

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 389 OF 2023
(Subject – Transfer)**

DISTRICT : AURANGABAD

Sau. Vandana Ganesh Sukale,)
Age : 52 years, Occu. : Service,)
(as a Senior Clerk, Ground Water Survey &)
Development Agency, Aurangabad, Deputy)
Director, Ground Water, Survey & Development)
Agency, Aurangabad.))
R/o : B/M-2/57, Thakre Nagar, N-2, Cidco,)
Aurangabad, Tq. and Dist. Aurangabad.) **APPLICANT**

V E R S U S

1. **The Commissioner,**)
Ground Water, Survey and Development)
Agency, Bhujal Bhavan, Narveer Tanaji)
Wadi, Shivaji Nagar, Pune.)
2. **The Deputy Director, Ground Water,**)
Survey and Development Agency,)
Aurangabad, Tq. & Dist. Aurangabad.)
3. **Shri Ravindra Kashinath Aarke,**)
Age : Major, Occu. : Service,)
R/o C/o. Senior Geologist, Ground)
Water Survey and Development Agency,)
Beed, Tq. and Dist. Beed.) ... **RESPONDENTS**

APPEARANCE : Shri Ajay Deshpande, Counsel for Applicant.

: Shri M.P. Gude, Presenting Officer for
respondent authorities.

: Shri A.B. Rajkar, counsel for respondent No. 3.

CORAM : **Hon'ble Justice Shri P.R. Bora, Vice Chairman**

DATE : **14.09.2023.**

ORAL - ORDER

1. Heard Shri Ajay Deshpande, learned counsel appearing for the applicant, Shri M.P. Gude, learned Presenting Officer appearing for respondent authorities and Shri A.B. Rajkar, learned counsel for respondent No. 3.

2. The applicant has preferred the present Original Application seeking quashment of 2 orders, both dated 24.05.2023, issued by respondent No. 2, whereby the applicant has been transferred from Aurangabad to Beed and respondent No. 3 has been transferred from Beed to Aurangabad.

3. It is the grievance of the applicant that only with an object to accommodate respondent No. 3 that she has been transferred vide the impugned order. It is the case of the applicant that after the list of the officers due for transfer was published on 24.04.2023, on the same day the applicant has preferred an application praying for her retention at least for one year on her existing post at Aurangabad on the ground that she was undergoing treatment at Aurangabad for the injuries caused to her in road accident. It is the further contention of the applicant that without considering the request so made, the respondents have transferred the applicant from Aurangabad to

Beed. It is the further contention of the applicant that Aurangabad is native place of respondent No. 3 and he had been successful in remaining at Aurangabad, even though he was transferred at some different place by taking deputation for Aurangabad. It is the further contention of the applicant that respondent No. 3 was not due for transfer in the present year's Annual General Transfer, since he has not completed ordinary tenure on the existing post at Beed and in spite of that on administrative grounds the respondents have transferred him from Beed to Aurangabad in place of the applicant. It is the further contention of the applicant that prior to issuance of the impugned order, the respondent No. 2 did not follow the guidelines laid down in the G.R. dated 11.02.2015 and the order of transfer of the applicant has been issued against the said guidelines. The applicant has further stated in her Original Application that she had never given option for Beed, on the contrary had requested for her retention at Aurangabad, however discarding the said request with intent to accommodate respondent No. 3 in her place that she has been transferred to Beed. The applicant in the aforesaid circumstances has prayed for quashment of both the orders.

4. The contentions as are raised in the O.A. and the prayers made therein are opposed by the respondents. The respondent Nos. 1 and 2 have jointly filed their affidavit in reply. The respondents have denied the allegations made in the O.A. as about not following the established procedure and undue favour to the respondent No. 3. It is further contended in the said affidavit in reply that the applicant was working on the existing post since 18.10.2016 and was overdue for transfer. She had completed 2 full tenures on the existing post according to the respondents. It is further contended by the respondents that they did not favour respondent No. 3 in any way or the decision to transfer respondent No. 3 from Beed to Aurangabad before he completes the ordinary tenure at Beed was not taken under any political pressure. It is further contended that since the services of respondent No. 3 were required at Aurangabad, that he was given deputation to work at Aurangabad as and when his services were required. It is further contended that to depute any employee at the place other than his place of posting is routine established practice. It is further contended that such deputation is given not only to respondent No. 3 but several other employees, whose services were required at a place other than their place of posting. Some such orders are placed on

record by the respondents. It is further contended that Civil Services Board has considered the matters placed before it and has recommended the transfer of the applicant at Beed and transfer of respondent No. 3 at Aurangabad in place of the applicant. It is further contended that the Government employee cannot insist for his transfer at a particular place or a particular post. On all above grounds, the prayer is made for dismissal of the present Original Application.

5. Learned counsel for the applicant assailed the impugned order mainly on the ground that the applicant has been transferred only with an object to accommodate respondent No. 3 in her place. Learned counsel pointed out that the respondent NO. 3 has not completed his ordinary tenure on his existing post at Beed. Learned counsel further pointed out that even during his posting at Beed very frequently the deputations for Aurangabad were given to him and most of the time he worked at Aurangabad. Learned counsel submitted that these facts on record are sufficient to draw an inference that the respondents were anyhow bent upon to bring respondent No. 3 at Aurangabad and that is the reason that despite the application given by the present applicant pending for consideration for retention at Aurangabad, discarding the said representation

respondent No. 3 has been given posting at Aurangabad by making his transfer from Beed. Learned counsel submitted that in view of the facts on record, the impugned order be set aside and the applicant be permitted to work at her existing post at least for next one year as has been prayed by her.

6. Learned Presenting Officer has resisted the contentions made on behalf of the applicant and the prayers made in the Original Application. Learned P.O. submitted that the applicant has completed her ordinary tenure on the post at Aurangabad and was due for transfer. Learned P.O. submitted that the applicant was overdue for transfer, since she had been working at Aurangabad from the year 2016. On promotion she was brought at Aurangabad. Learned P.O. submitted that the applicant made representation after the list of the officers due for transfer was published. Learned P.O. further submitted that the Civil Services Board has recommended the transfers of the applicant, as well as, respondent No. 3. Learned P.O. submitted that the respondents have duly followed the transfer guidelines and the norms which are laid down for effecting the transfer. Learned P.O. further submitted that no case is made by the applicant to cause interference in the impugned order. He therefore, prayed for rejection of Original Application.

7. Shri A.B. Rajkar, learned counsel appearing for respondent No. 3 while adopting the arguments made on behalf of P.O. further submitted that all the efforts of the applicant are to show how the order of transfer pertaining to respondent No. 3 is illegal and unsustainable instead of making out any case proving that how and what ground his order of transfer is unsustainable. Learned counsel submitted that after having stayed on one post and at one station for about two ordinary tenures, the applicant cannot he said to have been any case for making grievance that injustice has been caused to her. Learned counsel submitted that merely because the respondent No. 3 was frequently given deputation to Aurangabad cannot be interpreted to mean that it was to facilitate him to stay at his native place. Learned counsel submitted that if the contentions in the affidavit in reply are taken into account, the respondents have clarified that the services of respondent No. 3 were required and that was the reason that he was brought on deputation. Learned counsel further submitted that respondents have also recorded that to give deputation to any employee is routine matter in the Government administration and as and when, the services of any employee are required such orders are passed. Learned counsel submitted that the respondents themselves have placed on

record such orders in relation to other employees, who were given deputation. Learned counsel submitted that it is the respondents who have taken a decision to bring respondent No. 3 at Aurangabad for their administrative need. Learned counsel in the circumstances, prayed for rejection of Original Application.

8. In reply learned counsel appearing for the applicant invited my attention to the order pertaining to transfer of respondent No. 3 and pointed out that it is the order on request of respondent No. 3 and not as submitted by respondent No. 3 that the Government for their administrative need have brought respondent No. 3 at Aurangabad.

9. After having considered the submissions as are made by learned counsel appearing for the parties and on going through the documents on record, first it has to be examined whether the allegation of the applicant that to accommodate respondent No. 3 she has been transferred and injustice, thus, has been caused to her can be sustained ? It need not to be stated that the transfer is an incidence of service. After having ordinary tenure at one post, the employee has to be ready for working at some different station according to the administrative exigency. No doubt the guidelines provided that while effecting

such transfers, say of the applicant also need to be taken into consideration and so process of counseling has been introduced. However, above all the decision has to be taken by the authority concerned as about whose services are required at which place. In the present matter, as has been submitted on behalf of respondents, the applicant has been working at Aurangabad since 2016. It is thus evident that the applicant was overdue for transfer. The aspect which further requires to be considered is the request made by the applicant that she shall be retained for a year more, as she undergoing the treatment at Aurangabad for the injuries caused to her in a road accident. The said representation was allegedly made on 24.04.2023. As is revealing from the contentions raised and documents filed on behalf of respondents, the Civil Services Board has considered these aspects and thereafter recommended the transfer of the applicant from her existing post to Beed and the same has been approved by the competent authority.

10. The allegation of the applicant is that the impugned order was passed and the applicant has been shifted from her existing post to Beed only with an object to bring respondent No. 3 in her place. It has been further argued that respondent No. 3 has been unduly favoured by the respondents. It has been also

submitted that the native of respondent No. 3 is at Aurangabad and in his entire service carrier he has spent most of his period at Aurangabad.

11. The question arises whether on the aforesaid grounds the order of transfer in respect of the applicant can be held to have been made in violation of the transfer rules or the guidelines. It is the matter of record that the applicant was overdue for transfer. It is further not in dispute that she has been transferred in the annual transfers and her transfer is thus not midterm or mid-tenure transfer. Respondents have brought on record that the request made by the applicant for her retention vide her letter/representation dated 24.4.2023 was placed before the Civil Services Board and after considering that the Civil Services Board has recommended her transfer to Beed. The applicant has admittedly not raised allegations or attributed any mala fides on part of Members of the Civil Services Board. Recommendation made by the Civil Services Board has been approved by the competent authority and accordingly the order of transfer has been issued against the applicant.

12. Considering the aforesaid factors it is evident that the respondents have transferred the applicant by following the

transfer rules and the guidelines and no error can be attributed on part of the respondents.

13. Repeatedly it has been argued on behalf of the applicant that the respondents were bent upon to bring respondent No. 3 at Aurangabad and to accommodate him, the applicant has been transferred. It has been pointed out that the order of transfer in respect of respondent No. 3 shows that it's a transfer on request of respondent No. 3. I however, do not see merit in the aforesaid submission also.

14. For a moment even if it is accepted that respondent No. 3 on his request has been transferred to Aurangabad, on that basis the transfer order of the applicant cannot be held unsustainable, when no other ground is made out by her in exception to the said order. Further, respondent Nos. 1 & 2 in their affidavit in reply have stated that the services of respondent No. 3 are required at the office at Aurangabad and, as such, by invoking powers under Sections 4(4) and 4 (5) of the Transfer Act of 2005, he has been transferred from Beed to Aurangabad, though he has not completed his ordinary tenure at Beed. I do not see any reason to disbelieve the contention so raised by respondent Nos. 1 & 2 in their affidavit in reply in absence of any

contrary evidence on record. The applicant cannot decide whether or not the services of respondent No. 3 are required by the respondents at Aurangabad. It is only respondents who can take decision in this regard and unless some mala fides are attributed, the said decision of the respondents cannot be interfered with. It was sought to be contended on behalf of the applicant that not to consider the request of the applicant for her retention though it is made on medical ground and instead of that to bring respondent No. 3 at her place on his request would amount to mala fide exercise of power by the respondents. I am, however, not convinced with the submission so made. It has come on record that the request of applicant for her retention was placed for consideration before the Civil Services Board and it seems that it did not find favour and the Civil Services Board recommended the transfer of the applicant.

15. The applicant has placed on record the documents in support of her request for retention for one year at her existing place. The very first document at Annexure 'A-2', which is the certificate issued by the APEX Superspeciality Hospital reveals that she was under treatment in the said hospital for ® Supra Condylar Fracture Humerus w.e.f. 13.2.2023 and was advised rest up to 12.5.2023. The said certificate was issued on

21.4.2023. Another certificate, which is at page No. 21 of the paper book is issued by the Lotus Hospital, wherein the applicant is advised rest for four weeks from 19.4.2023 i.e. till 19.5.2023. The another certificate about the physiotherapy treatment is concerned, which is dated 22.5.2023, of course must not be there before the Civil Services Board. The certificate issued by the Apex Hospital or Lotus hospital do not disclose any requirement of any follow up treatment requiring her retention for one year on the existing place. There is reason to believe that on the basis of the said certificates, the Civil Services Board did not find it necessary to accept the request of the applicant for her retention at Aurangabad for next one year.

16. After having considered the facts as aforesaid revealing from the material brought on record, it is difficult to accept the contention of the applicant that she has been transferred mala fide with an object to bring respondent No. 3 in her place. I do not see any error in the orders impugned in the present Original Application requiring any interference at the hands of this Tribunal. The Original Application, therefore, fails and deserves to be dismissed and is accordingly dismissed. There shall be no order as to costs.

17. During the course of argument an alternate submission was made on behalf of the applicant that the respondents shall consider the request of the applicant for giving deputation to her at Aurangabad or to give her posting at any other equivalent post at Aurangabad at least for next one year. Insofar as this request is concerned, it would be open for the applicant to make a fresh representation to the respondents and if such representation is made, the respondents may not deny to consider the same on the ground that O.A. filed by the applicant is dismissed by the Tribunal. It may be considered by the respondents on its own merit.

PLACE : Aurangabad.

DATE : 14.09.2023

(Justice P.R. Bora)

Vice Chairman

KPB S.B. O.A. No. 389 of 2023 PRB Transfer