

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

**ORIGINAL APPLICATION NO. 507 OF 2021
(Subject – Transfer)**

DISTRICT : LATUR

Sunil S/o Nagesh Khamitkar,)
Age : 43 years, Occu. : Service)
(As District Social Welfare Officer, Z.P. Latur,))
R/o. 03, Saidham, AUSA Road, Latur.)
Mob. No. 8329140377.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Principal Secretary,)
Social Justice and Special Assistance)
Department, M.S. Mantralaya,)
Mumbai - 32.)
2. **Commissioner of Social Welfare,**)
M.S., Pune, Yashwantnagar,)
Shanti Nagar, Yeerwada, Pune.)
3. **The Chief Executive Officer,**)
Latur Zilla Parishad, Zilla Parishad Office,))
Latur.)
4. **Mr. S.T. Naikwadi,**)
Research Officer,)
District Caste Scrutiny Committee,)
Osmanabad.)

... **RESPONDENTS**

APPEARANCE : Shri Avinash Deshmukh, Advocate for the
Applicant.

: Shri M.P. Gude, Presenting Officer for
Respondent Nos. 1 and 2.

: Shri V.B. Wagh, Advocate holding for Shri U.B. Bondar, Advocate for respondent No. 3.

: Shri S.S. Manale, Advocate for respondent No. 4.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **15.03.2022.**

ORDER

1. This Original Application is filed by invoking jurisdiction of this Tribunal under the provisions of Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned orders of transfer of the applicant and respondent No. 4, both dated 30.08.2021 (Annexure A-6 and A-7) respectively issued by the respondent No. 1, thereby the applicant was transferred from the post of District Social Welfare Officer, Zilla Parishad, Latur to the post of District Social Welfare Officer, Zilla Parishad, Solapur and the respondent No. 4 is transferred on the post, which is earlier held by the applicant i.e. on the post of District Social Welfare Officer, Zilla Parishad, Latur from the post of Research Officer, District Caste Scrutiny Committee, Osmanabad.

2. The facts in brief giving rise to this application are as follows :-

(a) At the time of passing of impugned transfer order, the applicant was working on the post of District Social Welfare Officer, Zilla Parishad, Latur. He was working on that post since 24.02.2020 pursuant to his earlier transfer order dated 20.02.2020 (Annexure A-1). His joining report dated 24.02.2020 is at Annexure A-2. He hardly completed period of 1 year and six months on the said post. He was not due for transfer. In view of the same, the impugned transfer order of the applicant dated 30.08.2021 (Annexure A-6) is mid-term and mid-tenure transfer order. It ought to have been passed by observing the provisions of Section 4(4) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "the Transfer Act 2005").

(b) It is further stated that in the mid of August, 2021, the applicant learnt that he was likely to be transferred from the post of District Social Welfare Officer, Zilla Parishad, Latur to accommodate some other officer. He therefore, submitted his representations to the Principal Secretary of Social Justice and Special Assistance Department and also to the Under Secretary in the office of Hon'ble Chief Minister dated 28.08.2021 and 21.08.2021

(Annexure A-5 collectively) seeking his retention at the said place, as his daughter was studying in 12th Std. and son is studying in 7th Std. at Latur and he was not due for transfer. However, the said representations made by the applicant did not prove to be fruitful and the respondent No. 1 issued impugned transfer order dated 30.08.2021 (Annexure A-6), thereby transferring him to Solapur. The said transfer order is issued only on administrative ground and not on the ground of exceptional circumstances or special reasons as contemplated under Section 4(4) and 4(5) of the Transfer Act, 2005.

(c) On the same date by another order dated 30.08.2021 (Annexure A-7), the respondent No. 4 is transferred from the post of Research Officer, District Caste Scrutiny Committee, Osmanabad to the applicant's post i.e. District Social Welfare Officer, Zilla Parishad, Latur. His transfer is made merely on his request. Merely on request made by the respondent No. 4, applicant should not have been displaced when he was not due for transfer. In view of the same, the impugned order of transfer of respondent No. 4 is issued to accommodate him and illegally dislodging the applicant mid-term and mid-tenure.

(d) It is further stated that the G.Rs. dated 10.05.2021, 09.07.2021 and 29.07.2021 (Annexure A-4 collectively) in respect of extension of general transfer and transfer for special reasons were issued. However, there is no whisper of the said G.Rs. in the said impugned orders. The compliance of the said G.Rs. is not made in the impugned transfer orders. In fact, the applicant has been posted at Solapur, in such a post which was already occupied by one Shri Santosh Jadhav meaning that the said post was not vacant. That was in clear-cut violation of Clause (4) of the G.R. dated 29.07.2021 (part of Annexure A-4 collectively).

(e) As per the information of the applicant, the respondent No. 4 who is posted on his post was earlier working at Latur in the lower / subordinate cadre of Group-B Officer. During the said tenure, he was also holding additional charge of the post of District Social Welfare Officer for some period of time. In fact, certain irregularities were committed by him and the Departmental Enquiry was proposed against him, which is reflected in communication dated 23.09.2020 (Annexure A-9), addressed by the Deputy Commissioner (Establishment) in

the office of Divisional Commissioner, Aurangabad to the Dy. Commissioner (Development) in the same office.

(f) In view of above, according to the applicant, his order of transfer dated 30.08.2021 (Annexure A-6) suffers from illegality being in contravention of the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005, as well as, in contravention of the provisions of Clause 4 of the G.R. dated 29.07.2021 (part of Annexure A-4 collectively). Moreover, the impugned order of transfer of the respondent No. 4 dated 30.08.2021 (Annexure A-7) also suffers from illegality, as it is made only to accommodate the respondent No. 4 by transferring the applicant at Solapur on the post making vacant by transferring therefrom Shri Santosh Jadhav. Hence, the present Original Application.

3. (i) The affidavit in reply is filed on behalf of respondent Nos. 1 and 2 by one Shri Pandurang S/o Geetaram Wable, working as Assistant Commissioner, Social Welfare, Aurangabad, thereby he dined all the contentions raised in the present Original Application. It is denied that the impugned order of transfer of the applicant (Annexure A-6) is issued in contravention of the provisions of Section 4(4)

and 4(5) of the Transfer Act, 2005 and also in contravention of the provisions of Clause 4 of the G.R. dated 29.07.2021 (part of Annexure A-4 collectively). It is also denied that the impugned transfer order of the respondent No. 4 (Annexure A-7) is issued only to accommodate him on his request displacing the applicant from his post.

(ii) It is specifically contended that the impugned order of transfer of the applicant, as well as, respondent No. 4 are issued by complying the stipulations of Section 4(4) and 4(5) of the Transfer Act, 2005. The service record of the applicant is not satisfactory. He was suspended from 04.11.2008 to 09.09.2010 while working as District Social Welfare Officer, Kolhapur. He was also suspended from 31.03.2017 to 30.06.2018 while working as District Social Welfare Officer, Nanded for certain irregularities. There were charges of misappropriations in Scholarship Scheme against the applicant while working as Assistant Commissioner, Solapur. The enquiry was also initiated against the applicant vide order dated 19.09.2017 for misappropriation in the purchase of material for the personal benefit. Moreover, there were serious allegations of misconduct of the applicant while working on the said

post at Zilla Parishad, Latur. Criminal case is registered against him of Sexual harassment and Atrocity Act bearing FIR No. 0130/2021 dated 11.03.2021 at Shivaji Nagar Police Station, Latur.

(iii) It is further stated that the Chief Executive Officer, Latur has communicated to the Commissioner, Social Welfare, Maharashtra State, Pune vide letter dated 20.04.2021 that the applicant does not obey the commands of the superior officers and remained absent in Review Committee Meetings conducted by the office without permission. The Departmental Enquiry is proposed against the applicant as per the application dated 26.07.2021 (Annexure R-2). In view of this, the proposal of transfer of the applicant was placed before the requisite Civil Services Board for transfer of the applicant for special reasons. The applicant belongs to Group-A post being recruited directly in the year 2017. The Civil Services Board recommended the transfer of the applicant as proposed and it is approved by the Hon'ble Chief Minister. In the opinion of the Government, continuation of the applicant on the same post in the background of allegations of bribe and sexual harassment would be counter protective and is not

conducive for appropriate administration. Hence, the impugned transfer order of the applicant is legal and proper. Therefore, the present O.A. is liable to be dismissed.

4. The respondent No. 4 filed his affidavit in reply (page Nos. 41 to 89) and resisted the Original Application. He specifically denied that the impugned transfer of the respondent No. 4 is illegal being made only to accommodate him. According to him, there are serious allegation of corruption and sexual harassment against the applicant while working at various places, as well as, at Latur. Even the proposal for initiation of disciplinary action is made by the Chief Executive Officer, Zilla Parishad, Latur. The impugned transfer order of the applicant is made by adopting due procedure of placing material before the Civil Service Board and seeking approval of the Hon'ble Chief Minister. In view of the same, both the impugned orders are legal and proper. The allegations of certain illegalities and irregularities referred to by the applicant against this respondent are false. The State Government has not initiated any disciplinary action against the respondent No. 4. In fact, the respondent No. 4 was appreciated for his work done at Latur. In these circumstances, the present O.A. is liable to be dismissed.

5. I have heard at length the arguments advanced by Shri Avinash S. Deshmuk, learned Advocate for the applicant, Shri M.P. Gude, learned Advocate for respondent Nos. 1 and 2, Shri V.B. Wagh, learned Advocate holding for Shri U.B. Bondar, learned Advocate for respondent No. 3 and Shri S.S .Manale, learned Advocate for respondent No. 4. I have perused the detailed pleadings and documents produced by all the parties and case laws cited across the bar by respective learned Advocates.

6. Undisputedly, the applicant and respondent No. 4 are employee falling under Group-A category and mentioned in Table (column (b)) of Section 6 (Transferring Authority) of the Transfer Act, 2005. In view above, their competent transferring authority is the Minister-in-charge in consultation with Secretaries of the concerned Department.

7. As per the previous transfer order dated 20.02.2020 (Annexure A-1), the applicant was transferred at his present post as District Social Welfare Officer, Zilla Parishad, Latur and he joined on the same post on 24.02.2020 as per his joining report, which is at Annexure A-2. The impugned transfer order of the applicant is dated 30.08.2021 (Annexure A-6). Normal tenure of

the applicant being officer of Group-A category is of three years as per the Section 3 (1) of the Transfer Act, 2005. The impugned transfer order of the applicant is issued, when the applicant completed period of one year and six months.

8. The applicant has produced on record G.Rs. dated 10.05.2021, 09.07.2021 and 29.07.2021 (Annexure A-4 collectively). Perusal of those G.Rs. would show that as per the G.R. dated 10.05.2021 no general transfer orders were to be issued upto 30.06.2021. Further, by G.R. dated 09.07.2021, general transfers were allowed till 31.07.2021 and after that transfers for special reasons were allowed from 01.08.2021 to 14.08.2021. By further G.R. dated 29.07.2021, the date of general transfers was extended upto 09.08.2021 and transfers for special reasons were allowed during the period from 10.08.2021 to 30.08.2021.

9. In view of above, the impugned transfer order of the applicant dated 30.08.2021 (Annexure A-6) and the impugned transfer order of the respondent No. 4 (Annexure A-7) are issued allegedly for special reasons / request on the last date of permissible date i.e. on 30.08.2021. I have to see as to whether the impugned transfer order of the applicant dated 30.08.2021

(Annexure A-6) is transfer order for special reason as contemplated under Section 4(4) and 4(5) of the Transfer Act, 2005 and within the parameters laid down in the G.R. dated 29.07.2021, whereby it is stated that such transfer for special reason can be made on the vacant post. The relevant para Nos. 4, 5 and 6 are reproduced hereinunder to appreciate the case pleaded by the applicant assailing his transfer order and the transfer order of the respondent No. 4, which are as follows :-

- “४. सर्वसाधारण बदल्यांची कार्यवाही पूर्ण झाल्यानंतरच, जी पदे रिक्त राहतील केवळ अशा रिक्त पदांवरच विशेष करणास्तव बदल्या दि. १० ऑगस्ट, २०२१ ते दि. ३० ऑगस्ट, २०२१ या कालावधीपर्यंत अनुज्ञेय राहतील. सबब, जे पद रिक्त नाही अशा पदावरील कार्यरत अधिकारी/कर्मचारी यांची अन्यत्र बदली करून अशा पदावर विशेष कारणास्तव बदली करता येणार नाही.
५. बदली अधिनियमातील कलम ४(४) नुसार विशेष कारणामुळे बदली करणे आवश्यक असल्याची सक्षम प्राधिका-याची खात्री पटली असेल अशा बाबतीत तसे लेखी कारण नमूद केल्यानंतरच अशा विशेष कारणास्तव करावयाच्या बदल्या करण्यात याव्यात.
६. तसेच, विशेष कारणास्तव करावयाच्या बदल्या या बदली अधिनियमातील कलम ४ (५) नुसार कलम ६ मध्ये नमूद केलेल्या सक्षम प्राधिका-याच्या लगतच्या वरिष्ठ प्राधिका-याच्या मान्यतेने करण्यात याव्यात.”

The transfer order of the respondent No. 4 is consequential transfer order posting him on the post held by the applicant and therefore, the same is to be seen from the angle of seeing that the opportunity is granted to the respondent No. 4 before considering

the grievance raised by the applicant as regards his transfer order dated 30.08.2021 (Annexure A-6).

10. Perusal of both the impugned order dated 30.08.2021 (Annexure A-6 and A-7) would show that those are effected under the provisions of Section 4 of the Transfer Act, 2005 and for administrative reason by taking due approval of the competent transferring authority.

11. The respondent Nos. 1 to 3 have contended that there were serious allegations of atrocity and sexual harassment against the applicant. In that regard, Crime No. 0130/2021 dated 11.03.2021 (Annexure R-1) at Shivaji Nagar Police Station, Latur under Section 354A(1)(ii) of the IPC read with Section 3(1)(W)(i) and 3(1)(W)(ii) under the Prevention of Atrocity Act, 1979 as per FIR is registered against the applicant. The document at Annexure R-2, which is letter dated 26.07.2021 addressed by the Commissioner, Social Welfare, Maharashtra State, Pune to the Principal Secretary, Social Justice and Special Assistance Department, Mantralaya, Mumbai produced by the respondent Nos. 1 & 2 along with their affidavit in reply would show that the permission for disciplinary action was sought for against the

applicant for his alleged misconduct while working on his present post.

12. In this regard, the respondent Nos. 1 and 2 have come out with a case that the orders of transfer of the applicant, as well as, the respondent No. 4 is issued by scrupulously observing the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005. In this regard, the respondent Nos. 1 and 2 have produced on record recommendation of Civil Services Board and the requisite approval of the Hon'ble Chief Minister. The reason thereof mentioned is an administrative reason for the applicant and in respect of respondent No. 4, it is request transfer. In the said record, there is a letter dated 26.07.2021 addressed by the Commissioner, Social Welfare, Maharashtra State, Pune to the Principal Secretary, Social Justice and Special Assistance Department, Mantralaya, Mumbai informing about the allegations of misconduct including sexual harassment and seeking transfer of the applicant from the present post. In the said record, there are minutes of the meeting of the Civil Services Board dated 23.08.2021, in which it is mentioned that the Civil Services Board has given the recommendation on the basis of proposal received from the respondent No. 2.

13. In respect of abovesaid record, learned Advocate for the applicant strenuously urged before me that reading of entire record altogether does not give picture of any case of allegations of verified misconduct was being placed before the Civil Services Board. The impugned order of transfer of the applicant is made merely on administrative ground, which would not be sufficient to comply with the actual purport of Section 4(4) and 4(5) of the Transfer Act, 2005. In this regard, he placed reliance on the citation reported in **2011 (5) Mh.L.J.** in the matter of **Pradeepkumar S/o Kothiram Deshbhratar Vs. State of Maharashtra and Ors.**, wherein it is held as follows :-

“Transfer of the petitioner to Sub-Division of respondent No. 2 at Narkhed against respondent No. 5, is not in the interest of administration and not by respondent Nos. 2 and 3 but because of interference of the President of Zilla Parishad. Request made by the president of Zilla Parishad and recommendation of Minister has been the only reason for treating the proposal as special case. This is not contemplated by section 4(5) of 2005 Act and reasons to be recorded for permitting such transfers must be spelt out and must be found to be in the interest of administration. Those reasons cannot be only the wish or whim of any particular individual and such transfers cannot be ordered as special case to please the particular individual for mere asking. On the contrary, records show that respondent Nos. 2 and 3 have not recorded any special reasons at all. These respondents are not satisfied

with relevance of reasons placed before the Minister. Hence, they have developed a new story in an attempt to justify that transfer. Provisions of Section 4(5) read with Section 6 of the 2005 Act are not complied in the present matter. In this situation, impugned transfer order dated 31.05.2011 is quashed and set aside.”

14. As against that, learned Advocate for the respondent No. 4 submitted that the respondent Nos. 1 to 3 produced sufficient record to show that the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005 are complied with duly. Moreover, there is mention in the transfer order of the applicant of compliance of section 4 of the Transfer Act, 2005, as well as, administrative reason. The same is sufficient compliance. According to him, the impugned transfer order of the respondent No. 4 is request transfer and it cannot be said that the said transfer of respondent No. 4 is passed as per his convenience displacing the applicant. To bring home the said submissions, he placed reliance on following citations :-

(i) **2020 DGLS(Bom.) 1356, Bombay High** Court in the matter of **Saudamini S. Chaudhari Vs. State of Maharashtra and Ors. in W.P. No. 2585/2019, dated 16.12.2020.** In the said citation, it is held that when reasons for transfer are administrative in nature and the

appropriate authority acts bona fide, the Court has to stay at a distance and not interfere with such administrative order for transfer. It is further observed that transfer being an incidence of service and the petitioner being the holder of a transferable post could complain against the transfer order, if the same were ordered in violation of any of the provisions of the Transfer Act.

(ii) **2013 (7) Bom. C.R. 148, Bombay High Court** in the matter of **Sanjeev Bhagwanrao Kokil Vs. State of Maharashtra and Ors. in W.P. (Lodging) No. 1677/2012, dated 5/9.10.2012.** In the said citation, it is held as follows :-

“Reasons for satisfaction of Competent Authority cannot be basis for challenge. Order is by Competent Authority. But as far reasons, he has merely remarked “proposal - approved”. This shows that he agreed with reasons given in proposal. Hence it is not case of infraction of provisions of Section 4(4) and 4(5) of Act. Further transfer was approved by Government at higher level to facilitate fair and independent enquiry against him. Therefore, mere transfer per say cannot be said to be positive. Hence, Court upholds decision of Tribunal.”

(iii) **2007 (6) Bom. C.R. 579, Bombay High Court** in the matter of **V.B. Gadekar and Anr. Vs. Maharashtra**

Housing & Area Development in W.P. (Lodging) Nos. 1428, 1429 & 1430 of 2007, dated 27-7/23.8.2007.

The relevant observations in para No. 7 said citation are as follows :-

“7. 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-Markworthy 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. We do not see any fault in exercise of such power. In the present case, from the record before us, there are no patent mala fides or arbitrariness in exercise of power by the respondents. The conduct of the petitioners is to be looked into by the authorities and it will neither be just nor fair for the Court to interfere at this stage and hold that the orders

of transfer are vitiated on account of mala fide or colourable exercise of power or that they are in violation of the Rules.”

(iv) Learned Advocate for the respondent No. 4 further submitted that no mala-fide in respect of order of transfer of respondent No. 4 are pleaded and therefore, no fault can be found with the order of transfer of the applicant, as well as, respondent No. 4. To substantiate the same, he placed reliance on the judgment reported in **2009 (3) Bom. C.R. 673, Bombay High Court** in the matter of **State of Maharashtra Vs. Ashok Ramchandra Kore and Anr. in W.P. No. 8116/2008, dated 18-3/16.4.2009.** In the said citation, it is held that after referring to relevant judgments of Supreme Court this Court observed, whether reasons recorded by the State are sufficient or otherwise could not have gone into by MAT, employer would be best Judge who would appreciate performance of his employees and their suitability in particular place, MAT committed error of jurisdiction. There is no fabrication of documents. Mala fides not established.

(v) **1993 DGLS(SC) 413, Supreme Court** in the matter of **Union of India Vs. S.L. Abbas in Case No. 2348/1993,**

dated 27.04.1993. In the said citation in para No. 7, it is held as follows :-

“7. Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides 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.”

15. Learned Presenting Officer for the respondent Nos. 1 and 2 advanced arguments justifying the impugned order of transfer of the applicant, as well as, the respondent No. 4 contending that both the orders are passed on administrative ground as contemplated under Section 4(4) and 4(5) of the Transfer Act, 2005. Proper procedure of keeping requisite material for transfer of the applicant was placed before the Civil Services Board, which is in the form of mainly complaint of sexual harassment and prevention of SC/ST Atrocity Act contemplating disciplinary action. There is no mala-fide behind passing the impugned

transfer order of the applicant. The respondent No. 4 was accommodated on the place of the applicant merely on transfer made by the applicant due to his domestic difficulties.

16. Learned Advocate Shri V.B. Wagh, learned Advocate holding for Shri U.B. Bomdar, learned Advocate for respondent No. 3 adopted the arguments advanced on behalf of respondent Nos. 1 and 2 by the learned Presenting Officer.

17. I have already discussed at length regarding the procedure adopted by the respondent Nos. 1 and 2 for passing the impugned orders of transfer of the applicant and the respondent No. 4 dated 30.08.2021 (Annexure A-6 and A-7 respectively). The said findings on record would show that the proposal of transfer of the applicant was placed before the Civil Service Board by the competent transferring authority i.e. the Minister-in-charge in consultation with Secretary of the concerned Department and the recommendation of Civil Service Board was got approved from the Hon'ble Chief Minister being higher competent transferring authority / immediate superior transferring authority.

18. From the citations relied upon by the learned Advocate for the respondent No. 4, the principle is culled out that

administrative ground may amount to exceptional circumstances or special reason depending upon facts and circumstances of each case. Sufficiency of material for such administrative decision may not fall for strict scrutiny within the limited jurisdiction of the Tribunal.

19. In this background, if the facts of the present case are considered, it is seen that the complaints which were received against the applicant during his tenure which are of serious nature were placed before the Civil Services Board.

20. In this regard, the parameters laid down in the G.R. dated 11.02.2015 are also useful, which are as follows :-

“८. एखाद्या प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचा-याच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधीत अधिकारी/कर्मचा-यांची बदली करण्यात येऊ नये. अशा प्रकारणात संबंधीत अधिकारी /कर्मचा-यांच्या तक्रारीसंबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारीमधील गांभीर्य विचारात घेऊन, संबंधीत अधिकारी/कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे याबाबत बदली प्राधिका-याने ठोस निर्णय घ्यावा. संबंधीत अधिकारी/कर्मचा-याच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधीत अधिकारी/कर्मचा-याला त्याच पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याबाबत बदली प्राधिका-याने निर्णय घ्यावा. मात्र संबंधीत अधिकारी/कर्मचा-याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिका-याचे मत झाल्यास त्याबाबतची कारणमिमांसा नमुद करून बदली प्राधिकारी संबंधीत अधिकारी/कर्मचा-याची बदली त्याच्या लगतच्या वरिष्ठ प्राधिका-याकडे प्रस्तावित करू शकतो. लगतच्या वरिष्ठ

प्राधिका-याकडे असा प्रस्ताव प्राप्त झाल्यास बदली प्राधिका-याने नमूद केलेली कारणे योग्य आहेत किंवा कसे याची छाननी करून स्वतःचे मत स्पष्ट करून बदली प्राधिका-याच्या प्रस्तावाला मान्यता द्यावी किंवा बदली प्राधिका-याचा प्रस्ताव फेटाळून लावण्यात यावा. ज्या प्रकरणात बदली प्राधिका-याच्या प्रस्तावानुसार गैरवर्तणूकीच्या अनुषंगाने शासकीय अधिकारी /कर्मचारी यांची बदली करण्यात येते अशा प्रकरणात संबंधीत अधिकारी/कर्मचारी यांची बदली केल्यानंतर त्यांच्या विरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी. ”

21. Considering the nature of allegations and the fact that the Departmental Enquiry is contemplated against the applicant, it cannot be said that the allegations are without any substance. Considering those allegations, continuation of the applicant on the same post would not be conducive. Therefore, I do not find any prima-facie contravention of the parameters of para No. 8 of the said G.R. dated 11.02.2015. In the circumstances as above, in my considered opinion, while passing the impugned order of transfer of the applicant dated 30.08.2021 (Annexure A-6) parameters as contemplated under Section 4(4) and 4(5) of the Transfer Act, 2005 are complied with.

22. The order of respondent No. 4 incidentally request transfer and by the said transfer order, he has been transferred to the post held by the applicant. From the facts and circumstances, it cannot be said irresistibly inferred that in

normal course only to accommodate the respondent No. 4 the applicant has been displaced by passing any illegal order of transfer.

23. However, one more aspect of the matter is that whether both the impugned orders hold good in view of stipulation laid down in para Nos. 4, 5 and 6 of the G.R. dated 29.07.2021 (part of Annexure A-4 collectively), I have already reproduced the said paras. The said G.R. seems to have been issued for limited purpose of extending the date of general transfers till 09.08.2021 and restricting the transfers for special reasons during the period of 10.08.2021 to 30.8.2021 only on vacant posts, which fall vacant after completing process of general transfer. The said G.R. is issued in the background of prevailing pandemic situation. It can be said to be supplementary to the provisions of Transfer Act, 2005 restricting the process to see that only minimum required transfers are effected during pandemic.

24. In this background, if both the impugned orders of the applicant and the respondent No. 4 dated 30.08.2021 (Annexure A-6 and A-7 respectively) are examined, it is seen that the applicant has been posted by transfer at Solapur by displacing the officer viz. Santosh Jadhav holding the post of District Social

Welfare Officer at Solapur. So the applicant was not posted on vacant post. Similarly, the respondent No. 4 has been posted by displacing the applicant. By this G.R. dated 29.07.2021, the Government has made transfer on special ground other than on vacant post impermissible. However, the respondent No. 1 has proceeded to pass both these orders in contravention of the provisions of G.R. dated 29.07.2021. The said G.R. cannot be said to be inconsistent with the provisions of the Transfer Act, 2005. It was incumbent upon the respondent Nos. 1 and 2 to effect the transfers within the parameters laid down in the said G.R. dated 29.07.2021. It is not known as to how the transfer has affected Shri Santosh Jadhav, who is holding the post of District Social Welfare Officer, Solapur. In the circumstance as above, in my considered opinion, both the impugned orders are passed in accordance with the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005 mentioning them as administrative reasons. However both the impugned orders of transfer of the applicant and the respondent No. 4 come in the teeth of the provisions of para No. 4 of the G.R. dated 29.07.2021. In the circumstances, posting of the applicant, as well as, respondent No. 4 other than on vacant posts is not in accordance with law

and are liable to be quashed and set aside on that ground only. I therefore, proceed to pass following order :-

ORDER

- (1) The Original Application is partly allowed.
- (2) The impugned orders of transfer of the applicant and the respondent No. 4 dated 30.08.2021 (Annexure A-6 and A-7 respectively) are hereby quashed and set aside only on the ground of being in contravention of Clause 4 of the G.R. dated 29.07.2021 (page of Annexure A-4 collectively).
- (3) There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 15.03.2022.

(V.D. DONGRE)
MEMBER (J)