

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT NAGPUR**

**ORIGINAL APPLICATION NO. 455 OF 2020 (S.B.)**

**DISTRICT : NAGPUR**

**Shri. Rajesh Ghanshyam Baghmar,**  
Age : 65 years, Occ : Service,  
R/o 'Ushakal' Apartment, Flat No. 201,  
Near Chati Mahila Kala Niketan,  
Gorepeth, Nagpur.

.... **APPLICANT**

**VERSUS**

- 1) **The State of Maharashtra,**  
Through the Secretary,  
Water Resources Department,  
Mantralaya, Mumbai.
- 2) **Vidarbha Irrigation Development Corporation,**  
Through its Executive Director,  
Sinchan Bhavan, Nagpur.
- 3) **The Chief Engineer,**  
Gosikhurd Project, Sinchan Bhavan,  
Nagpur.
- 4) **The Superintendent Engineer,**  
Gosikhurd Circle, Sinchan Bhavan,  
Nagpur.

... **RESPONDENTS**

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**Shri N.R. Saboo, Advocate for the applicant.**

**Shri S.A. Sainis, Presenting Officer for the respondent No. 1.**

**Shri S.G. Jagtap, Advocate for the respondent Nos. 2 to 4.**

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**CORAM : Hon'ble Shri A.D. Karanjkar, Member (J).**

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**Date of Reserving for Judgment : 24<sup>th</sup> December, 2020.**

**Date of Pronouncement of Judgment : 7<sup>th</sup> January, 2021.**

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**J U D G M E N T****(Delivered on this 7<sup>th</sup> day of January, 2021)**

1. Heard Shri N.R. Saboo, learned Advocate for the applicant, Shri S.A. Sainis, learned P.O. for the respondent No. 1 and Shri S.G. Jagtap, learned Advocate for respondent Nos. 2 to 4.

2. The applicant is Executive Engineer and currently he is working at Asolamendha Project Revenue Division No.1 at Mul. It is submitted that the applicant is working at the station since 01.07.2017. The applicant was not due for transfer, as normal tenure of three years was not completed by him. It is grievance of the applicant that in view of the G.R. dated 07.07.2020, VIDC forwarded names of the Executive Engineers, who were due for transfer and in that list, name of the applicant was not forwarded. It is contention of the applicant that all of a sudden without following due procedure under Section 4(4) and 4(5) of the Transfer Act, 2005, the respondent No.1 abruptly transferred him as Assistant Chief Engineer, Water Resources Division, Nagpur vide order dated 10.08.2020. It is submission of the applicant that the impugned order dated 10.08.2020 is in violation of law and therefore, it is liable to be quashed and set aside.

3. The respondents have filed affidavit in reply, which is at paper book page No. 34. It is contention of the respondents that the applicant had completed period of three years in the month of July, 2020, therefore, he was due for transfer and consequently, there is no illegality in the transfer of

the applicant. It is further submitted that the applicant is due for retirement on attaining the age of superannuation on 30.06.2022 and if the applicant was not transferred in this year, then it would not be possible to transfer the applicant in view of the provisions of Section 5(1) (a) of the Transfer Act, 2005. According to the respondents, as the applicant was due for transfer, therefore, there was no reason to comply the requirements under Section 4(4) and 4(5) of the Transfer Act, 2005. It is submitted by the respondents that the applicant is transferred to Nagpur, as due to transfer of Shri Dalvi, the post of Assistant Chief Engineer was vacant. According to the respondents, there is no substance in the Original Application, hence, it is liable to be dismissed.

4. I have heard submissions on behalf of the applicant and the respondents. Learned Advocate for the applicant invited my attention to Annexure A-4. Annexure A-4 (paper book page No. 25) is dated 17.07.2020 and vide Annexure A-4, information was forwarded to the Principal Secretary, Water Resources Department, Mantralaya, Mumbai. In this letter the names of the Executive Engineer, who were due for transfer were forwarded with remarks. On perusal of the Annexure A-4, it seems that the department computed the period at a particular station till 31.05.2020. Secondly the department forwarded the names of the Executive Engineers, who had completed three years service on 30.05.2020 at a particular station. It is apparent that on 31.05.2020 the

applicant had not completed tenure of three years and consequently his name was not forwarded.

5. The respondents contention is that the applicant has completed three years service at Mul in the month of July, 2020 and therefore, he was due for transfer. In this regard, I would like to point out that the respondents are using two different scales for computing the tenure of respective officers at a particular station. So far as officers named in the Annexure A-4, the respondents computed the period till 31.05.2020, but so far as the applicant is concerned, the respondents are contending that he was due for transfer in the month of July, 2020. I have also perused the G.R. dated 07.07.2020. After reading this G.R., it seems that the permission was granted to transfer the offices who were due for transfer on 31.05.2020. It is also mentioned in the G.R. that due to G.R. dated 04.05.2020 (Annexure R-4-A) Finance Department had imposed ban on General Transfers due to threat of Covid-19. The import of G.R. dated 07.07.2020 was that the officers who were due for transfer, but could not be transferred due to G.R. dated 04.05.2020, permission was given to transfer such officers only, to the extent of 15% officers in the Cadre. In view of this, it does not lie in the mouth of the respondents that the applicant was due for transfer and therefore, it was not necessary to comply the Section 4(4) and 4(5) of the Transfer Act, 2005. Once it is held that the applicant was not due for transfer, when the respondents were bound to follow the statutory mandate under section 4 (4) & (5). It is undisputed that the

respondents have not complied the statutory mandate and therefore, there is illegality committed by the respondents by issuing the impugned transfer order.

6. Secondly, though it is contended by the respondents that the applicant is transferred on vacant post, but the respondents have candidly submitted in their reply in paragraph No. 6 that Shri Dalvi was transferred vide order dated 10.08.2020 and therefore, the post of Assistant Chief Engineer, Water Resources Division, Nagpur became vacant. In my opinion for transferring the officers, who were not due for transfer, the employer cannot create vacancy and say that the officer not due for transfer is given posting on a vacant post, therefore, he has no legal protection. once it is accepted that the transfer is in violation of Section 4(4) and 4(5) of the Transfer Act, 2005, then consequence is that the impugned order of transfer, transferring the applicant from Mul to Nagpur cannot be sustained. In the result, I pass following order :-

### **ORDER**

1. The Original Application is allowed in terms of prayer Clause 9(i) & (ii), which reads as under :-

9. (i) It is therefore, prayed that this Hon'ble Tribunal, may kindly be pleased to quash and set aside order of transfer dated 10.08.2020 issued by respondent No. 1 at Annexure A6, whereby the services of the applicant is transferred from the office of Asolmendha Project Renovation Division No. 1, Mul to Nagpur.

- (ii) Allow the Original Application and direct the respondents to continue the services of the applicant in the office of Asolmendhe Project Renovation Division No. 1, Mul.

2. There shall be no order as to costs.

**(Anand Karanjkar)**  
**Member(J).**

**\*Dated** :- 07/01/2021.  
KPB.

I affirm that the contents of the order in PDF format are word to word same as per the original judgment.

Name of Stenographer (H.G.) : K.P. Borude

Court Name : Hon'ble Member (J)

Judgment signed and pronounced on : 07-01-2021.

Uploaded on : 07-01-2021.