



issued by the sole respondent, thereby transferring the applicant from the post of Regional Deputy Director, Groundwater Survey & Development Agency, Aurangabad Division, Aurangabad to the post of Regional Deputy Director, Groundwater Survey & Development Agency, Konkan Division, Belapur.

2. The facts in brief giving rise to this O.A. can be summarized as under :-

The applicant was initially appointed on the post of Assistant Geologist (Group-B). He worked on the said post from 19.7.1991 to 11.3.2004. Thereafter, he was promoted to the post of Senior Geologist (Group-A) and he worked on the said post from 11.3.2004 to 8.12.2015. Thereafter, the applicant was further promoted to the post of Deputy Director of Groundwater Survey and Development Agency as per the G.R. dated 8.12.2015 in the pay scale of Rs. 15600-29100 Grade Pay Rs. 6600. By the said promotion order he was posted as a Regional Deputy Director, Groundwater Survey and Development Agency, Aurangabad Division, Aurangabad and since then he was working on the said post till the impugned transfer order dated 10.8.2020 (A-5).

3. It is further submitted that while working on the said post of Deputy Director as per the order dated 9.12.2020 (Annex. A-2

page 16 of paper book) issued by the Director of Groundwater Survey and Development Agency, Maharashtra State, Pune, the applicant is holding the additional charge of the posts of Joint Director (1) and Joint Director (Engineering) of Pune.

4. It is further submitted that as per the options for transfer as called by the Director of Groundwater Survey & Development Agency, the applicant submitted his options vide letter dated 18.2.2020 (Annex. A-3 page 19 of paper book) in the prescribed format, thereby he gave option for the post of Regional Deputy Director, Groundwater Survey & Development Agency, Pune. Subsequently, he also submitted 2 representations dated 3.7.2020 and 16.7.2020 (Annex. A-4 collectively page 21 of paper book) requesting the respondent not to effect his transfer as he is due for next promotion and he is also due for retirement on superannuation in near future i.e. by 30.11.2021.

5. It is learnt by the applicant that the Civil Services Board recommended the name of the applicant as per his option given for transfer / posting on the Deputy Director of Groundwater Survey & Development Agency, Pune and proceeding was put up for approval. However, when the transfer order dated 10.8.2020 (Annex. A-5) came to be published, the applicant came to know that he was transferred to the post of Regional Deputy Director,

Groundwater Survey & Development Agency, Konkan Division, Belapur, thereby the applicant was stood relieved on that day itself though he was holding the additional charge of the post of Joint Director (Engineering), Groundwater Survey & Development Agency, Pune and without following the prescribed procedure of handing over and taking over the charge. In view of the same, he continued to work on that post. It is submitted that the applicant is 57 years old and he is due for retirement on superannuation within 01 year and 03 months from the date of the impugned transfer order. He is suffering from diabetes and he would require to shift his family from Aurangabad to Konkan Division at Belapur, which is inconvenient and hazardous in the COVID-19 pandemic situation. In view of the same, the impugned order of transfer of the applicant is not according to law and liable to be quashed and set aside.

6. Affidavit in reply is filed by Smt. Megha d/o Dinkarrao Deshmukh, Senior Geologist / in-charge Deputy Director, Groundwater Survey & Development Agency, Aurangabad on behalf of the sold respondent. At the outset, it is admitted that the applicant was working on the post of Regional Deputy Director, Groundwater Survey & Development Agency, Aurangabad since his order of promotion dated 8.12.2015 (Exhibit

R-1 page 33 of paper book) till issuance of the impugned transfer order dated 10.8.2020 (Annex. A-5 page 23 of paper book). It is, however, emphatically denied that the procedure of giving option is available to the applicant, who is the Officer in the category of Group-A. The policy of counseling and option as envisaged in the requisite G.R. dated 9.4.2018 is not available to the Officers of Group-A category working with the State Government. The competent transferring authority for the post of Deputy Director of Groundwater Survey & Development Agency, Aurangabad Division, which is a Group-A post, is the Hon'ble Chief Minister and, as such, the impugned transfer order is issued in accordance with the law. It is further contended that the applicant has joined on the transferred post in Konkan Division at Belapur as per the impugned transfer order dated 10.8.2020 (Annex. A-5 page 23 of paper book). Therefore, the respondent prayed for dismissal of the O.A. stating that it is devoid of merits.

7. After filing affidavit in reply by the respondent this Bench of the Tribunal in the order dated 18.2.2021 passed in farad sheet observed that the respondent is silent about the issuance of G.R. issued by the Government, whereby time limit for issuance of general transfers has been extended due to COVID-19 pandemic situation. However, surprisingly there is no mention of the said

G.R. in the affidavit in reply nor copy of the said G.R. is filed on record. It is further observed in the said order that only on reference to the said G.R. by the Tribunal, the learned P.O. realized that it should have been pleaded in the affidavit in reply and the copy of the said G.R. should have been annexed with the affidavit in reply.

8. In view of the same short affidavit in reply along with copy of said G.R. came to filed. It is at page 58 of the paper book. By the short affidavit it is submitted that 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'), the administrative transfers are to be made in April / May every year, however, in the background of COVID-19 pandemic situation, as per the G.R. dated 7.7.2020 issued by the G.A.D., the general transfers are to be made in the financial year 2020-2021 till 31<sup>st</sup> July, 2020 instead of 31<sup>st</sup> May, 2020 within the limit of 15% of the working posts. By the subsequent G.R. dated 23.7.2020 the deadline for transfer in the financial year 2020-2021 was further extended from 31.7.2020 to 10.8.2020.

9. It is further submitted that the total sanctioned posts of the deputy Director in Group-A category for the Groundwater Survey

& Development Agency are 8 out of which 5 Deputy Directors are working. As per the G.R. dated 7.7.2020 of the G.A.D., out of total 5 working posts in the cadre of Deputy Directors the number of transferable post was 0.75% i.e. 01 (within 15% limit). Accordingly, the applicant was eligible for administrative transfer. The proposal thereof was received by the Director of Groundwater Survey & Development Agency. It was further submitted to the Hon'ble Chief Minister through the Hon'ble Minister of Water Supply and Sanitation Department and thereafter the impugned transfer order was issued.

The applicant has not filed his rejoinder affidavit to the affidavit in reply and additional affidavit in reply filed by the respondent.

10. During the course of the arguments the learned Advocate for the applicant submits that though the applicant is transferred after the tenure of 3 years, he being transferred on 10.8.2020, which is midterm transfer and is not in accordance with the conditions laid down in section 4(4)(ii) of the Transfer Act, 2005, which speaks about exceptional circumstances and special reasons. In view of the same and in order to understand the analogy of the competent transferring authority i.e. the Hon'ble Chief Minister in this case and next higher authority thereof, this

Bench directed the learned P.O. to produce the original record in respect of transfer proposal of the applicant. Xerox copy of the concerned original file is placed on record by the learned P.O., which is kept after page 65 of the paper book. The said record is in all 21 pages.

11. I have heard the arguments advanced by Shri V.B. Wagh, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondents, at length.

12. Learned Advocate for the applicant strenuously urged before me that the applicant is holding the post of the Regional Deputy Director, Groundwater Survey & Development Agency, Aurangabad Division, Aurangabad in the pay scale of Rs. 15600-29100 Grade Pay Rs. 6600. In view of the same as per the section 6 of the Transfer Act, 2005 the Hon'ble Chief Minister is competent transferring authority. According to him, the impugned transfer order dated 10.8.2020 is not a general transfer order, but is a midterm transfer order. In view of the same, according to him, the parameters under section 4(4)(ii) and 4(5) of the Transfer Act, 2005 ought to have been followed by taking the approval of the next higher authority of the competent transferring authority and that is not there. Hence, the impugned transfer order is liable to be quashed and set aside.

13. Second limb of his arguments is that the applicant opted for his transfer as per the requisition made by the Director of Groundwater Survey & Development Agency by giving option for the post of the Deputy Director, Groundwater Survey & Development Agency at Pune. The said post at Pune was not vacant, however, equivalent post in National Hydraulic Project, Groundwater Survey & Development Agency, Pune was vacant and the applicant was recommended for transfer on the said equivalent post. The competent transferring authority ought to have acted upon the said recommendations, but turned down the said recommendation and transferred the applicant on the post of Regional Deputy Director, Groundwater Survey & Development Agency, Konkan Division, Belapur, which was never opted by the applicant considering the ensuing retirement of the applicant in recent future and family problems to be faced by the applicant.

14. As against that, the learned P.O. submitted that in view of the said requisite G.Rs. dated 7.7.2020 and 23.7.2020 the deadline for general transfers in the year 2020-2021 was initially extended from 31.5.2020 to 31.7.2020 and further from 31.7.2020 to 10.8.2020 and therefore the impugned transfer order dated 10.8.2020 is a general transfer order and not a midterm transfer order and the arguments advanced by the learned Advocate for

the applicant in that regard are totally misconceived. He further submitted that moreover the original record produced by the respondents would show that the post of the Deputy Director, Groundwater Survey & Development Agency, Konkan Division, Belapur is vacant since long and the Department is facing difficulty and therefore the applicant is transferred to that post for administrative convenience as against the recommendations of the Civil Services Board, which is proper and not in contravention of any of the provisions of the Transfer Act, 2005 or any other requisite order, Notification or G.Rs. issued by the Government in that regard.

15. After having considered the submissions made on behalf of both the parties with the help of respective pleadings and documents placed on record by both the sides, it is evident that the impugned order of transfer of the applicant is dated 10.8.2020 (Annex. A-5). The said order is issued in the background of G.Rs. dated 7.7.2020 & 23.7.2020, whereby the date of general transfer of 31.5.2020 was first extended up to 31.7.2020 and subsequently it was extended up to 10.8.2020. In view of the same, the impugned order of transfer is a general transfer order on the administrative grounds and not midterm order governed by section 4(4) of the Transfer Act, 2005 as sought to be made out by

the applicant. In view of the same, the guidelines for midterm transfer as contemplated under section 4(4)(ii) of the Transfer Act, 2005 need not be considered in this case. The applicant has already completed more than 03 years' tenure on his previous post at Aurangabad.

16. The applicant has come out with a case that before issuance of the impugned transfer order, the Director of Groundwater Survey & Development Agency, Pune called for the options of places for transfer and the applicant submitted his option under his letter dated 18.2.2020 (Annex. A-3), thereby he gave his option for transfer as Regional Deputy Director, Groundwater Survey & Development Agency, Pune. In that regard the respondent in the affidavit in reply has contended that the process of counseling and calling of options is not applicable to the Officer like the applicant, who is in Group-A category. In that regard, the respondent referred to G.R. dated 9.4.2018 (Exhibit R-2 page 36 of paper book) wherein in clause (1) it is mentioned as follows :-

“१) समुपदेशनाद्वारे बदलीसाठी पात्र शासकीय अधिकारी / कर्मचारी -

*मंत्रालयीन संवर्ग व राज्य शासकीय गट-अ मधील अधिकारी वगळून राज्य शासकीय गट-ब मधील अधिकारी, तसेच गट-क व गट-ड मधील कर्मचारी यांना समुपदेशनाद्वारे बदलीचे धोरण लागू होईल.*

*\*बदली अधिनियम २००५ मधून पोलीस दलातील कर्मचा-यांना वगळण्यात आले असल्यामुळे या कर्मचा-यांना समुपदेशनाद्वारे बदलीचे धोरण लागू होणार नाही.”*

17. However, that apart, perusal of the original file produced by the respondent would show that, in fact, such options were called for from the applicant before issuance of the impugned transfer order and the applicant gave his option as stated hereinabove. The said papers show that the proposal for transfer of the applicant was placed before the Civil Services Board stating thereby that the post of Regional Deputy Director, Groundwater Survey & Development Agency at Pune opted for by the applicant was not vacant. In view of the same, the Civil Services Board could not consider the case of the applicant for the said post. However, the Civil Services Board noted that, another equivalent post at Pune was vacant and that was the post at National Hydraulic Project, Groundwater Survey & Development Agency, Pune and accordingly the applicant was recommended on that post at Pune. However, when the said proposal was placed before the competent transferring authority namely Hon'ble Chief Minister through the Hon'ble Minister of Groundwater Survey & Development Agency, the said proposal was not accepted and as per the reasons stated by the Hon'ble Minister of the concerned Department that the post of Regional Deputy Director, Groundwater Survey & Development Agency, Konkan Division, Belapur was lying vacant since long, and therefore, the said

Division is facing difficulties. Therefore, the applicant by the impugned order was transferred on the said post at Belapur.

18. Learned Advocate for the applicant in this regard submitted that once the Civil services Board issues the recommendations, the same will have to be accepted by the competent transferring authority. Moreover, he submitted that the applicant is due for retirement on superannuation in November, 2021 and, as such, the proposal of the Civil Services Board ought to have been considered and implemented. In this regard he placed reliance on the G.R. dated 31.1.2014 issued by the G.A.D. In the said G.R. the relevant paragraph is para 3.1, which reads as follows :-

*“३. १) प्रशासकीय विभागांनी नागरी सेवा मंडळ (१) बाबत प्रभारी मंत्री यांची मान्यता घेऊन आदेश काढावेत. मंत्रालयीन संवर्गासाठी संबंधित आस्थापनेने नागरी सेवा मंडळ (३) व (४) बाबत अनुक्रमे मुख्यमंत्री व अपर मुख्य सचिव / प्रधान सचिव / सचिव (सेवा) यांची मान्यता घेऊन आदेश काढावेत.”*

19. In this regard he also placed reliance on the citation of the Hon'ble Supreme Court in the case of **T.S.R. Subramanian & Ors. Vs. Union of India & Ors.** dated 31.10.2013 delivered in **writ petition (Civil) No. 82 of 2011.**

20. Perusal of G.R. dated 31.1.2014 referred to above would reveal that the said G.R. is issued by the Government in view of

the law laid down by the Hon'ble Supreme Court in the case of **T.S.R. Subramanian & Ors.** (supra).

21. Plane reading of para 3 & 3.7 of the said G.R. dated 31.1.2014 would show that the competent transferring authority is required to take final decision after receipt of the recommendations of the Civil Services Board. Considering the purport of the whole scheme, it can be seen that the competent transferring authority if disagrees with the recommendations of the Civil Services Board, it can give the reasons therefor, but the discretion lies with the competent transferring authority in that regard. In the case in hand, the original file contains the noting of the Hon'ble Minister of the concerned Department dated 28.7.2020 (internal page 20 of the copy of file produced by the respondent) stating the reasons for transfer of the applicant on the post of Regional Deputy Director at Groundwater Survey & Development Agency, Konkan Division, Belapur, which post is for the Konkan Region and the said recommendation is finally accepted by the Hon'ble Chief Minister, which is the competent transferring authority.

22. In view of the discussion as above, in my considered opinion, the applicant has not been able to demonstrate that the impugned order of his transfer is passed in contravention of any provisions

of the Transfer Act, 2005 or any relevant Government Notifications, Circulars or Orders. In fact, while considering the impugned transfer, due precaution is taken by the respondent even by calling options. The said impugned transfer order is not governed by the provisions under section 4(4)(ii) of the Transfer Act, 2005 as sought to be made out by the learned Advocate for the applicant. Only because the applicant is due for retirement in near future i.e. in November, 2021, would not be a ground to transfer him at Pune on the post recommended by the Civil Services Board. The respondent has requisite power to meet the administrative exigency. Accordingly, the impugned transfer order passed by the respondent is found to be legal and proper. Hence, the present Original Application deserves to be dismissed. Therefore, I proceed to pass the following order :-

**ORDER**

Original Application No. 259/2020 stands dismissed with no order as to costs.

**(V.D. DONGRE)**  
**MEMBER (J)**

**Place : Aurangabad**  
**Date : 02.09.2021**