

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

**ORIGINAL APPLICATION NO. 532 OF 2021
(Subject – Transfer)**

DISTRICT : JALNA

Kaviraj S/o Jawaharlal Kucche,)
Age : 35 years, Occu. : Govt. Service)
(District Conservation Officer))
Water Conservation Department (Local Sector))
Jalna, Dist. Jalna
R/o. Ambad Chowk, Jalna, Tq. & Dist. Jalna.)
Mobile No. 9764408233.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Soil & Water Conservation Department,))
Mantralaya, Mumbai - 32.)
2. **The Commissioner,**)
Soil & Water Conservation Department)
(WALMI), Aurangabad.)
3. **Shri Rajaram S/o Hiralal Zuravat,**)
Age : Major, Occ. : Govt. Service,)
(As a Sub-Divisional Water Conservation))
Officer, Chikhali, Tq. Chikhali,)
Dist. Buldhana))

...RESPONDENTS

APPEARANCE : Shri K.G. Salunke, Advocate for the Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer for
Respondent Nos. 1 & 2.

: Shri N.B. Narwade, Advocate for respondent
No. 3.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**
DATE : **02.03.2022.**

O R D E R

1. By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the impugned order of transfer of the applicant dated 07.09.2021 (Part of Annexure A-2 collectively at page No. 27 of paper book), whereby he has been transferred from the post of District Water Conservation Officer, Soil and Water Conservation Division, Jalna to the post of District Conservation Officer, Zilla Parishad (Minor Irrigation) Division, Jalna.

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

(a) The applicant was initially appointed by the order dated 14.12.2015. At that time, he was posted at Minor Irrigation (Survey) Sub Division, Bhokardan, Dist. Jalna. He joined his duties on 01.01.2016. Thereafter, he was transferred to his present posting of District Water Conservation Officer, Soil and Water Conservation Division,

Jalna by the order dated 30.06.2020 (Annexure A-1). The applicant claims that his work was up to the mark and there was no single complaint about his working. However, within a period of one year and two months on his present posting, suddenly he was transferred by the impugned transfer order dated 07.09.2021 to the post of District Conservation Officer, Zilla Parishad (Minor Irrigation) Division, Jalna. It is mid-term and mid-tenure transfer order being issued before completion of his normal tenure of three years and being issued beyond extended period setup up to 30.08.2021.

(b) It is specific contention of the applicant that as on the date of filing of the present O.A., he was not relieved from his present post. There is no mention of any other posting at the post held by the applicant. The impugned order of transfer is not passed following the criteria laid down in Section 4(4) and 4(5) of the Transfer Act, 2005. Hence, it is illegal and it is liable to be quashed and set aside at the threshold.

(c) It is further contended that the respondent No. 1 has issued promotion order with posting order of 25 Sub

Divisional Water Conservation Officer, vide another order dated 07.09.2021 (Part of Annexure A-2 at page No. 28 of the paper book). By the said order, the respondent No. 3 i.e. the Rajaram Hiralal Zuravat is posted on promotion on the post held by the applicant i.e. on the post of District Water Conservation Officer, Soil and Water Conservation Division, Jalna, thereby the applicant has been displaced from his present posting before completion of his normal tenure of posting, though there were other vacant posts including the post in Zilla Parishad, Jalna, to which the applicant is posted by the impugned order of transfer. Hence, the transfer order of the respondent No. 3 is also liable to be quashed and set aside.

(d) It is further contended that various G.Rs. issued by the respondent No. 1 in respect of General mid-term and mid-tenure transfers dated 10.05.2021 and 09.07.2021 (Annexure A-3 collectively) and G.R. dated 29.07.2021 (Annexure A-4). As per the G.R. dated 10.05.2021 (page No. 35 of paper book), General transfers for the year 2021 were not to be effected up to 30.06.2021. As per the G.R. dated 09.07.2021 (page No. 37 of paper book), the date of general transfer was extended to 31.07.2021 with certain rider and

transfers for special reasons were to be effected during the period of 01.08.2021 to 14.08.2021. By the G.R. dated 29.07.2021 (Annexure A-4, page No. 40 of paper book), date of general transfers was extended till 09.08.2021 and remaining vacant posts for special reasons were to be filled up during the period from 10.08.2021 to 30.08.2021. Moreover, transfers for special reasons were to be effected only on vacant posts. In view of above, the respondent No. 3 is accommodated displacing the applicant and therefore, the transfer order of respondent No. 3 is illegal. Moreover, the impugned order of transfer of the applicant dated 07.09.2021 is also illegal being not issue in consonance with the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005. Moreover, no such transfer is permissible as per the G.R. dated 29.07.2021 (Annexure A-4). In the circumstances, according to the applicant both the impugned orders of transfer dated 07.09.2021 (Annexure A-2 collectively) and 07.09.2021 (Annexure A-2 collectively) are liable to be quashed and set aside. Hence, this Original Application.

3. (a) The affidavit in reply on behalf of respondent Nos. 1 and 2 (page Nos. 82 to 99) was firstly filed by one Smt.

Bhagyashri Rajendra Pathak working as Assistant Regional Officer, in the office of Regional Water Conservation Officer, Soil and Water Conservation Division, Aurangabad. Subsequently, she also filed further additional short explanatory affidavit on behalf of respondent Nos. 1 and 2 (page Nos. 100 to 116), thereby adverse contentions raised in the present Original Applicant are denied. It is specifically contended that the impugned order of transfer of the applicant is passed by observing the requirement of provisions of Section 4(4) and 4(5) of the Transfer Act, 2005 and more particularly with approval of the Hon'ble Chief Minister. There were complaints against the applicant about his working and in respect of those complaints, the Departmental Enquiry is recommended by the respondent No. 2 i.e. the Commissioner, Soil and Water Conservation Department (WALMI), Aurangabad to the respondent No. 1 i.e. the Secretary, Soil and Water Conservation Department, Mantralaya, Mumbai vide communication dated 05.08.2021 (Annexure R-1, page No. 93 of paper book). Hence, in order not to hamper the investigation, the proposal for transfer of the applicant was placed before the requisite Civil Service Board and upon his

recommendation, due approval of the said transfer is given by the Hon'ble Chief Minister. It is further stated that in respect of complaints of five works, enquiry was handed over with the Regional Vigilance and Quality Control Officer, Vigilance and Quality Squad (Soil and Water Conservation) Aurangabad. The said authority called for the documents from the office of the applicant. However, the applicant did not furnish the documents, though called vide letter dated 10.12.2020 (Annexure R-1 collectively, page No. 98 of paper book), which amounted to misconduct. Hence, the said authority recommended disciplinary action against the applicant vide letter dated 05.05.2021 (Annexure R-1 collectively, page Nos. 94 to 97 of paper book).

(b) In the short affidavit, it is submitted that the proposal of transfer of the applicant and the proposal of promotion of Sub Divisional Water Conservation Officer to the post of District Water Conservation Officer were submitted on the same file at the same time. However, the decision for transfer of the applicant and the respondent No. 3 was taken in the meeting of the Civil Services Board. Hence, both the issues are handled by separate requisite

committees and not by one committee. Separate promotional committee was set up as per the G.R. dated 13.09.2019 (page No. 106 of paper book). The Civil Services Board was set up by G.R. dated 22.11.2017 (page No. 111 of paper book).

(c) It is further stated that the impugned transfer orders of the applicant, as well as, respondent No. 3 are issued by observing the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005, by placing the matter of the applicant before the appropriate Civil Services Board and taking approval of next higher authority i.e. the Hon'ble Chief Minister. Hence, both the impugned orders are legal and proper and did not suffer from any illegality

4. The respondent No. 3 has filed affidavit in reply, which is at page Nos. 56 to 81, thereby the respondent No. 3 has denied the adverse contentions raised in the O.A. It is denied that the transfer order of the respondent No. 3 is passed in contravention of the provisions of Transfer Act, 2005 and that the impugned order of transfer of the applicant is issued only to accommodate the respondent No. 3 on his post. Record shows that there were complaints against the applicant in not furnishing the requisite

documents in respect of the complaints and as such, the applicant was transferred. The respondent No. 3 has been posted on the post held by the applicant incidentally after he was promoted in the cadre of District Water Conservation Officer from the cadre of Sub Divisional Water Conservation Officer. The respondent No. 3 has taken charge of his transferred place ex-parte on 08.09.2021 itself after he was relieved on the same day. It is further stated that the Vigilance Squad called for the requisite information from the applicant in respect of complaints regarding various works vide letters dated 23.10.2020 (page No. 71 of paper book) and 04.12.2020 (page No. 73 of paper book), but the documents were not furnished by the applicant. Hence, show cause notices on 22.03.2021 (page No. 75 of paper book) and 09.04.2021 (page No. 76 of paper book) were issued by the Assistant Regional Water Conservation Officer, Soil and Water Conservation Division, Aurangabad to the applicant. In view of this, the transfer order of the applicant seems to have been justifiable reason. Hence, the present Original Application is liable to be dismissed.

5. (a) The affidavit in rejoinder is filed by the applicant denying all the contentions raised in the affidavit in reply filed on behalf of the respondents and contending that all

the information and documents were furnished to the enquiry committee in time. In fact, works alleged in the complaints were completed before applicant's tenure. The applicant was concerned only with furnishing of documents in respect of those works and cooperating Vigilance Squad in their visit. It is scrupulously done by the applicant. Photo copies annexed with the rejoinder affidavit would show that cooperation extended by the applicant during the site visits. The applicant has given reply to the show cause notice, which is issued after the impugned transfer order, as those are dated 30.09.2021 and 04.10.2021. Those are not connected with the transfer order.

(b) It is further stated that two committees were set up for making enquiry of the complaints and that will show that there was confusion at the Government level itself. The applicant co-operated with both these committees. Hence, those complaints were can not be attributed to the applicant.

(c) It is further stated that the recommending Departmental Enquiry against the applicant seems to be backbone behind issuing the impugned transfer order. In

these circumstances, the impugned order of transfer is punitive in nature and hence, it is not sustainable. The impugned transfer order dated 07.09.2021 is issued in violation of the provisions of G.R. dated 29.07.2021 (Annexure A-4) and against the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005. The impugned order of transfer shows only administrative reason, which is not sufficient to effect the transfer order.

6. The affidavit in sur-rejoinder is file on behalf of respondent Nos. 1 and 2 denying adverse contentions raised in the affidavit in rejoinder filed by the applicant. It is denied that the applicant has furnished information and documents as required by the Vigilance Squad in time. Contemplation of disciplinary action is no bar for effecting transfer under Section 4(4) and 4(5) of the Transfer Act, 2005, when the continuation of the applicant on the present posting was causing hurdle in investigating the complaints. Hence, both the impugned transfer orders are justifiable.

7. I have heard the arguments advanced by Shri K.G. Salunke, learned Advocate for the applicant, Shri M.S. Mahajan,

learned Chief Presenting Officer for the respondent Nos. 1 and 2 and Shri N.B. Narwade, learned Advocate for respondent No. 3.

8. At the outset, learned Advocate for the applicant submitted that the impugned transfer order of the applicant dated 07.09.2021 (Part of Annexure A-2 collectively at page No. 27 of paper book) is issued in contraventions of the provisions of Clause Nos. 4, 5 & 6 of the G.R. dated 29.07.2021 (Annexure A-4) issued by the General Administration Department. The said clauses 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 कारणांमुळे 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.”

He further submitted that during the Covid-19 pandemic situation, various G.Rs. were issued by the Government for governing the general and special transfers specifying periods for the said purposes. In this regard, the learned Advocate for the

applicant placed on record relevant two other G.Rs. dated 10.05.2021 and 09.07.2021 (Annexure A-3 collectively).

9. In view of above, according to the learned Advocate for the applicant, no power vested in the respondent No. 1 effecting transfer on that for special reasons, when G.R. dated 29.07.2021 specifies period of 10.08.2021 to 30.08.2021 for transfer for special reasons.

10. Learned Chief Presenting Officer on the other hand opposed the abovesaid submissions and stated that any of the abovesaid provisions of the G.Rs. dated 10.05.2021, 09.07.2021 (Annexure A-3 collectively) and 29.07.2021(Annexure A-4) would not come in the way of the powers of the respondent Government to effect the transfer under Section 4(4) and 4(5) of the Transfer Act, 2005 for exceptional circumstances or for special reasons by complying with the said provisions in proper perspective.

11. In the background of the rival submissions, if the scheme of transfer as specified under the provisions of Section 3 to 6 of the Transfer Act, 2005 and relevant G.Rs. dated 10.05.2021, 09.07.2021 (Annexure A-3 collectively) and 29.07.2021(Annexure A-4) are considered, it is seen that in terms of Section 4 of the Transfer Act, 2005, the transfer of the Government servant shall

ordinarily be made only once in the year in the month of April or May. All abovesaid G.Rs. are issued in respect of transfers pertaining to the year 2020-21. Upon perusal of the G.R. dated 10.05.2021 (part of Annexure A-3 collectively), it is seen that by issuing earlier G.Rs. dated 07.07.2020 and 23.07.2020, the period for transfer of general nature, as well as, special reasons was extended to 10.08.2020. In continuation of those G.Rs., as per the G.R. dated 10.05.2021(Annexure A-3 collectively), the period of transfer was extended up to 30.06.2021 specifying certain parameters. Further as per the G.R. dated 09.07.2021 (Annexure A-3 collectively), the period of transfers was extended up to 14.08.2021 and thereafter, any type of transfer was not permissible. That specifically provided under the said G.R. Thereafter, by further G.R. dated 29.07.2021(Annexure A-4), general transfers were to be effected up to 09.08.2021 and thereafter transfers for special reasons by invoking the provisions of Section 4(4) were to be implemented during the period of 10.08.2021 to 30.08.2021. In this G.R., there is no rider no any further transfers for special reasons will be permissible as stated in earlier G.R. dated 09.07.2021 (Annexure A-3 collectively).

12. In view of above, it is seen that the impugned transfer order of the applicant dated 07.09.2021 (Part of Annexure A-2

collectively at page No. 27 of paper book), as well as, transfer order of the respondent No. 3 dated 07.09.2021 (part of Annexure A-3 collectively at page No. 28 of paper book), both the orders are issued by the respondent No. 1 and on the same date i.e. on 07.09.2021.

13. Perusal of the transfer order of the applicant would show that it is issued by invoking the powers of transferring authority under Section 4(4) and 4(5) of the Transfer Act, 2005 by seeking approval of the immediate competent superior authority i.e. the Hon'ble Chief Minister. The order of respondent No. 3 is promotion cum transfer order. The said order is of 25 officers and the name of respondent No. 3 appears at Sr. No. 20. By the said order, the respondent No. 3 has been posted at the post earlier held by the applicant, who is transfer as District Water Conservation Officer, Soil and Water Conservation Department, Jalna, from which the applicant has been transferred to the District Conservation Officer, Zilla Parishad (Minor Irrigation) Division, Jalna. The transferred place of the applicant is vacant place, whereas the transferred post of the respondent No. 3 is the post which are fallen vacant due to transfer of the applicant vide transfer order dated 07.09.2021 (Part of Annexure A-2 collectively at page No. 27 of paper book).

14. Upon reading of the G.R. dated 29.07.2021 (Annexure A-4) in its entirety even by reading more particularly para Nos. 4, 5 & 6 as reproduced above would not show that the powers of competent transferring authority are further restricted from 01.09.2021 onwards. In fact, the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005 were always available, but it can be said that some restrictions were put in exercising the said powers up to 30.08.2021 by giving posting of transfer for special reasons only on vacant posts and not on the post by vacating it. Upon reading of the said G.R., it cannot be said that the said restriction is extended further by mentioning anything in the said G.R. In view of the same, I find no substance and force in the arguments in that regard advanced on behalf of the applicant. I therefore, hold that the respondent No. 1 as on 07.09.2021 has rightly exercised its power under Section 4(4) and 4(5) of the Transfer Act, 2005 to effect the transfers under exceptional circumstances or for special reasons.

15. Above-said findings take me to consider further the alleged illegality of the impugned order of transfer of the applicant in the first place and thereafter secondly the transfer order of respondent No. 3.

16. I have already reproduced the contentions on behalf of respondent Nos. 1 and 2 in justification of the impugned order in nutshell. In the contention of the respondents about five incidences of the irregularity and illegality of working of the office of District Water Conservation Officer, Soil and Conservation Division, Jalna were noticed and in that respect, Vigilance Squad was making enquiry. It is a fact that the applicant came to occupy the said post by his earlier transfer order dated 30.06.2020 (Annexure A-1) and he joined the said post on 02.07.2020. The impugned order of his transfer is dated 07.09.2021 (Part of Annexure A-2 collectively at page No. 27 of paper book). Further it is also a fact that the applicant is working on the post falling under Group-A of the pay scale of Rs. 15600-39100. In view of the same, as per the Section 6 of the Transfer Act, 2005, the competent transferring authority of the applicant is the Hon'ble Chief Minister. In terms of Section 3 of the Transfer Act, 2005, the normal tenure of the applicant is of three years. The applicant had hardly completed tenure of one year and two months on the present posting. The General transfers were to be effected only up to 09.08.2021. In view of the same, the impugned transfer order of the applicant dated 07.09.2021 (Part of Annexure A-2 collectively at page No. 27 of paper book)

definitely mid-term and mid-tenure transfer order. Hence, compliance of Section 4(4)(ii) and 4(5) of the Transfer Act, 2005 is must.

17. Now coming to the compliance of the said provisions, the defence raised by the respondent Nos. 1 and 2 is required to be considered. In this regard justifying the transfer order of the applicant, the respondent Nos. 1 and 2 have stated in nutshell that in respect of five types of work undertaken by the office of District Water Conservation Officer, Soil and Conservation Division, Jalna, certain irregularities and illegalities were noticed. In that respect, the enquiry was initiated by the Regional Vigilance and Quality Control Officer, Vigilance and Quality Squad (Soil and Water Conservation) Aurangabad. Those alleged irregularities and illegalities are specified in confidential letter dated 05.05.2021 (Annexure R-1 collectively, page Nos. 94 to 97 of paper book) addressed by the Regional Vigilance and Quality Control Officer, Vigilance and Quality Squad (Soil and Water Conservation) Aurangabad to the respondent No. 2 i.e. the Commissioner, Soil and Water Conservation, WALMI, Aurangabad. However, in that regard, the said Vigilance Squad sought relevant documents from the office of District Water Conservation Officer, Soil and Conservation Division, Jalna vide

letter dated 10.12.2020 (Annexure R-1 collectively, page No. 98, as well as, page No. 429 of paper book). However, at that time, admittedly the applicant was holding the said post of District Water Conservation Officer at Jalna. However, it is alleged that he did not furnish the requisite information and documents. Therefore, the Vigilance Squad by letter dated 05.05.2021 (Annexure R-1 collectively, page Nos. 94 to 97, as well as, page Nos. 425 to 428 of paper book) addressed to the respondent No. 2 i.e. the Commissioner, Soil & Water Conservation, WALMI, Aurangabad opined that act of the applicant amounts to misconduct as contemplated under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and necessary action should be initiated. In furtherance of same, the respondent No. 1 issued show cause notice dated 30.09.2021 (Page No. 109 of paper book) to the applicant, which is produced along with the short affidavit filed on behalf of respondent Nos. 1 and 2 to show cause as to why disciplinary enquiry should not be initiated against him for not producing the documents. In this regard, even the Vigilance Squad issued show cause notice dated 04.10.2021 to the applicant as to why disciplinary action should not be proposed against him, which letter is also produced along with the additional affidavit in reply.

18. The applicant dealt with the contentions of the respondent Nos. 1 & 2 in both the affidavits in his affidavit in rejoinder and denied that the requisite information and documents were not produced on record. He annexed the photographs to show that he also visited the various work sites along with Vigilance Squad. According to him, the alleged works were undertaken before his joining on the said post. This is undisputed fact. However, question arises as to whether the applicant complied with the requisitions made by the Vigilance Squad as regard the requisite information and documents. The applicant has produced on record copies of register showing measurement of work, which is at page Nos. 159 to 163 of the paper book. He has also produced on record copy of letter dated 12.07.2021 (page No. 167 of paper book) addressed to the Vigilance Squad, Aurangabad giving certain information and three documents i.e. in respect of site visit dated 27.07.2021. He has also produced on record copy of letter dated 27.07.2021 (page No. 168 of paper book) addressed to the Sub Divisional Water Conservation Officer, Soil and Water Conservation Sub-Division, Partur. He has also produced on record a copy of letter dated 10.08.2021 (page No. 172 of paper book).

19. The applicant has further produced on record correspondence between him and the Vigilance Squad during the period of December, 2020 (page Nos. 174 to 177 of paper book). He has also placed on record copy of his letter dated 18.01.2021 (page No. 178 of paper book) addressed to the Regional Water Conservation Officer, Soil and Water Conservation Regional Divisiona, Aurangabad for keeping only one enquiry committee instead of two enquiry committees. One Enquiry Committee is for making enquiry of the work irregularities done in respect of works at Bhokardan and another Committee is for making enquiry of the works at Parbhani.

20. In this regard, the applicant has further produced on record various documents spreading over from page Nos. 181 to 267 of the paper book.

21. As regards compliance of the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005, the respondent Nos. 1 and 2 have produced original record and the copies thereof in respect of transfer of the applicant and the respondent No. 3 including proposal of transfer of the applicant and the respondent No. 3 made by the respondent No. 1 before the requisite Civil Services Board and recommendation of Civil Services Board and approval

of competent next higher authority / immediately superior transferring authority as contemplated under Section 4(4) and 4(5) of the Transfer Act, 2005.

22. Perusal of the said record would show that the Members of the requisite Civil Services Board consisted of Chairman, being the Additional Chief Secretary, Soil and Water Conservation, Soil and Water Conservation Division, and two Members being Commissioner, Soil and Water Conservation, Aurangabad (respondent No. 2) and the Deputy Secretary, Tribal Development Department. This record includes the minutes dated 30.08.2021 of the Civil Services Board. Those minutes of meeting are at page No. 57 and 58 of the said original record. It shows that the Chairman i.e. Mr. Nand Kumar, Additional Chief Secretary, Soil and Water Conservation, Soil and Water Conservation Division and one Member i.e. Mr. M.G. Ardad, Commissioner, Soil and Water Conservation, Aurangabad being members were present. Second member viz. Mr. S.N. Shinde, Deputy Secretary, Tribal Development Department was absent in the said meeting. In the said meeting, they considered the posting of 25 promoted officers to the cadre of District Water Conservation Officer and three more officers including the applicant for transfer. As against the name of the applicant, it is stated that his transfer to the post of

District Water Conservation Officer, Zilla Parishad (Minor Irrigation) Division, Jalna was recommended in view of the complaints in respect of his working. The said record further shows that the positing of respondent No. 3 amongst other 25 officers at Sr. No. 20 on the post of District Water Conservation Officer, Soil and Water Conservation Division, Jalna, which post was being vacated on transfer of the applicant from that post. The said record further shows that the requisite approval of the authority viz. Hon'ble Chief Minister is taken. It is to be seen as to whether the compliance under Section 4(4) & 4(5) of the Transfer Act 2005 is in proper perspective and in accordance with the certain parameters being laid down as per the G.R. 11.02.2015 (Annexure A-5) more particularly as laid down in para No. 8 therein, which is as follows:-

“८. एखाद्या प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी / कर्मचा-याच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारी संबंधीत अधिकारी / कर्मचा-याची बदली करण्यात येऊ नये. अशा प्रकरणात 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 संबंधील 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 नमूद 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 गैरवर्तणुकीच्या अनुषंगाने शासकीय अधिकारी / कर्मचारी यांची बदली करण्यात येते अशा प्रकरणात संबंधीत अधिकारी / कर्मचारी यांची बदली केल्यानंतर त्याच्या विरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी.”

23. Upon plain reading of the contents in para No. 8 of the above-said G.R., it is seen that only on merely on unverified complaints, the Government servant should not be transferred mid-tenure and that if substance is found, the decision of initiation of Departmental Enquiry can be taken and only if continuation of such Government servant was not proper, then only transfer can be proposed.

24. As regards abovesaid record, the learned Advocate for the applicant strenuously urged before me that the applicant produced on record along with his rejoinder affidavit various documents to show that the information and documents sought for were provided and also applicant cooperated the members of the Vigilance Squad in their site visits and despite that if the respondent No. 1 is contemplating disciplinary action, the applicant has to face it, for which the respondent No. 1 has already issued show cause notice and the applicant has duly replied to it. However, in contemplation of said disciplinary

action, when the applicant is transferred mid-term and mid-tenure on the basis of unverified complaints, the said transfer is illegal. In the circumstances, according to him, the impugned transfer order of the applicant is punitive in nature and is liable to be quashed and set aside and consequential transfer order of respondent No. 3 would also go away, as it is evident that the transfer order of the applicant is issued only to accommodate the respondent No. 3.

25. He further strenuously urged before me that the respondent No. 2 herein viz. the Commissioner, Soil and Water Conservation Department, WALMI, Aurangabad has proposed disciplinary action and at the same time, relying upon his report that the applicant has not provided information and documents as sought for by the Vigilance Squad is recommending transfer of the applicant as a Member of the Civil Services Board. It is not permissible to deal with the same situation in two different positions, as it would amount to sitting over appeal on his earlier decision. In view of the same, the recommendation of transfer of the applicant, as well as, the respondent No. 3, he being Member of the Civil Services Board falls to the ground.

26. In order to support his arguments about not proper compliance of the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005, learned Advocate for the applicant placed reliance on the following citations :-

- (i) O.A. No. 300/2020 in the case of Shri Rajesh Gopalrao Lande Vs. The State of Maharashtra and Ors. dated 06.10.2020 decided by the Principal Seat of this Tribunal at Mumbai.
- (ii) O.A. No. 990/2018 in the matter of Gaurishankar Prabhuling Swami Vs. State of Maharashtra and Ors. dated 04.04.2019 decided by this Tribunal Bench at Aurangabad.
- (iii) O.A. No. 123/2021 in the matter of Gaurishankar Prabhuling Swami Vs. State of Maharashtra and Ors. dated 06.08.2021 decided by this Tribunal Bench at Aurangabad.
- (iv) O.A. No. 256/2021 in the matter of Priya Ashokrao Salve Vs. the Principal Chief Conservator of Forest (Van Bal Pramookh) and Ors. decided by this Tribunal Bench at Aurangabad.

In all these abovesaid citations, nature of allegations on which the transfer of the respective applicants under Section 4(4) and 4(5) of the Transfer Act, 2005 were effected on unverified complaints and those reasons were not in strict compliant of the

provisions of Section 4(4) of the Transfer Act, 2005. He has also placed reliance on the citation of the Hon'ble Supreme Court in **Civil Appeal No. 7308/2008 (Arising Out of SLP (Civil) No. 3516 of 2007)** in the case of **Somesh Tiwari Vs. Union of India and Ors.** decided on 16.12.2008. In the said citation in para No. 20, it is held as follows :-

“20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”

27. As against that the learned Chief Presenting Officer strenuously urged before me that in the case in hand, it cannot be said that the complaints of not providing requisite information and documents are unverified complaints, as prima-facie there is no record to show that pursuant to the requisitions made by the Vigilance Squad, the applicant provided information and

documents. Moreover, the continuation of the applicant on the same post, in which office certain irregularities and illegalities were found committed would be prejudicial to the public interest at large, if the necessary information and documents, do not coming in possession of the Enquiry Committee. Moreover, the administrative exigency is having broad spectrum covering the various situations and it is difficult to list the various situations under one umbrella. Moreover, proper procedure is followed as contemplated under Section 4(4) and 4(5) of the Transfer Act, 2005, placing on record well founded material against the applicant. To support the said submissions, he placed reliance on the citation reported in **2010 (5) Bom. C.R. 444 (Bombay High Court) (Nagpur Bench)** in **W.P. No. 5199 of 2009** in the case of **Anil Marotrao Khobragade Vs. State of Maharashtra and Ors.** decided on 21.01.2020. In the said citation case, the Government servant was transferred in view of the allegations made against him on alleged misbehavior with women at college. The applicant therein challenged his order of transfer before the Maharashtra Administrative Tribunal, Bench at Nagpur. That was dismissed. Against that he preferred W.P. before the Hon'ble High Court, Bench at Nagpur, wherein it is observed that there were allegations of misbehavior with women at college against

the applicant and approval granted by the Hon'ble Chief Minister and the respondent No. 4 therein was posted in place of the applicant therein on administrative ground. In view of the same, said W.P. was dismissed. He also placed reliance on the decision Hon'ble High Court of Judicature at Bombay Civil Appellate Jurisdiction in **W.P. No. 8116/2008** in the matter of **The State of Maharashtra through the Secretary Vs. Ashok Ramchandra Kore and Anr.** dated 16.04.2009. In the said citation in para Nos. 40 and 41 it is observed as follows:-

“40. We are concerned here with somewhat similar fact situation. The Minister for Water Conservation, Khar Lands and Agriculture is the executive head of the Water Conservation Department. He has taken review of various schemes implemented in the State. During the review it was found that the work of the 1st respondent was not satisfactory. The post of Chief Engineer, Minor Irrigation Local Sector, Pune is directly under the control of Secretary Water Conservation. The Secretary, Water Conservation found several lacunae in the functioning of the 1st respondent which we have noted hereinabove. The Minister, Water Resources had also applied his mind to this aspect. He opined that the 2nd respondent was having experience in the field of Minor Irrigation Schemes under the local sector and hence he should be brought in the place of the 1st respondent. All this material was placed before the Chief Minister who approved the

proposal of transfer. We have already noted that there is no fabrication of documents. Malafides have not been established. The MAT should not have, therefore, acted as an appellate authority. In our opinion, the MAT exceeded its jurisdiction.

41. Having examined the files of the Government and after considering the present case, in the light of relevant judgments, to which we have made reference, in our opinion, the impugned order dated 24/25/26/9/2008 delivered by the Maharashtra Administrative Tribunal, Mumbai Bench, must be set aside and is accordingly set aside.”

28. He further placed reliance on the citation reported in **(2009) 2AIRBomR 22** in **W.P. No. 4859/2008** in the matter of **The State of Maharashtra Vs. Omprakash Ghanshyamdas Mudiraj and Anr.** decided on 18.12.2008. In the said citation, as regards sufficiency of the exceptional circumstances or special reasons as contemplated under Section 4(4) and 4(5) of the Transfer Act, 2005, it is observed in para No. 17 as follows:-

“17) Whether the reasons propounded by the State Government for transferring the respondents are sufficient or otherwise could not have been gone into by the Tribunal. The Tribunal even assessed the sufficiency of reasons by referring to the case of one Mr. M.A. Mate, Superintending Engineer in Yawatmal Irrigation Circle

having completed target 100% recovery. The said case was considered, as Mr. Mate, according to the Tribunal, was transferred prior to completion of his normal period. Such comparison in the facts of the case was not essential as each case will have to be considered on its own merits by the State. The employer would be the best judge to appreciate performance of its employees and their suitability mandates that in a particular place. At the same time, law mandates that the State shall comply with the necessary requirements as envisaged under the provisions of Section 4(4) for effecting transfers (order) prior to completion of normal tenure of posting. We find that in this case the State has considered individual cases of both the respondents and decided to transfer them. The Tribunal did not discuss the issue of mala fide. Therefore, we are of the opinion that the said issue need not be taken up by us for consideration in exercise of extra ordinary writ jurisdiction under [Article 226](#) of the Constitution of India. We find in the facts of the case that the State had complied with the provisions of Section 4 of the Act of 2005. There are special reasons with the State for effecting transfer orders and the contention of accommodation of respondent No.2 in the facts of the case cannot be accepted.”

29. In the background of rival arguments advanced on behalf of both the parties, if the impugned transfer orders of the applicant and the respondent No. 3 are examined, it is found that the

transfer order of the applicant is issued in the background of complaints against the applicant that he did not provide requisite information and documents as called for by the Vigilance Squad as already discussed in detail. It is the contention of the applicant that he has complied with the said order furnishing the necessary information and documents as stated by him in his affidavit in rejoinder and by annexing photographs and documents. On factual aspect, it is prima-facie, evident that the alleged response by the applicant in response is by way of two letters of Vigilance Squad particularly letter dated 05.05.2021 (Annexure R-1 collectively, page Nos. 94 to 97 of paper book), as well as, letter dated 04.01.2021 (page Nos. 431 and 432 of the paper book). The alleged compliance made by the applicant seems to be mainly in respect of site visits and providing some pages of register, which can be seen at page Nos. 159 to 163 of the paper book, but that apart, the question is how far the Tribunal in its limited jurisdiction can go into in that regard. Limited jurisdiction of the Tribunal in this regard is discussed in the citation placed on record by the learned Chief Presenting Officer reported in **(2009) 2AIRBomR 22** in **W.P. No. 4859/2008** in the matter of **The State of Maharashtra Vs. Omprakash Ghanshyamdas Mudiraj and Anr.** decided on

18.12.2008 (cited supra), which is already reproduced. In view of the said ratio, it would not be permissible to the Tribunal in its limited jurisdiction to give a decision that the requisitions made by the respondent Nos. 1 and 2 were complied with by the applicant and it is purely a matter of administrative exigency. No doubt, there may be cases, where the applicant would show concrete evidence that the allegations were false or the material produce to disprove it. That would be dependent on the facts and circumstances of the each case. In view of the same, the citation relied upon by the applicant would not be useful to the applicant and cannot be said to be aptly applicable. Considering the rival materials on record, no mala-fide can be inferred against the respondents in passing the impugned transfer order of the applicant.

30. So far as compliance of provisions of para No. 8 of the G.R. dated 11.02.2015 (Annexure A-5) relied upon by the learned Advocate for the applicant is concerned, it can be seen that it lays down that on unverified complaints transfer order cannot be passed and in case of sufficient material, disciplinary action can be initiated and if continuation of Government servant on the same post hampers in any manner in carrying out investigation of the allegations, the transfer can be effected.

31. In the case in hand, there are allegations of irregularities and illegalities by the persons holding the post of District Water Conservation Officer, Soil and Water Conservation Department, Jalna. No doubt, it is of the period before the applicant joined the said post. However, Vigilance Squad making Enquiry in the said allegations demanded certain documents from the office of the said District Water Conservation Officer, Jalna, at the time when the applicant was posted there. But the said office failed to provide the necessary information and documents. Definitely initiation of any action against the erring persons would follow. In these circumstances, it can be said that the said situation has necessitated transfer of the applicant from the said post. By the transfer order, the applicant has been posted on another equivalent post at Jalna itself. In view of that great prejudice cannot be said to have been caused to the applicant of his rights as a Government servant.

32. The applicant has assailed both the transfer orders on one more ground that the respondent No. 2, who recommended disciplinary action against the applicant, is himself the Member of the Civil Services Board, who recommended the transfer of the applicant. The respondent No. 2 cannot sit over in appeal on his own decision of recommending disciplinary action, as well as,

recommending transfer. I have given conscious and serious thought to this aspect of the matter. To some extent the respondent No. 2 is acting in dual capacity. However, I have already observed that no mala-fide is seen in the transfer order of the applicant. The impugned transfer order of the applicant is passed by the respondent No. 1 by seeking requisite approval of the Hon'ble Chief Minister. The applicant is a Group-A employee having pay scale of Rs. 15600-39100. Original record produced by the respondent Nos. 1 and 2 would show that the proposal of transfer of the applicant is made by the respondent No. 1 before the requisite Civil Services Board and the Civil Services Board after taking into consideration the complaints against the applicant, accepted the proposal and recommended the transfer of the applicant. Same is approved by the next higher competent authority i.e. the Hon'ble Chief Minister. There is no dispute that the next higher authority / superior transferring authority under Section 4(4) and 4(5) of the Transfer Act, 2005 is the Hon'ble Chief Minister. The requisite procedure as contemplated under Section 4(4) and 4(5) of the Transfer Act is followed in proper perspective. The complaint made against the applicant cannot be said to be prima-facie having no substances, even if the defence of the applicant is taken into consideration. The case

will fall within the power of administrative exigency to be exercised by the competent transferring authority. Hence, irregularity or illegality is not found as regards the compliance of Section 4(4) and 4(5) of the Transfer Act, 2005. It is evident on record that the said provisions are complied with in proper perspective.

33. So far as role of respondent No. 2 i.e. the Commissioner, Soil and Water Conservation Department, WALMI, Aurangabad is concerned, it is evident that he is holding the post of Commissioner and is also the Member of the requisite Civil Services Board appointed for transfer of Group-A employees. I have already observed that mala-fide is not apparent on record. The alleged irregularities in that regard cannot be said to be sufficient to hold that the impugned transfer order of the applicant is illegal being in contravention of any provisions of Transfer Act, 2005. The impugned transfer order of the respondent No. 3 is consequential order of promotion by posting him on the post earlier held by the applicant. That order would not come into the teeth of the provisions of para Nos. 4, 5 & 6 of the G.R. dated 29.07.2021 (Annexure A-4), as the said G.R. does not specify any rider by which it will be continued till further orders. In the facts and circumstances, it cannot be said that

the applicant has been displaced to accommodate the respondent No. 3 there. The applicant has been transferred for independent reasons unconnected with the respondent No. 3. Only because the respondent No. 3 would have been posted on any other vacant place at Jalna including the place on which the applicant has been transferred, does not make his transfer order illegal.

34. In view of the discussions in foregoing paragraphs, I found no merit in the contentions raised in the present Original Application assailing the impugned order of transfer of the applicant, as well as, the respondent No. 3. Therefore, the Original Application deserves to be dismissed. I therefore, proceed to pass following order :-

ORDER

- (A) The Original Application No. 532 of 2021 stands dismissed with no order as to costs.
- (B) The original record is handed over to the learned C.P.O.

PLACE : AURANGABAD.
DATE : 02.03.2022.

(V.D. DONGRE)
MEMBER (J)