineer at Aurangabad. It is his contention that by issuing the order dated 26.5.2020 the Government has modified his posting order and transferred him in place of the applicant at Osmanabad instead of his earlier posting at Aurangabad, as the applicant has been transferred from the post of the Superintending Engineer, Osmanabad Irrigation Circle, Osmanabad to the post of Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya, Mumbai by the impugned transfer order dated 26.5.2020. It is his contention that the applicant has already been transferred from the said post in the year 2019, but it was quashed and set aside by this Tribunal. It is his contention that the Government has issued the impugned order by following the provisions of section 4(4) and 4(5) of the Transfer Act, 2005 and the compliance of the mandatory provisions under the said Act has been made. Therefore he justified the impugned order and prayed to reject the O.A.

11. The applicant has filed affidavit in rejoinder to the affidavit in reply of the respondent nos. 1 to 3. He has denied that the

proposal regarding his transfer has been placed before the Civil Services Board and the recommendations of the Civil Services Board have been obtained for his transfer. It is his contention that the G.R. dated 4.5.2020 provides ban on the transfers and it does not provide prior approval of the Finance Department for making the transfers. It is his contention that by the G.R. dated 4.5.2020 the Government has imposed absolute ban on the transfers during the current financial year 2020-21, but the respondent has issued the impugned order in violation of the said G.R. The impugned order has not been issued by following the mandatory provisions of section 4(4) and 4(5) of the Transfer Act, 2005. The impugned order has been issued to accommodate the respondent no. 3 in his place at Osmanabad. The impugned order has been issued in malice. Therefore he prayed to quash the impugned order by allowing the O.A.

12. I have heard the arguments advanced by Shri Avinash S. Deshmukh, learned Advocate for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent nos. 1 & 2 and Shri Ajay S. Deshpande, learned Advocate for respondent no. 3. I have also gone through the documents placed on record.

13. Admittedly the applicant entered the Government service on 1.7.2000 as a direct recruited Assistant Executive Engineer upon his due selection and recommendation by the Maharashtra Public Service Commission. Admittedly in the month of August 2004 he was promoted to the post of Executive Engineer. Thereafter in the month of December, 2015 he was further promoted to the post of Superintending Engineer and since then he is working in the said cadre. Admittedly by the order dated 1.4.2017 passed by the respondent no. 1, the applicant was transferred from the post of Superintending Engineer, Minor Irrigation (Water Conservation) Circle, Amravati to the post of Superintending Engineer, Osmanabad Irrigation Circle, Osmanabad and he joined on the said post on 3.4.2017 and since then he is working there. Admittedly the applicant has completed normal tenure of 3 years on the said post. Admittedly prior to completion of his normal tenure the respondent no. 1 had issued the order dated 13.2.2019 and transferred him from the post of Superintending Engineer, Osmanabad Irrigation Circle, Osmanabad to the post of Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya, Mumbai. The said transfer was midterm and mid-tenure and therefore the applicant challenged the said order before this Tribunal by filing O.A. no. 136/2019. This Tribunal allowed the O.A. by the order dated 6.5.2019 and

quashed and set aside the transfer order dated 13.2.2019. Admittedly the Government challenged the order of this Tribunal before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing writ petition No. 12758/2019 and the writ petition is still pending.

14. Admittedly the respondent no. 3 has been promoted from the cadre of Executive Engineer to the cadre of Superintending Engineer by the order dated 1.2.2020. As per his option he has been posted at Aurangabad by the said promotion order. But the respondent has not been relieved from Pune and therefore he could not join on his promotional post at Aurangabad. Admittedly he is still working as Executive Engineer in Water Resources Department at Pune. Admittedly the Government issued the G.R. dated 4.5.2020 taking various measures to curb the unnecessary financial expenditure affecting the financial position of the State in view of COVID-19 pandemic situation and imposed ban on the transfers of the Government employees and Officers during the current financial year 2020-21 and also directed that the G.A.D. will issue the necessary directions in that regard. Admittedly the applicant and respondent no. 3 have been transferred by the respondents by passing 2 separate orders. The applicant has been transferred from the post of the Superintending Engineer,

Osmanabad Irrigation Circle, Osmanabad to the post of Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya, Mumbai and the respondent no. 3 has been posted at the place of applicant at Osmanabad by modifying his earlier posting order.

15. Learned Advocate for the applicant has submitted that the applicant has completed his normal tenure of posting and he is due for transfer in the general transfers of 2020. On 4.5.2020 the Government has issued the G.R. and issued the directives and certain measures to curb the unnecessary expenditure of the State Government keeping in mind the financial difficulties due to COVID-19 pandemic situation and imposed a ban on the transfers of the Government servants during the financial year 2020-21. He has submitted that because of the ban imposed by the State Government the applicant cannot be transferred during the current financial year 2020-21. But the respondents by violating the said directives given in the G.R. dated 4.5.2020 issued the impugned transfer order of the applicant. He has submitted that the impugned transfer of the applicant is in violation of section 4(5) of the Transfer Act, 2005 and no exceptional circumstances have been made out while issuing the impugned order. He has submitted that no special reasons have been recorded while

effecting his transfer by the competent transferring authority as well as the superior / higher competent transferring authority while approving the proposal of the Department. He has submitted that the proposal regarding transfer of the applicant has not been placed before the Civil Services Board. He has argued that duly constituted Civil Services Board had not approved the proposal of the Department. The record produced by the respondents shows that the matter has not been placed before the Civil Services Board and no reasons have been recorded in writing for making the transfer of the applicant. The impugned transfer order has been issued with a view to accommodate the respondent no. 3.

16. He has submitted that the respondent no. 3 has been promoted to the cadre of Superintending Engineer by the order dated 1.2.2020 and has been posted in Aurangabad Irrigation Circle, Aurangabad on the vacant post as per the option given by him. But the respondent no. 3 has not joined on the promotional post of Superintending Engineer at Aurangabad Irrigation Circle, Aurangabad. The respondents have not taken any action against him in that regard. On the contrary, they issued the impugned transfer order and posted the respondent no. 3 at his place at Osmanabad to accommodate and favour him.

17. Learned Advocate for the applicant has submitted that neither the G.R. dated 4.5.2020 nor any directives issued by the Government provide that prior approval of the Additional Chief Secretary, Finance Department is required for the transfers during the current financial year. But the respondents made the record in that regard to show that there was approval of the Finance Department to the impugned transfer of the applicant. The provisions of the Transfer Act, 2005 has not been suspended by the G.R. dated 4.5.2020 and it was in the nature of instructions in general nature. He has submitted that even if the respondents intend to make the transfer of the applicant then the respondents have to follow the mandatory provisions of section 4(4) and 4(5) of the Transfer Act, 2005. But the mandatory provisions of the said section has not been complied with by the respondents while issuing the transfer order of the applicant. Therefore, he prayed to quash the impugned orders by allowing the O.A.

18. Learned C.P.O. for respondent nos. 1 & 2 and learned Advocate for respondent no. 3 have submitted that the applicant was due for transfer on completion of 3 years' tenure in the month of April / May, 2020. The post of Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya, Mumbai, is vacant and, therefore, the Department prepared a

proposal regarding the transfer of the applicant and transfer of the respondent no. 3 at his place on his promotion. The said proposal was placed before the Civil Services Board. The Members of the Civil Services Board accepted the proposal of the Department and recommended the transfer of the applicant. Thereafter approval of the Additional Chief Secretary, Finance Department had been taken to the said proposal as there was ban on the general transfers as per the G.R. dated 4.5.2020. After obtaining approval of the Additional Chief Secretary of Finance Department it was placed before the Hon'ble Minister and the competent transferring authority approved the said proposal. Thereafter it was placed before the Hon'ble Chief Minister, who is highest / superior competent transferring authority and the said authority has also accorded his sanction to the said proposal. They have submitted that the provisions of the Transfer Act have been strictly followed by the respondents while issuing the transfer order. Therefore they justified the impugned transfer orders and prayed to reject the O.A.

19. Learned Advocate for the respondent no. 3 has submitted that at the time of proposing the transfer of the applicant the Department decided to withdraw the writ petition No. 12758/2019, which was pending before the Hon'ble High Court

and accordingly intimation was given to the Government Pleader of the Hon'ble High Court in that regard. He has submitted that the pendency of the said writ petition will not affect the impugned transfer orders. Therefore he justified the impugned transfer orders and prayed to reject the O.A.

20. On perusal of record produced by the respondents it reveals that the Department prepared the proposal regarding the transfer of the applicant to fill up the vacancy in the cadre of Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya. At the same time the proposal regarding posting of respondent no. 3 on promotion at the place of the applicant at Osmanabad by modifying the earlier proposal regarding his posting at Aurangabad was prepared by the respondents. The said record shows that the said proposal was placed before the Civil Services Board. No doubt, the compilation / record produced by the respondents show that there was recommendation of Civil Services Board, but it does not disclose that when the meeting of the Civil Services Board was called. It shows that the Civil Services Board-1(A) comprising of Principal Secretary of Water Resources Department as Chairman, the Secretary of Water Resources Department and Deputy Secretary (Establishment) of Social Justice and Special Help Department as

Members has been constituted for the transfers of the Superintending Engineer (Group-A). There is nothing on record to show that the meeting of the Civil Services Board has been called and the matter has been placed before the said Board. If the meeting of the Civil Services Board had been called then the minutes of the said meeting would have been prepared and maintained by the respondents. But no such minutes of the meeting of the Civil Services Board have been placed on record. The so called recommendations of the Civil Services Board on page 5 of the record show that it has been signed by the Secretary of Water Resources Department as a Member and the Principal Secretary, Water Resources Department as a Chairman of the said Civil Services Board. However, another Member i.e. the Deputy Secretary (Establishment) of Social Justice and Special Help Department has not put his signature on the so called recommendations. No reasons have been recorded by the Civil Services Board while recommending the transfer of the applicant. On perusal of para 10 of the proposal prepared by the Department, it reveals that after receiving the recommendations of the Civil Services Board the matter has been placed before the competent transferring authority for the approval. It means that the recommendations of the Civil Services Board have been received before placing the proposal before the competent

transferring authority. But the record shows that the so called recommendations of the Civil Services Board made on the said proposal and it has been signed by the Chairman and the Member and not by the 3rd Member of the Civil Services Board. Therefore it creates doubt regarding the meeting of the Civil Services Board and the recommendations made by the Civil Services Board. The record shows that the approval of the Additional Chief Secretary of the Finance Department has been obtained for effecting the impugned transfer of the applicant. However, the reasons for the approval of the Finance Department is obtained by the respondents have not been mentioned. Neither the provisions of the Transfer Act, 2005 or the directives / guidelines given in the G.R. dated 4.5.2020 provides to obtain the approval of the Finance Department for transfers. Therefore, one cannot understand as to why and for what purpose the approval of the Finance Department has been obtained for the impugned transfer.

21. On perusal of record it reveals that the Hon'ble Minister as the competent transferring authority and the Hon'ble Chief Minister as highest / superior competent transferring authority put their signatures on the proposal of the Department. But none of them has recorded the reasons in writing for effecting the transfer of the applicant as well as the respondent no. 3. In order

to make transfers of the Government servants under section 4(4) and 4(5) of the Transfer Act, 2005, the exceptional circumstances have to be made out. But the mandatory provisions of section 4(4) and 4(5) have not been complied with by the respondents while effecting the transfer of the applicant and the respondent no. 3. The record shows that the transfer of the applicant has been made in violation of the section 4(4) and 4(5) of the Transfer Act, 2005. It seems that the transfer has been made to favour and accommodate the respondent no. 3. The said transfer order has been made in violation of the G.R. dated 4.5.2020. No satisfactory reasons for violation of the G.R. have been given by the respondents. Therefore, in my view, the impugned orders dated 26.5.2020 are illegal and in violations of the provisions of the Transfer Act, 2005. Therefore, the same require to be quashed by allowing the O.A.

22. No doubt the Competent Transferring Authority is not precluded from making transfers of the Government servant on completion of his normal tenure or before completion of his tenure or in the midst of his term in exceptional circumstances and by recording reasons by making strict compliance of the mandatory provisions of section 4(4) & 4(5) of the Transfer Act, 2005. But in the instant case the Competent Transferring Authority has not

followed the provisions of section 4(5) of the Act. The transfer of the applicant seems to be enacted with a view to accommodate and favour the respondent no. 3 and therefore it requires to be quashed.

23. In view of the discussion in foregoing paragraphs the present Original Application stands allowed. The impugned orders dated 26.5.2020 passed by the respondent no. 1 transferring the applicant from the post of the Superintending Engineer, Osmanabad Irrigation Circle, Osmanabad to the post of Superintending Engineer-cum-Deputy Secretary, Water Resources Department, Mantralaya, Mumbai and posting the respondent no. 3, Shri Manoj R. Awalgaonkar, in his post at Osmanabad are quashed and set aside. There shall be no order as to costs.

(B.P. PATIL)
VICE CHAIRMAN

Place : Aurangabad
Date : 8th July, 2020