

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

**ORIGINAL APPLICATION NO. 531 OF 2021
(Subject – Transfer)**

DISTRICT : AURANGABAD

Maruti Mahadeo Kakad,)
Age : 51 years, Occu. : Service as Executive)
Engineer (Mech.) under Chief Engineer P.W.)
Region, Aurangabad.)
R/o. Flat No. 14, 'Indraprastha', 'A' Wing,)
Dargah Road, Opp. CIIGMA Hospital,)
Aurangabad. Mob. No. 9923097473.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through the Principal Secretary,)
Water Resources Department,)
Madam Kama Marg, Hutatma Rajguru)
Chowk, Mantralaya, Mumbai – 400 032.)
2. **The State of Maharashtra,**)
Through the Principal Secretary,)
Public Works Department, 4th Floor,)
Madam Kama Marg, Hutatma Rajguru)
Chowk, Mantralaya, Mumbai – 400 032.)
3. **The Chief Engineer,**)
P.W. Region, Padampura, Aurangabad.)
4. **Shri Vaijanath Apparao Galande,**)
Executive Engineer, Mechanical Division))
No. 2, Padampura, Aurangabad.)

... **RESPONDENTS**

APPEARANCE : Shri Ajay Deshpande, Advocate for the
Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer for Respondent Nos. 1 to 3.

: Shri Avinash Deshmukh, Advocate for respondent No. 4.

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

DATE : **05.04.2022.**

ORDER

1. The present Original Application is filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned transfer orders dated 30.08.2021 (Annexure A-7 collectively) in respect of the applicant, one Shri Abdul Javed Abdul Wahed Kazi and the respondent No. 4 i.e. Vaijanath Apparao Galande issued by the respondent No. 1. Thereby the applicant has been transferred from the post of Assistant Chief Engineer, (Mechanical), P.W. Regional Division, Mumbai to the post of Executive Engineer, Tembhu Lift Irrigation, Mechanical and Electrical Squad Oglewadi, Tq. Karad, Dist. Satara on the vacant post, Shri Abdul Javed Abdul Wahed Kazi is transferred from the post of Assistant Chief Engineer, (Mechanical), P.W. Regional Division, Aurangabad to the post of Executive Engineer, Mechanical Division (Konkan Region), Alore, Ratnagiri on the vacant post. Further the respondent No. 4 i.e. Vaijanath Apparao

Galande is transferred from the post of Executive Engineer, Mechanical Division No. 2, Aurangabad to the post of Assistant Chief Engineer (Mechanical), Public Works Regional Division, Aurangabad in place of Shri Abdul Javed Abdul Wahed Kazi.

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

i. The applicant initially joined the service as Dy. Engineer (Mechanical) under the erstwhile Irrigation Department, which has now become Water Resources Department (in short 'WRD') upon his selection through MPSC. Eventually, he came to be promoted as Executive Engineer (Mechanical) on 28.08.2008 and since then he has been working as Executive Engineer (Mechanical). After his promotion, he worked at various placed on that post till 01.06.2018.

ii. It is further contented that he worked almost four years as Executive Engineer, Mechanical Division No. 2, Aurangabad from 22.08.2014 to 01.06.2018. Thereafter, while working at Aurangabad under respondent No. 1 i.e. WRD, his willingness was sought for posting under Respondent No. 2 i.e. the Public Works Department (in

short 'PWD'). Upon giving such willingness, the respondent No. 1 i.e. the WRD issued order of transfer dated 31.05.2018 (Annexure A-1) transferring the applicant from the post of Executive Engineer, Mechanical Division No. 2, Aurangabad to the post of Assistant Chief Engineer (Mechanical), P.W.D. Mumbai Region against a vacant post. By this order, the services stood transferred from WRD to PWD i.e. from the respondent No. 1 to respondent No. 2 on the basis of willingness. It can be safely termed as 'appointment on deputation'.

iii. During the transfer season of the year 2021-22, the applicant had completed his three years tenure at Mumbai. By that time, the applicant had already made representation seeking his transfer either to Aurangabad or to Nashik under P.W. Regional Office on account of his health issue being met with an accident. By that time, Abdul Javed Abdul Wahed Kazi, who was working as Assistant Chief Engineer (Mechanical) at Aurangabad was due for transfer during the transfer season of the year 2021-22. The applicant made representation dated 28.01.2021 (Annexure A-2) for his transfer at the place of said Abdul Javed Abdul Wahed Kazi working in

Aurangabad and Nashik Region. The Chief Engineer, Public Works Division (Regional), Konkan forwarded copy of it with a recommendation dated 04.02.2021 (Annexure A-3) to the respondent No. 2. Incidentally, Abdul Javed Abdul Wahed Kazi in whose place the applicant requested for transfer and posting had also requested for his transfer at Mumbai in place of the applicant. As both of them were due for transfer, the respondent No. 2 issued transfer order of the applicant from Mumbai to Aurangabad and *vice-a-versa* by distinct orders dated 06.08.2021 (Annexure A-4 collectively). Both of them assumed the charge of respective posts on the same day. The office of respondent No. 3 i.e. the Chief Engineer, Public Works Region, Aurangabad endorsed the fact of handing over and taking over of charge on 06.08.2021 under communication dated 11.08.2021 (Annexure A-6).

iv. However, the respondent No. 1 i.e. WRD effected the impugned orders of transfer of the applicant, Abdul Javed Abdul Wahed Kazi and the respondent No. 4 i.e. Vaijanath Apparao Galande on 30.08.2021 (Annexure A-7 collectively).

v. It is precisely contented that the applicant and Abdul Javed Abdul Wahed Kazi were both working at the relevant time under the respondent No. 2 i.e. the PWD. Whereas, the respondent No. 4 i.e. Vaijanath Apparao Galande was working under the respondent No. 1 i.e. the WRD. In view of the same, the transfer of the respondent No. 4 is inter-departmental transfer from WRD to PWD, thereby warranting an approval of the respondent No. 2 before promulgation thereof to the post of applicant, for which no concurrence is given by the respondent No. 2 to the transfer and posting of respondent No. 4 Shri Vaijanath Apparao Galande from the respondent No. 1 WRD to the respondent No. 2 PWD.

vi. It is further contented that due to unprecedented Covid-19 pandemic situation the normal period of effecting transfer in April and May was extended till 09.08.2021. Therefore, the transfers effected on or before 09.08.2021 will have to be construed as regular transfers, not falling within the mischief of Section 4 of the Transfer Act, 2005. The impugned transfer order dated 30.08.2021 therefore, required adherence of compliance of special reasons as contemplated under Section 4(4) and 4(5) of the Transfer

Act, 2005. The post of Executive Engineer falls under Group-A category. The competent transferring authority of the said post is of the Hon'ble Minister In-charge and thus, next higher authority happens to be the Hon'ble Chief Minister. However, the impugned orders of transfers are issued without obtaining approval of the Hon'ble Chief Minister. Moreover, the impugned order of transfer of the applicant dated 30.08.2021 (part of Annexure A-7 collectively) is mid-term and mid-tenure transfer order, as it is issued within a period of three weeks of his earlier transfer order dated 06.08.2021 (part of Annexure A-4 collectively) rightly issued by the respondent No. 2 i.e. the PWD under whom the applicant was working. Therefore, the impugned transfer orders dated 30.08.2021 (Annexure A-7 collectively) are liable to be quashed and set aside. Hence, the present Original Application.

3. The application is resisted on behalf of respondent Nos. 1 and 2 by filing affidavit in reply of one Shri Ram S/o Bhalchandra Kulkarni, working as the Executive Engineer, Chief Gate Errection Unit No. 4, Aurangabad, District Aurangabad, thereby he denied all the adverse contentions raised in the present Original Application. It is specifically denied that the

impugned transfer order of the applicant is mid-term and mid-tenure transfer order. It is not disputed that by the earlier transfer order dated 31.05.2018 (Annexure A-1), the applicant was transferred on willingness by respondent No. 1 i.e. WRD from WRD to P.W. Region from post of Executive Engineer, Mechanical Division No. 2, Aurangabad to the post of Assistant Chief Engineer (Mechanical), P.W.D. Mumbai Region against vacant post. Similarly, Shri Abdul Javed Abdul Wahed Kazi was also transferred from W.R.D to P.W. Region from the post of Executive Engineer, Mechanical Division, Vertical Penganga Project, Nanded to the post of Assistant Chief Engineer (Mechanical), P.W.D. Aurangabad Region, Aurangabad by the order dated 31.05.2018 (Annexure A-1). However, as regards transfer of orders of the applicant and Shri Abdul Javed Abdul Wahed Kazi dated 06.08.2021 (Annexure A-4 collectively) are concerned, it is stated that before issuance of said transfer orders by the respondent No. 2 i.e. the PWD, the said authority did not consult with the respondent No. 1 WRD, which is competent authority being parent department of the applicant and Shri Abdul Javed Abdul Wahed Kazi. In view of the same, respondent No. 1 WRD was unaware of the said orders. It is further submitted that as the applicant was due for transfer and

there was administrative exigency to fill up the post of Executive Engineer, Tembhu Lift Irrigation, Mechanical and Electrical Squad, Oglewadi, Tq. Karad, Dist. Satara on the post fallen vacant due to transfer of Mr. Ankush Jadhav therefrom. In view of the same, the impugned order of transfer dated 30.08.2021 came to be issued by the respondent No. 1. The respondent No. 2 PWD is not being the competent authority of the applicant. The order dated 06.08.2021 issued by the respondent No. 2 PWD transferring the applicant from Mumbai to Aurangabad is non-est and therefore, the said department was ready to relieve the applicant from his post. In view of the same, the impugned orders of transfer dated 30.08.2021 are legal and proper and therefore, the present Original Application liable to be dismissed.

4. The applicant filed rejoinder affidavit and denied all the adverse contentions raised in the affidavit in reply. It is submitted that the impugned orders of transfer dated 30.08.2021 (Annexure A-7) refers to the compliance of provisions of Section 4(4) and 4(5) of the Transfer Act, 2005 by seeking recommendation of the Civil Services Board and approval of the higher competent transferring authority. There is no approval of the Hon'ble Chief Minister and therefore, the alleged transfer orders seem to have been vitiated for want of proper approval.

The said orders do not reveal alleged special reasons and exceptional circumstances as contemplated under Section 4(4) and 4(5) of the Transfer Act, 2005. Moreover, those orders are issued in contravention of the provisions of G.R. dated 29.07.2021 issued by the GAD, which is produced by the respondent No. 4 along with their affidavit in reply at page No. 43 of the paper book, as no special reasons as contemplated for the transfers between 10.08.2021 to 30.08.2021 are reflected. Moreover, once the services are rendered from one department to another department, the borrowing department is the competent to utilize the services of such incumbents by transferring them as per the convenience of the said department and in this case, the respondent No. 2 PWD has effected such transfer orders dated 09.08.2021 (page Nos. 64 and 66 of the paper book) transferring various officers working under their control. In view of the same, for all the purposes, the transfer order of the applicant dated 06.08.2021 (part of Annexure A-4 collectively) is legal and proper and subsequent transfer order of the applicant dated 30.08.2021 (Annexure A-7 collectively) and two others in respect of Shri Abdul Javed Abdul Wahed Kazi and the respondent No. 4 fall to the ground for non-compliance of the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005, as

well as, stipulation laid down in GAD G.R dated 29.07.2021 (page No. 43 of the paper book).

5. The affidavit in sur-rejoinder is filed on behalf of respondent Nos. 1 and 2 by one Shri Ram S/o Bhalchandra Kulkarni, working as the Executive Engineer, Chief Gate Errection Unit No. 4, Aurangabad, District Aurangabad, thereby he denied all the adverse contention raised in the rejoinder affidavit and reiterated the contentions raised in the affidavit in reply. It is further added that the respondent No. 1 WRD is only the competent transferring authority of the applicant and the impugned transfer order dated 30.08.2021 of the applicant is issued rightly under Section 4(4) and 4(5) of the Transfer Act, 2005. Further the applicant completed normal tenure of three years on the present post. The respondent no. 2 while making proposal of transfer of the applicant and Shri Abdul Javed Abdul Wahed Kazi, due care was taken of mentioning earlier transfer order dated 06.08.2021 issued by the respondent No. 2 PWD. Moreover, the parameters laid down under Section 4(4) and 4(5) of the Transfer Act, 2005 are duly complied with, with the help of the Government Notification dated 25.04.2016, which speaks of delegation of powers of approval of next higher authority and immediately superior to the transferring authority. Moreover, the

applicant and Shri Abdul Javed Abdul Wahed Kazi made representation to the respondent No. 2 i.e. PWD keeping respondent No. 1 WRD in dark and in such circumstances, the transfer order dated 06.08.2021 came to be issued by the respondent No. 2, which is not sustainable in the eye of law. In the circumstances, there is no merit in the present Original Application and hence, the same requires to be dismissed.

6. (i) The respondent No. 4 by filing affidavit in reply has resisted the Original Application. He thereby denied all the adverse contentions raised in the Original Application. At the outset, it is contented that the appointing authority of the applicant and he, who both are working in the cadre of Executive Engineer (Mechanical) is the respondent No. 1 i.e. the Government of Maharashtra in its Water Resources Department. By earlier transfer order dated 31.05.2018 (Annexure A-1), the applicant was transferred by respondent No. 1 WRD to respondent No. 2 PWD. Thereafter, however the respondent No. 2 i.e. the PWD issued transfer orders of the applicant and Shri Abdul Javed Abdul Wahed Kazi being orders dated 06.08.2021 (Annexure A-4 collectively) without consulting the respondent No. 1 WRD transferring them *vice-a-versa* on

their representation, which are *void-ab-initio* and cannot be acted upon. Moreover, handing and taking over charge of the applicant and Shri Abdul Javed Abdul Wahed Kazi *vice-versa* is totally in contravention of the provisions of Rule 31 of the Maharashtra Civil Services (General Conditions of Service), Rules, 1981. Hence, the said transfer orders dated 06.08.2021 (Annexure A-4 collectively) and subsequent handing and taking over charge is non-est.

(ii) It is specifically contended that the impugned orders of transfer of the applicant, Shri Abdul Javed Abdul Wahed Kazi and the respondent No. 4 dated 30.08.2021 (Annexure A-7 collectively) are legal and proper, as the same are passed adhering to the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005, even if they are termed as transfer for special reasons in accordance with G.R. dated 29.07.2021. In the circumstances, the O.A. is liable to be dismissed.

7. I have heard the arguments at length by Shri Ajay Deshpande, learned Advocate for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent

Nos. 1 to 3 and Shri Avinash Deshmukh, learned Advocate for respondent No. 4.

8. The facts and documents on record, following admitted facts emerge before me :-

(a) The applicant, Shri Abdul Javed Abdul Wahed Kazi and the respondent No. 4 Shri Vaijanath Apparao Galande all are working in the cadre of Executive Engineer (Mechanical). Their parent department is the respondent No.1 i.e. the WRD. As per the transfer order dated 31.05.2018 (Annexure A-1), the applicant and Shri Abdul Javed Abdul Wahed Kazi were transferred from respondent No. 1 WRD to the respondent No. 2 PWD on their willingness. Both of them were due for transfer in April-May 2021 being completed three years tenure.

(b) Further on 06.08.2021 (Annexure A-4 collectively), the respondent No. 2 PWD issued transfer orders transferring the applicant and Shri Abdul Javed Abdul Wahed Kazi *vice-a-versa* in PWD. Handing and taking over charge is endorsed by the respondent No. 2 vide communication dated 11.08.2021 (Annexure A-6).

9. Considering the rival pleadings, first of all I have to consider as to whether the impugned order of transfer of the applicant dated 06.08.2021 (part of Annexure A-4 collectively) issued by the respondent No. 2 PWD is valid transfer order in the eye of law. Further I have to see as to whether the impugned transfer order of the applicant dated 30.08.2021 (part of Annexure A-7 collectively) is general transfer order or transfer order for special reasons or in exceptional circumstances as contemplated under Section 4(4) and 4(5) of the Transfer Act, 2005 and in accordance with the relevant G.R. dated 29.07.2021 (page No. 43 of the paper book) issued by the GAD. Further I have to see as to how far the Notifications dated 05.12.2014 and 25.04.2016 issued by the respondent No. 1 delegating powers of transfer issued under 2nd proviso of Section 6 of the Transfer Act, 2005 are relevant and applicable to the case in hand.

10. Chronologically first of all I have to take into consideration the transfer orders dated 06.08.2021 (Annexure A-4 collectively) in respect of the applicant and Shri Abdul Javed Abdul Wahed Kazi, which both are issued by the respondent No. 2 PWD. Admittedly, the applicant and Shri Abdul Javed Abdul Wahed Kazi originally belong to respondent No. 1 WRD being initially appointed in the said department. Section 2 (i) of the Transfer

Act, 2005 defines 'Transfer' which means posing of a Government servant from one post, office or Department to another post, office or Department. Section 2 (b) defines 'Competent Authority' which means the appointing authority of the Government servant and shall include the transferring authority specified in Section 6. Section 2(j) defines 'Transferring Authority' which means the authorities mentioned in Section 6.

11. Upon reading abovesaid definitions, it is evident that the appointing authority is the competent authority and as such transferring authority. If that is so in case of the applicant, Shri Abdul Javed Abdul Wahed Kazi, as well as, respondent No. 4, who all belong to Executive Engineer (Mechanical) in Group-A category, their competent transferring authority is the respondent No. 1 i.e. the WRD.

12. Incidentally, by earlier order dated 31.05.2018 (Annexure A-1) the applicant was transferred to PWD at Mumbai. Under the said order only Shri Abdul Javed Abdul Wahed Kazi was also transferred to PWD at Aurangabad. The said transfer orders of the applicant and Shri Abdul Javed Abdul Wahed Kazi can be said to have been issued by the competent transferring authority i.e. the respondent No. 1 WRD. However, subsequent *vice-a-versa*

transfer orders dated 06.08.2021 (Annexure A-4 collectively) in respect of the applicant and Shri Abdul Javed Abdul Wahed Kazi were issued by the respondent No. 2 PWD. Perusal of both the said orders would show that there was no concurrence or approval or even consultation with the respondent No. 1 WRD for effecting the said transfers.

13. The applicant sought to justify both the said orders placing on record similar such orders passed by the respondent No. 2 PWD. He produced on record such orders dated 09.08.2021 along with their rejoinder affidavit at page Nos. 64 and 66 of the paper book. Copy of the order at page No. 64 of the paper book is marked to the respondent No. 1 WRD. However, the second order at page No. 66 of the paper book is not marked with the respondent No. 1 WRD. In my considered opinion, the practice of PWD issuing such transfer orders of the officers not belonging to their department cannot be recognized in the eye of law being issued by the competent transferring authority as contemplated under Section 6 of the Transfer Act, 2005, which is only provision specifying the competent transferring authority. As per the scheme of transfer act, the appointing authority is the competent transferring authority. In view of the same, the transfer orders dated 06.08.2021 (Annexure A-4 collectively)

transferring the applicant and Shri Abdul Javed Abdul Wahed Kazi *vice-a-versa* to Aurangabad and Mumbai are non-est in the eye of law.

14. It is true that no separate proceeding in that regard is filed by any aggrieved person under Section 19 of the Administrative Tribunals Act, 1985. But the applicant has come out with a case that he has been transferred by the said order dated 06.08.2021 (Annexure A-4 collectively) from Mumbai to Aurangabad within PWD and on that basis, he has contended that the impugned transfer order of the applicant dated 30.08.2021 (part of Annexure A-7 collectively) is being mid-term and mid-tenure transfer order. In such circumstances, the validity of the transfer order dated 06.08.2021 (part of Annexure A-4 collectively) in respect of the applicant is required to be considered and such exercise is well within the limited jurisdiction of this Tribunal.

15. So far as the contention as regards Shri Abdul Javed Abdul Wahed Kazi is concerned, it is incidentally evident that by another order dated 06.08.2021 (part of Annexure A-4 collectively) issued by the respondent No. 2 PWD Shri Abdul Javed Abdul Wahed Kazi was transferred from Aurangabad to the

post held by the applicant at Mumbai. Examining the orders as regards Shri Abdul Javed Abdul Wahed Kazi at the behest of the applicant would amount to entertaining such litigation as public interest litigation travelling beyond the limited jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985. In the same line, the impugned transfer order of Shri Abdul Javed Abdul Wahed Kazi dated 30.08.2021 (part of Annexure A-7 collectively) would not fall for consideration under limited jurisdiction of this Tribunal. In the given circumstances, it cannot be said that Shri Abdul Javed Abdul Wahed Kazi is likely to be affected, in case fate of the impugned order of transfer *vice-a-versa* dated 30.08.2021 (part of Annexure A-7 collectively) decided in favour of the applicant. However, the impugned order of transfer of respondent No. 4 dated 30.08.2021 (part of Annexure A-7 collectively) falls within the jurisdiction of this tribunal, as the respondent No. 4 is likely to be affected by positive outcome of the present O.A. filed by the applicant.

16. It is a matter of record that due to exceptional circumstances of Covid-19 pandemic situation, G.R. dated 29.07.2021 (page No. 43 of the paper book) came to be issued by the GAD, Government of Maharashtra. Thereby the date of general transfers of the year 2021-22 falling on 31.05.2021 is

extended till 09.08.2021. Paragraph Nos. 3, 4, 5 & 6 would be relevant to decide the present Original Application. Those paragraphs are as follows:-

- “ ३. सर्वप्रथम सर्वसाधारण बदल्यांची कार्यवाही दि. ९ ऑगस्ट, २०२१ पर्यंत पूर्ण करण्यात यावी.
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 कारणांमुळे बदली करणे आवश्यक असल्याची सक्षम प्राधिका-याची खात्री पटली असेल अशा बाबतीत तसे लेखी कारण नमूद केलेल्यानंतरच 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.”

17. As discussed earlier, once it is held that the order of transfer of the applicant dated 06.08.2021 (part of Annexure A-4 collectively) is non-est in the eye of law being illegally passed by the respondent No. 2 PWD without authority and without consultation or concurrence or approval of the respondent No. 1 WRD, I have to examine the validity of the impugned transfer order of the applicant and the respondent No. 4 dated 30.08.2021 (Annexure A-7 collectively).

18. It is undisputed position that by 31.05.2021, the applicant completed normal tenure of three years as Assistant Chief Engineer (Mechanical) at Mumbai. However, the respondent No. 1 WRD did not issue general transfer order of the applicant on or before stipulated date of 09.08.2021 as stated in G.R. dated 29.07.2021 (page No. 43 of the paper book). Record further shows that the respondent No. 1 WRD after coming know about the transfer order of the applicant dated 06.08.2021 (part of Annexure A-4 collectively), placed his transfer matter before the requisite Civil Services Board. For that purpose, the respondent No. 1 took help of the Notification dated 25.04.2016 issued by it, whereby the powers of transfer were delegated to different authorities for the Government servants in different categories. As per the said Notification dated 25.04.2016, the powers of transfer of Group-A officers were delegated to the Principal Secretary WRD and the next higher authority and immediately superior transferring authority under Section 4 (4) and 4(5) of the Transfer Act, 2005 is stated to be the Minister-in-Charge of the concerned Department.

19. Perusal of said record would show that there is mention of earlier transfer order of the applicant dated 06.08.2021 (part of

Annexure A-4 collectively) issued by the respondent No. 2 PWD. In terms of said Notification dated 25.04.2016, approval of concerned Minister in-charge of the WRD is taken being next higher authority and immediately superior transferring authority as contemplated under Section 6 of the Transfer Act, 2005.

20. Learned Advocate for the applicant, however, submitted that as per Section 6 of the Transfer Act, 2005, the competent transferring authority of the applicant is the Minister In-Charge in consultation with Secretary of the concerned Department and immediately superior transferring authority and next higher authority would be the Hon'ble Chief Minister. The impugned order dated 30.08.2021 (Annexure A-7 collectively), which is issued by observing the provisions of Section 4(4) and 4(5) of the Transfer 2005 does not show that there was approval of the Hon'ble Chief Minister. He further submitted that even Notification dated 25.04.2016 relied upon by the respondent No. 1 cannot be acted upon as there are various decisions of this Tribunal stated that there cannot be delegation of powers of transferring authority under Section 4(4) and 4(5) of the Transfer Act, 2005, as to who is the next higher authority or immediate superior transferring authority. He submitted that under proviso 2 of Section 6 of the Transfer Act, 2005, the competent

transferring authority specified in the Table only by general or special order, delegate its power under this section to any of its subordinate authority.

21. To substantiate the abovesaid submissions, he placed reliance on the decision of this Tribunal at Mumbai dated 27.08.2021 in O.A. No. 528/2021 in the matter of Shri Dattatray Bhagwan Mundhe Vs. Government of Maharashtra and Ors. In this regard, he has also placed reliance on the decision of this Tribunal of co-ordinate bench at Mumbai dated 03.12.2021 in O.A. No. 653/2021 in the matter of Shri Popat Khanderao Shelar Vs. The State of Maharashtra and Ors.

22. Abovesaid submissions however are opposed by the learned Chief Presenting Officer for the respondent Nos. 1 to 3, as well as, by the learned Advocate for respondent No. 4. They submitted that the Notification dated 25.04.2016 issued by the respondent No. 1 WRD was the subject matter for consideration in **W.P. No. 3318/2017** and Ors. in the matter of **Shri Bharat Ramkisan Shingade Vs. The state of Maharashtra and Ors.** decided on 17.04.2017 before the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad. In the said case, one D.B. Pande filed O.A. inter-alia contended that he was transferred mid-term

and mid-tenure. The department opposed the said O.A. on the ground that the transfer order was necessitate and it was in pursuance of the Notification dated 25.04.2016. The Tribunal quashed and set aside the transfer order with the findings that it is against the provisions of Transfer Act, 2005 and it is mala-fide. When the matter was take up before the Hon'ble High Court, the Hon'ble High Court quashed and set aside the order passed by the MAT and the transfer was upheld. In the said judgment, the legality of Notification dated 25.04.2016 was also challenged before the Hon'ble High Court, which was turned down. The Hon'ble High Court held that the proposal of transfers submitted by the Principal Secretary was approved by the Hon'ble Minister, who was delegated with the powers of Hon'ble Chief Minister, as per the Notification dated 25.04.2016 and as such was empowered to approve the proposal for transfer of Shri Pande.

23. In this regard, they also relied upon the judgment and order dated 17.02.2022 delivered by the co-ordinate Bench of this Tribunal at Mumbai in O.A. No. 874/2021 in the matter of Shri Abdul Javed Abdul Wahed Kazi Vs. The State of Maharashtra and Anr. The applicant there is Shri Abdul Javed Abdul Wahed Kazi, is same Shri Abdul Javed Abdul Wahed Kazi, whose order of transfer dated 30.08.2021 is also challenged by the applicant

in the present Original Application. The observations in para Nos. 09 to 17 of the said judgment would be relevant, those are as under :-

“9. Following are the principles culled out from various decisions of Hon’ble Supreme Court in the matter of transfer of a Government servant to be borne in mind :-

“(i) The courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the grounds of mala fides. (Mrs. Shilpi Bose & ors. Vs. State of Bihar & ors.) 10, 1990 DGLS (soft) 696 : 1991 (Supp.2) SCC 659 : A.I.R. 1991 SC 532.

(ii) A Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer order issued by a Competent Authority does not violate any of his legal rights. (Shilpi Boses's case (supra).

(iii) Who should be transferred where, is a matter for the appropriate authority to decide. Unless the transfer order is vitiated by mala fides and is made in violation of any statutory provisions, the court cannot interfere with it. (Union of India & Ors. Vs. S.L. Abbas) 11, 1993 DGLS (soft) 409: 1993 (4) SCC 357 : A.I.R. 1993 SC 2444.

(iv) Transfer of an employee is not only an incidence inherent in the terms of the appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. (State of Uttar Pradesh & Ors. Vs. Gobardhan Lal) 12, 2004 DGLS (soft) 190: 2004 (11) SCC 402 : AIR 2004 SC 2165.

(v) Transfer made even in transgression of administrative guidelines cannot also be interfered with, as it does not confer any legally enforceable rights unless it is shown to be vitiated by mala fides or made in 16 wp3318-2017+group violation of any statutory provision and so long as the official status is not affected adversely and

there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments (Gobardhan Lal's case (supra)).

(vi) The courts should not deal with transfer orders as if they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. They cannot substitute their own decision in the matter of transfer for that of competent authorities of the State. Even allegations of mala fides when made must be such as to inspire confidence in the court or based on concrete materials. (Gobardhan Lal's case (supra)).

(vii) Allegation of mala fides should not be entertained on the mere making of it or on consideration borne out of conjectures or surmises. (Gobardhan Lal's case (supra)).

(viii) Except for strong & convincing reasons no interference could ordinarily be made with an order of transfer. (Gobardhan Lal's case (supra)).”

10. Indisputably, Applicant's parent department is Respondent No.1 – WRD. Initially, by transfer order dated 31.05.2018 issued by his parent department, he was transferred from Nanded to Aurangabad as Assistant Chief Engineer, PWD. As such, the Applicant works under the control of WRD but by order dated 31.05.2018, he was transferred in PWD on the post of Assistant Chief Engineer, Aurangabad. He had completed normal tenure of 3 years in general transfers of 2021. When he was due for transfer, he made representation dated 10.02.2021 (Page No.21 of P.B.) addressed to Respondent No.2 – Additional Chief Secretary, PWD requesting for transfer to Mumbai on the ground of medical treatment of his father. Indeed, the Applicant being under the control of Respondent No.1 – WRD, his representation ought to have been forwarded to Respondent No.1 – WRD for necessary orders. Here, Respondent No.2 – PWD committed error by accepting his representation and giving him posting at Mumbai. Undoubtedly,

the said transfer order was preceded by minutes of CSB and File Noting under the signature of Additional Chief Secretary, PWD and the same was approved by Minister of the Department. Indeed, the Respondent No.1 that time ought to have realized that parent department of the Applicant being Respondent No.1 – WRD, it had no competency or jurisdiction to transfer the Applicant. Be that as it may, the fact remains that Respondent No.2 – PWD was not at all competent to transfer the Applicant to Mumbai. This being the position, the transfer order dated 06.08.2021 passed by Respondent No.2 – PWD has to be treated as non-est in the eye of law.

11. *The submission advanced by learned Advocate for the Applicant that in view of communication of transfer order dated 06.08.2021 to Respondent No.1 – WRD, it had knowledge and acquiesced to transfer order issued by Respondent No.2 – PWD on 06.08.2021 is totally unpalatable. Mere forwarding of transfer order dated 06.08.2021 to Respondent No.1 – WRD cannot be construed that transfer order dated 06.08.2021 was in consultation or concurrence with Respondent No.1 – WRD. True, the perusal of transfer order dated 06.08.2021 reveals that the copy of transfer order issued by Respondent No.2 – PWD was forwarded to Respondent No.1 – WRD and noticing the same, the Respondent No.1 – WRD ought to have rectified the mistake immediately. However, Respondent No.1 – WRD took remedial measure after about three weeks by issuance of order dated 30.08.2021. Suffice to say, there was no such consultation of concurrence with WRD before transferring the Applicant by Respondent No.2 – PWD. In other words, the Respondent No.2 – PWD had exceeded its authority and usurped the jurisdiction of Respondent No.1 – WRD by issuance*

of transfer order dated 06.08.2021 which will have to be termed as non-est in the eye of law.

12. Once transfer order dated 06.08.2021 issued by Respondent NO.2 – PWD found non-est in law, consequent to it, such order cannot confer any right upon the Applicant to claim 3 years' tenure in Mumbai on the basis of said order. This being the position, the transfer order dated 30.08.2021 issued by Respondent No.1 – WRD as a remedial measure and which is in the nature of rectification of mistake done by PWD, the transfer order dated 30.08.2021 cannot be termed mid-term or midtenure transfer. Resultantly, the question of making out a special case and compliance of Section 4(5) of 'Transfer Act 2005' which inter-alia provides for approval of next preceding competent authority (Hon'ble Chief Minister) does not survive. As such, the submission advanced by the learned Advocate for the Applicant that transfer order dated 30.08.2021 is mid-term and mid-tenure transfer and bad in law for want of approval of Hon'ble Chief Minister is totally misconceived.

13. Apart, even assuming for a moment that it is mid-term and midtenure transfer, in that event also, the said order being issued to rectify grave error committed by Respondent No.2 – PWD in issuing transfer order dated 06.08.2021, such action of remedial measure will have to be construed as a special case in service jurisprudence. What can be construed as a special case as contemplated under Section 4(5) of 'Transfer Act 2005' would depend upon facts of each case and it is not possible to reduce it into straight-jacket formula. There could be diverse consideration on the basis of which, it could be termed as a special case. Therefore, in my considered opinion, even the test of special case will have to be said satisfied. In this behalf, material to note that there is specific file noting which preceded

approval of transfer order dated 30.08.2021 that Respondent No.2 – PWD had transferred the Applicant by order dated 06.08.2021 though Applicant belongs to Respondent No.1 – WRD.

14. *Insofar as approval to transfer order dated 30.08.2021 is concerned, it is admittedly approved by Minister Incharge of WRD having empowered in view of Notification dated 25.04.2016. By this Notification, the powers of special transfer under Section 4(5) are delegated to Minister, WRD. Indeed, in the present case, as stated above, the transfer order dated 30.08.2021 cannot be construed mid-term or mid-tenure transfer, since it was by way of rectification of mistake committed by Respondent NO.2- PWD. In terms of G.R. dated 29.07.2021, the deadline for issuance of general transfers was extended upto 09.08.2021 on account of Covid-19 pandemic situation, since general transfers could not be effected in May, 2021 as required to be effected under the provisions of 'Transfer Act 2005'. By the said G.R, the deadline for issuance of general transfers were extended upto 09.08.2021 and for special transfers, time limit was fixed up to 30.08.2021. It is in this context, the transfer order dated 30.08.2021 has been issued by WRD with the approval of Minister, WRD on the basis of delegation of powers as permitted under Section 6 of 'Transfer Act 2005'.*

15. *The learned Advocate for the Applicant tried to contend that there could be no delegation of power for special transfers to any other authority and the powers of general transfers only can be delegated. However, in the present case, the perusal of record, particularly File Noting reveals that Hon'ble Chief Minister himself has delegated his power to Minister, WRD. It is in pursuance of it, Notification dated 25.04.2016 has been*

issued thereby confirming powers of general transfers upon Principal Secretary and powers of special transfers are delegated to Minister, WRD.

16. *Shri Bandiwadekar, learned Advocate for the Applicant sought to place reliance on the decision rendered by this Tribunal in O.A.No.528/2021 [Dattatray B. Mundhe Vs. State of Maharashtra] decided on 27.08.2021 and O.A.No.539/2019 [Ajay M. More Vs. Superintending Engineer & Ors.] decided on 17.10.2019 to bolster up his contention that delegation of power for mid-term transfer is illegal.*

17. *The issue of legality of Notification dated 25.04.2016 is indeed not open to challenge in view of decision of Hon'ble High Court in Writ Petition No.3318/2017 [Bharat Shingade Vs. State of Maharashtra & Ors.] decided on 17.04.2017. In that case, one Shri D.B. Pande filed O.A. before MAT, Aurangabad Bench inter-alia contending that he was transferred mid-term and mid-tenure. The Department opposed O.A. on the ground that transfer was necessitated and it was approved by Minister in pursuance of Notification dated 25.04.2016. The Tribunal quashed the transfer order with the finding that it is against the provisions of 'Transfer Act 2005' and malafide. When matter was taken up before Hon'ble High Court, the order passed by MAT was quashed and transfer was upheld. In this Judgment, the legality of Notification dated 25.04.2016 was also challenged before Hon'ble High Court which were turned down. The Hon'ble High Court held that since Hon'ble Minister has delegated his powers to Minister as per Notification dated 25.04.2016, the transfer order held legal. This is the same Notification dated 25.04.2016 on the basis of which Respondent No.1 - WRD issued transfer order dated 30.08.2021. Therefore, the decisions rendered in*

O.A.No.528/2001 and 539/2019 are of no help to the Applicant.”

24. The facts of the present case in fact are similar and to some extent identical with the facts of the abovesaid O.A. No. 874/2021. It is pertinent to note here that the concerned Notification dated 25.04.2016 issued by the respondent No. 1 WRD is approved by the Hon'ble High Court. Further, the decisions relied upon by the learned Advocate for the applicants in respect of said Notification dated 25.04.2016 do not refer to the abovesaid decision of the Hon'ble High Court in the matter of **W.P. No. 3318/2017 and Ors.** in the matter of **Shri Bharat Ramkisan Shingade Vs. The state of Maharashtra and Ors.** decided on 17.04.2017. In view of the same, the decisions relied upon by the learned Advocate for the applicant of co-ordinate Bench of this Tribunal at Mumbai would not be of any help to the applicant in the present case.

25. In the circumstances, as above, in fact when it is held that the transfer order of the applicant dated 06.08.2021 is non-est in the eye of law and when the applicant has completed his normal tenure of three years at Mumbai he was due for transfer in the General Transfers of the year 2021-22 in May 2021. However, due to Covid-19 pandemic situation, the said date of general

transfer was extended to 09.08.2021. The impugned transfer order of the applicant and respondent No. 4 are issued on 30.08.2021. As per the G.R. dated 29.07.2021 issued by the GAD Government of Maharashtra, the transfers between 10.08.2021 to 30.08.2021 were made permissible only for special reasons and by observing provisions of Section 4(4) and 4(5) of the Transfer Act, 2005.

26. In the case in hand, the procedure has been followed by the respondent No. 1 WRD before issuing the impugned orders of transfer of the applicant and the respondent No. 4 by placing the matter before the Civil Services Board and getting approval of the approving authority in terms of Notification dated 25.04.2016. The transfer orders of the applicant and the respondent No. 4 are issued for administrative reasons. It is the fact that the applicant was transferred by the respondent No. 2 PWD by order dated 06.08.2021 without having any authority of transfer. In order to meet such unprecedented situation, the impugned order of transfer of the applicant seems to have been passed. Incidentally, by another order dated 30.08.2021 (part of Annexure A-7 collectively) the respondent No. 4 is transferred at the place, where the applicant was transferred earlier under the order dated 06.08.2021 (part of Annexure A-4 collectively). The

fate of the impugned order of transfer of the respondent No. 4 would be dependent upon the fate of the outcome of the impugned order of transfer of the applicant. Validity of the impugned transfer order of the respondent No. 4 will have to be considered from that limited angle or else it will amount to examining the order of respondent No. 4 at the instance of the applicant.

27. In the circumstances, as above, in my considered opinion, the impugned orders of transfer of the applicant and the respondent No. 4 seem to have been passed by observing the provisions of Transfer Act, 2005 and even by taking into consideration the parameters laid down in G.R. dated 29.07.2021 (page No. 43 of the paper book) issued by the GAD, Government of Maharashtra. In the circumstances, the Original Application is devoid of merits and the same is liable to be dismissed. I therefore, proceed to pass following order :-

ORDER

- A. The Original Application stands dismissed.
- B. However, in the facts and circumstances, the respondent Nos. 1 to 3 are directed to continue the applicant and the respondent No. 4 on their present

post in view of prevailing interim relief granted by this Tribunal on 07.09.2021 till 10.05.2022 and to relieve them on 10.05.2022.

C. There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 05.04.2022.

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

KPB S.B. O.A. No. 531 of 2021 VDD Transfer