

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 663 OF 2019

DISTRICT: - BEED.

Veerbhadrapa S/o Madiwalappa Hanamsagar,

Age-55 years, Occu. : Govt. Service,

R/o: Near Panchmukhi Hanuman Temple,

Palwan Road, District Beed.

.. APPLICANT.

V E R S U S

1) The State of Maharashtra,

Through it's Principal Secretary,

Public Works Department,

Mantralaya, Mumbai.

2) The Superintendent Engineer,

Public Work Department,

Bandhkam Bhavan, Aurangabad.

3) The Chief Engineer,

Public Work Department

Regional Department,

Konkan Bhavan, Navi Mumbai.

.. RESPONDENTS.

APPEARANCE : Shri. Mahesh C. Swami, learned
Advocate for the applicant.

: Shri M.P. Gude – learned Presenting
Officer for the respondents.

CORAM : **B.P. PATIL, ACTING CHAIRMAN**

RESERVED ON : **07.01.2020**

PRONOUNCED ON : **10.01.2020**

ORDER

The applicant has challenged the order dated 22.07.2019 passed by the respondent No. 1 thereby transferring the applicant from the post of Deputy Engineer, Pradhanmantri Gram Sadak Yojna Beed to the post of Deputy Engineer, Public Works, Zilla Parishad, Beed, by filing the present Original Application.

2. The applicant was initially appointed as Sectional Engineer in the month of October, 1983. Thereafter he worked on various posts under the authority of Zilla Parishad. On 14.08.2018 he was promoted as Deputy Engineer (Grade A) and posted as Deputy Engineer (Grade A), Pradhanmantri Gram Sadak Yojna, Beed. Accordingly, he has been relieved from the post of Deputy Engineer, on 01.09.2018 and joined on the transferred post on 10.09.2018. Since then he is working on the said post. The applicant has completed more than 35 years' service and his service record is excellent & unblemished. He has efficiently handled the various posts and charge assigned to him under the authority of the Government. The applicant has hardly worked on the post of Deputy Engineer, Pradhanmantri Gram Sadak Yojna

Beed, for 11 months. He has not completed his normal tenure of posting on that post and he was not due for transfer, but respondent No. 1 has issued the impugned order dated 22.07.2009 and transferred him from the post of Deputy Engineer, Pradhanmantri Gram Sadak Yojna Beed to the post of Deputy Engineer, Public Work Sub Division, Zilla Parishad, Beed. It is his contention that the impugned order was issued in violation of the provisions of the Maharashtra Government Servants regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "The Transfer Act, 2005") and it has been issued arbitrarily and with malice. It is his contention that several important projects of Pradhanmantri Gram Sadak Yojna in Marathwada Region are pending and those are in progress and due to the impugned transfer order the said works are affected adversely. It is his contention that the impugned order has been issued due to the political influence to accommodate other employee. It is his contention that in fact the staff working under the Pradhanmantri Gram Sadak Yojna is insufficient and, therefore, the Executive Engineer Pradhanmantri Gram Sadak Yojna, Beed, requested to appoint two more Deputy Engineer for proper work. In spite

of that the respondent No. 1 issued the impugned order arbitrarily with malice and transferred the applicant. The impugned order is illegal and, therefore, he prayed to quash and set aside the same by allowing the present Original Application.

3. Respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the applicant was initially appointed on the post of Sectional Engineer and thereafter on 14.08.2018 he has been promoted on the post of Deputy Engineer, Grade-1, and posted as Deputy Engineer, Grade-1, Pradhanmantri Gram Sadak Yojna, Beed. They have admitted the fact that the applicant has joined on the promotional post on 01.09.2018. They have admitted that the applicant has been transferred by the impugned order dated 22.07.2019 from the post of Deputy Engineer, Pradhanmantri Gram Sadak Yojna Beed to the post of Deputy Engineer, Zilla Parishad (Works) Sub-Division, Beed. It is their contention that the said transfer has been effected due to administrative exigency in view of the provisions of the Transfer Act, 2005. It is their contention that the headquarter of the applicant has not been changed. It is their contention that the impugned order is

issued by following the due procedure of law, and therefore, they prayed to reject the Original Application.

4. Applicant has filed rejoinder affidavit to the reply filed by the respondent Nos. 1 to 3 and contended that the impugned order has been issued in violation of the provisions of the Transfer Act, 2005. There was no administrative exigency or exceptional circumstances to effect his transfer. No reason has been assigned by the respondents while issuing transfer order. Therefore, he prayed to quash and set aside the impugned transfer order by allowing the Original Application.

5. I have heard the arguments advanced by Shri Mahesh C. Swami, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in reply filed by the respondents. I have also perused the documents placed on record by both the parties.

6. Admittedly, the applicant was initially appointed as Sectional Engineer in the month of October, 1983. Admittedly, he worked on various posts under the authority of Zilla Parishad. On 14.08.2018 he was promoted as Deputy

Engineer (Grade A) and posted at Pradhanmantri Gram Sadak Yojna, Beed. Admittedly, he has been relieved from the post of Deputy Engineer, Pradhanmantri Gram Sadak Yojna Beed, on 01.09.2018 and thereafter he joined on the transferred post on 10.09.2018 and since then he was working there. He has hardly completed 11 months on the said post but he has been transferred by the impugned order from the said post to the post of Deputy Engineer, Zilla Parishad, Sub Division, Beed on account of administrative exigency / ground. Admittedly, he has not completed normal tenure of posting on the post of Deputy Engineer, Pradhanmantri Gram Sadak Yojna Beed. He was not due for transfer, but respondent No. 1 has issued the impugned order of transfer dated 22.07.2009 and transferred him from the post of Deputy Engineer, Pradhanmantri Gram Sadak Yojna Beed to the post of Deputy Engineer, Public Work Sub Division, Zilla Parishad, Beed. The impugned order is midterm and mid-tenure transfer order.

7. Learned Advocate for the applicant has submitted that the applicant has not completed his normal tenure of posting on the post of Deputy Engineer, Pradhanmantri Gram Sadak Yojna Beed. He has hardly completed 11 months tenure on

the said post. He was not due for transfer, but the respondent No. 1 has issued the impugned order and transferred him from the post of Deputy Engineer, Pradhanmantri Gram Sadak Yojna Beed to the post of Deputy Engineer, Zilla Parishad, Sub Division, Beed. He has submitted that the impugned order does not show any reason for his transfer. He has submitted that the impugned order has been issued due to the political pressure to accommodate some other employee at his place. He has submitted that the provisions of Section 4 (4) and 4 (5) of the Transfer Act, 2005 have not been followed while effecting the transfer of the applicant. The impugned order is issued in violation of the provisions of Section 3, Section 4 (4) & Section 4 (5) of the Transfer Act, 2005. The impugned order has been issued arbitrarily and with malice and, therefore, it is required to be quashed and set aside by allowing the Original Application.

8. He has further argued that the proposal regarding his transfer has not be placed before the Civil Services Board and without recommendation of the Civil Services Board the impugned order has been issued by the respondents. Therefore, it is in contravention of the provisions of the Transfer Act, 2005 and, therefore, he has prayed to quash

and set aside the impugned order of transfer by allowing the Original Application.

9. He has submitted that this Tribunal in several cases has considered the provisions of the Transfer Act, 2005 and quashed and set aside the transfer orders of the Government servants in case of similarly situated persons / employees. In support of his submissions he has placed reliance on the following judgments / orders passed by this Tribunal and by the Principal Seat of this Tribunal at Bombay: -

- (a) O.A. No. 972/2018 [Smt. Sangita Rohit Jagtap Vs. the State of Maharashtra & Ors.] decided by this Tribunal on 25.01.2019.**
- (b) O.A. No. 01/2017 (Shri Dattatraya Balikrishna Pande Vs. the State of Maharashtra & Ors.) decided by this Tribunal on 08.03.2017.**
- (c) O.A. No. 542/2017 (Dr. Sunil Purushottam Bhamre Vs. the State of Maharashtra & Ors.) decided by this Tribunal on 01.02.2018.**
- (d) O.A. No. 983/2018 (Shri Amol Vilas Gaikwad Vs. the State of Maharashtra & Ors.) decided by the Principal Seat of this Tribunal at Bombay on 10.01.2019.**
- (e) O.A. No. 900/2018 (Shri Prashant Suresh Pisal Vs. the State of Maharashtra & Ors.) decided by the Principal Seat of this Tribunal at Bombay on 20.12.2018.**

- (f) **O.A. No. 614/2017 (Shri Pramod Haribhau Sawakhande Vs. the State of Maharashtra & Ors.) decided by the Principal Seat of this Tribunal at Bombay on 27.03.2018.**
- (g) **O.A. No. 527/2018 (Dr. Ravindranath B. Chavan Vs. the State of Maharashtra & Ors.) decided by the Principal Seat of this Tribunal at Bombay on 19.11.2018.**

He has submitted that the case of the applicant is squarely covered by the principles laid down in the aforesaid judgments passed by this Tribunal and by the Principal Seat of this Tribunal at Bombay and, therefore the impugned order is required to be quashed and set aside by allowing the Original Application.

10. Learned Presenting Officer for the respondents has submitted that the applicant has been transferred on account of administrative exigency. While making the transfer of the applicant the provisions of the Transfer Act, 2005 has been strictly followed by the respondents and there was no violation of any provision of the Transfer Act, 2005. He has submitted that there is no illegality in the impugned order of transfer. The Competent Authority has issued the order of transfer on administrative ground and, therefore, he justified the impugned order and prayed to dismiss the Original Application.

11. On perusal of the documents placed on record by both the parties, it reveals that the applicant has been promoted and transferred on the post of Deputy Engineer, Grade-1, Pradhanmantri Gram Sadak Yojna, Beed by order dated 14.08.2018. He joined on the said promotional post on 10.09.2018 and since then he is working there. He has not completed his normal tenure of posting on the said post. He was not due for transfer, but the respondent No. 1 has transferred him by the impugned order on 22.07.2019. The impugned order is midterm and mid-tenure transfer order. No doubt the Competent Transferring Authority is empowered to make midterm & mid-tenure transfer of the Government servants by following the mandatory provisions laid down in Section 4 (4) & 4 (5) of the Transfer Act, 2005 with prior approval of the next higher Competent Transferring Authority, by recording the reasons in writing in exceptional circumstances in the interest of public or on account of administrative exigency. In the instant case, the respondents have effected the transfer of the applicant by the impugned order dated 22.07.2019 on administrative ground. The documents produced on record show that the proposal regarding transfer of the applicant has not been placed before

duly constituted Civil Services Board. No recommendation of the Civil Services Board has been obtained for the transfer of the applicant. Not only this, the prior approval of the next higher Transferring Authority has been obtained for the midterm and mid-tenure transfer of the applicant. No reasons in writing have been recorded while effecting the transfer of the applicant. No exceptional circumstances have been made out by the respondents while effecting the transfer of the applicant. It shows that the impugned transfer order has been issued in violation of the mandatory provisions of Sections 4 (4) and 4 (5) of the Transfer Act, 2005. The transfer of the applicant has been made before completion of his normal tenure as provided under Section 3 of the Transfer Act, 2005. Therefore, the impugned transfer is in violation and against the provisions of the Transfer Act, 2005. It is illegal, therefore it requires to be quashed and set aside by allowing the Original Application.

12. I have gone through the aforesaid decisions cited by the learned Advocate for the applicant. I have no dispute regarding the settled legal principles laid down therein. In the instant case, the respondents effected the transfer of the

applicant in violation of the provisions of Sections 4 (4) & 4 (5) of the Transfer Act, 2005 without recording reasons and, therefore, it is illegal. The impugned order has been issued by the respondents arbitrarily with malice. Therefore, it requires to be quashed and set aside by allowing the Original Application.

13. In view of the discussions in the foregoing paragraphs, the present Original Application is allowed. The impugned order dated 22.07.2019 transferring the applicant from the post of Deputy Engineer, Pradhanmantri Gram Sadak Yojna Beed to the post of Deputy Engineer, Public Works, Zilla Parishad, Beed, is hereby quashed and set aside. The respondents are directed to repost the applicant at his earlier post i.e. Deputy Engineer, Pradhanmantri Gram Sadak Yojna Beed, immediately.

There shall be no order as to costs.

ACTING CHAIRMAN

PLACE : AURANGABAD.

DATE : 10.01.2020