

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 836 OF 2019

DIST. : DHULE

Sajidbanu Gulamnabi Shahpure,)
Age. 47 years, Occu. Service,)
as Executive Engineer, Dhule Irrigation)
Division, Dhule,)
R/o P.W.D. Class I Quarter 1/6,)
Room No. 3, Oppo. Zilla Parishad,)
Dhule, Dist. Dhule.)-- APPLICANT

VERSUS

1. The State of Maharashtra,)
Through its Principal Secretary,)
Water Resources Department,)
M.S., Mantralaya, Mumbai - 32.)

2. The Chief Engineer,)
Tapi Irrigation Development)
Corporation, Jalgaon,)
Sinchan Bhavan,)
Akashwani Chowk, Jalgaon - 01.)

3. The Superintending Engineer,)
Command Area Development)
Authority, Jalgaon,)
Girana Bhavan, Opp. Akashwani,)
Jalgaon - 425 001.) -- RESPONDENTS

APPEARANCE :- Shri A.S. Deshmukh, learned Advocate for
the applicant.
: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondent no. 1.
: Smt. Suchita A. Dhongde, learned Advocate
holding for Shri S.D. Dhongde, learned
Advocate for respondent nos. 2 & 3.

CORAM : Hon'ble Shri B.P. Patil, Vice Chairman
RESERVED ON : 23.6.2020
PRONOUNCED ON : 30.6.2020

ORDER

1. The applicant has challenged the order dated 17.9.2019 passed by the respondent no. 1 the Principal Secretary, Water Resources Department, Mantralaya, Mumbai thereby transferring her from the post of Executive Engineer, Dhule Irrigation Division, Dhule to the post of Executive Engineer, Canal Design Division No. 2, Nashik, by filing the present O.A.

2. The applicant has passed B.E. (Civil) in the year 1994. On 18.1.1999 she entered in the Government service as a Junior Engineer. On 24.1.2001 she was appointed as a Assistant Engineer, Grade-II in the Public Works Department. Thereafter she was appointed as a Assistant Engineer, Grade-I in the Irrigation Department, which has been nomenclated as a Department of Water Resources. On 15.10.2018 she was promoted as a Executive Engineer. Accordingly she has joined the said promotional post on 5.11.2018 in Dhule Irrigation Division, Dhule and since then she is working there. She has completed hardly 10 months' tenure on the said post. She has not completed her normal tenure of posting in view of the provisions of section 3 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005). But the respondent

no. 1 has issued the order on 17.9.2019 and transferred her from Dhule to Nashik in the midst of the term. Nobody has been transferred and posted in her place at Dhule by the said order. But it has been mentioned therein that separate order will be issued for transfer and posting of another Officer in her place at Dhule. It is her contention that the impugned order has been issued in contravention of the provisions of section 3 and section 4(4) and 4(5) of the Transfer Act, 2005 and that too without recording the reasons. It is her contention that the mandatory provisions of section 4(4) and 4(5) of the Transfer Act, 2005 has not been complied with by the respondents while effecting her transfer. It is her contention that her son namely Sajid Ali Ayaz Ahmad Shaikh is studying in 3rd standard at S.V.K.M. School at Dhule. It is her contention that due to midterm and mid tenure transfer his educational career will be affected. The respondent no. 1 ought to have accommodated her on any one of the vacant post at Dhule. But the respondent no. 1 had not considered the said aspect and issued the impugned transfer order. Therefore, she has filed the present O.A.

3. The respondent nos. 1 to 3 filed their affidavit in reply and resisted the contentions of the applicant. They have admitted the fact that the applicant has not completed her normal tenure of

posting as a Executive Engineer at Dhule Irrigation, Dhule and she was not due for transfer. They have denied the fact that the impugned order has been issued in contraventions of the provisions of section 4(4) and 4(5) of the Transfer Act, 2005.

4. It is contention of the respondents that in the year 2018 and 2019 there was scarcity of drinking water in 16 villages in Sakri Taluka and Sakri city. Therefore the Collector, Dhule reserved 45.44 mcft and 69.15 mcft drinking water for those villages from Malangaon reservoir. It is their contention that during the month of December, 2018 to April, 2019 the Collector, Dhule issued several letters and orders to release the water for said 16 villages and the Sakri city. But the applicant released excess water without seeking permission from the Collector, Dhule into rotations. Because of excess water released by the applicant the Collector, Dhule has to make arrangement of tankers for providing drinking water to villages of Sakri and Sakri Town. Because of misdeed of the applicant the Collector, Dhule was required to face the critical situation regarding the drinking water. Therefore the Collector, Dhule requested to the superior authority of the applicant to take action against the applicant as per the provisions of M.C.S. (Discipline & Appeal) Rules, 1979 and also requested to transfer her. Therefore show notice was issued to the

applicant on 23.4.2019. The Chief Engineer, T.I.D.C. submitted a report and requested the Competent Transferring Authority for taking appropriate decision in the matter. Accordingly a proposal of midterm and mid tenure transfer of the applicant on non executive post was submitted to the Civil Services Board. The Civil Services Board after considering the matter recommended the transfer of the applicant on the post of Executive Engineer, Canal Design Division No. 2, Nashik as it was vacant due to retirement of Shri Gangurde. On the basis of the recommendations of the Civil Services Board the competent transferring authority by obtaining approval of the immediate superior authority i.e. Hon'ble Minister of Water Resources Department decided to transfer the applicant from the post of the Executive Engineer, Dhule Irrigation Division, Dhule to the post of Executive Engineer, Canal Design Division No. 2, Nashik. On the basis of the said decision the order dtd. 17.9.2019 has been issued in view of the provisions of section 4(5) of the Transfer Act, 2005. It is their contention that the applicant has been transferred due to instructions issued by the Collector, Dhule. It is their contention that the applicant has been transferred due to her failure in discharging duties as per the orders of the competent authority and for putting the said authority in an embarrassing position. The applicant has been transferred after

following the due provisions of section 4(5) of the Transfer Act, 2005. Therefore, they have justified the transfer order and prayed to dismiss the O.A.

5. The applicant has filed rejoinder affidavit to the affidavit in reply filed by the respondent nos. 1 to 3. It is her contention that no special reasons have been recorded while issuing the impugned order and there were no exceptional circumstances for her transfer. She has denied that the impugned order has been issued due to failure on her part while discharging her official duties. It is her contention that the impugned order has been issued in violations of the guidelines issued by the Government in the Circular dated 11.2.2015. It is her contention that neither the Collector, Dhule, nor the S.C.N. made report against her as well as other 3 Officers. But no action has been taken against that 3 Officers and action has been taken only against her. It is her contention that for releasing water the Executive Engineer, Rural Water Supply Division, Dhule has to submit his demand letter to the Collector, Dhule and then the Collector asks the opinion of the W.R.D. and after receiving the opinion the Collector passes the final order regarding release of water. In the present case the Collector, Dhule ordered on the basis of demand of Nagaradhyaksh, Sakri Nagar Panchayat without taking demand

from Rural Water Supply Department as well as without taking opinion from the Executive Engineer, D.I.D., Dhule. The Collector, Dhule issued the order regarding release of 5 Mcft water. Considering the past experience to release the water from Malangaon Dam to the lift well of Sakri, the distance of which is approximately is 30 kms., 35 to 40 Mcft water is required. If only 5 Mcft water would have been released, it could have reached hardly few distance and purpose of the said order would not have been served. Considering all these technical difficulties the requisite water quantity was released to serve the purpose. It is her contention that as mentioned in the orders for irrigation rotation, the water was released in the canal of Malangaon dam up to 14 Km. To supply the water to Sakri City it was necessary to release water in the Nalla which crosses canal by 25 Km chainage. From 14 Km the maintenance work of canal was in progress and therefore it was difficult to carry out water through canal. To overcome that difficulty and to curb the possible losses, the water was conveyed through the Malangaon dam to the life well of Sakri City water supply. There are 18 new/old jalyukt / bandharas constructed by other department in the river course. The sills of these Bandharas are near about 1m high than the river bed level. Naturally after storing water approximately 1 mcft to 1.5 mcft in each Bandhara, the water moves ahead. All ditches

and pits in this river length occupy and retain some water quantity. In such situation the applicant had consulted the Collector, Dhule by approaching him personally in his chamber as well as contacted him on phone and many times discussed the said matter with him. It is her contention that there was no disobedience nor any negligence on her part in discharging her duties. It is her contention that there was no loss of water as the excess water was stored in the ditches and pits in the bed of river created by sand removers, as well as in 18 bandharas and it was utilized for the drinking and domestic need of the cattle, flora and fauna. Also it has accelerated the water recharging of the wells in the territory. Ultimately this water is utilized for the benefit of public at large. Therefore it cannot be said that there was wastage of water. There was no negligence on her part in discharging the duties. It is her contention that the impugned action taken by the respondents is against the provisions of the Transfer Act, 2005 and her transfer has been made on the basis of the report made by the Collector, Dhule. The Collector, Dhule has wrongly recommended her transfer. Therefore, she prayed to quash the impugned order.

6. The respondent nos. 1 to 3 filed sur-rejoinder to the rejoinder affidavit filed by the applicant and reiterated the

contentions raised by them in the affidavit in reply. It is their contention that 69.15 mcft water was reserved for Sakri City from the Malangaon Dam for drinking purpose. Accordingly, for the Sakri city, in the first rotation it was directed to release 5 mcft water and in the second rotation it was directed to release 10 mcft water. Further in the third rotation it was directed to release 10 mcft water. But it was modified at the request of applicant to 20 mcft vide order dated 15.4.2019. At the same time about 45.44 mcft water was reserved from Malangaon Dam for 16 villages from Sakri Taluka and residing on the bank of Kan River for redressal of scarcity of water in the said villages. In the first rotation it was directed to release 15 mcft water. But, applicant without seeking prior approval of the Collector, Dhule or that of her superiors released excess quantity of 34.80 mcft water in the first rotation and 20.83 mcft water in the second rotation thereby released total 55.63 mcft excess water for Sakri Nagar Panchayat. Similarly while releasing 3rd rotation for Sakri Nagar Panchayat and 15 mcft water for 16 villages on the banks of Kam river, the applicant submitted report to the Collector, Dhule that instead of 25 mcft water if 45 mcft water is released then it will possible to supply water for the said 16 villages. The Collector, Dhule sought explanation from the concerned Irrigation officials including the applicant. At the time of meeting of Water Reservation for the year

2018-19 up to June, 2019 the said reservation was fixed taking into consideration the demand, transit and evaporation losses. However, due to release of excess water, instead of second and third rotation only one rotation was possible for 16 villages residing on the bank of Kan river. Because of the said conduct of the applicant the water was required to be supplied through water tanker to the Sakri Nagar Panchayat. After considering the explanation submitted by the applicant the Collector, Dhule asked the Chief Engineer, T.I.D.C., Jalgaon to transfer her and also to take action against her under the provisions of the M.C.S. (Discipline & Appeal) Rules, 1979. Accordingly the Chief Engineer has submitted the same to the Government and requested to transfer the applicant and also to take action against her and other officers under the provisions of M.C.S. (Discipline & Appeal) Rules, 1979. Accordingly the applicant was transferred by the order dated 17.9.2019 passed by the respondent no. 1. It is their contention that the applicant has been transferred after following the due process. The applicant committed negligence in discharging her duties and thereby caused loss to the public at large and the Government. Therefore they have justified the impugned order.

7. I have heard the arguments advanced by Shri A.S. Deshmukh, learned Advocate for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent no. 1 and Smt. Suchita Dhongde, learned Advocate holding for Shri S.D. Dhongde, learned Advocate for respondent nos. 2 & 3. I have also gone through the documents placed on record.

8. Admittedly the applicant was initially appointed as a Jr. Engineer on 18.1.1999. Thereafter she was appointed as a Assistant Engineer, Grade-II in the Public Works Department on 24.1.2001. Thereafter she was appointed as a Assistant Engineer, Grade-I in the Irrigation Department, which has been nomenclated as a Department of Water Resources. Admittedly by the order dated 15.10.2018 she was promoted as a Executive Engineer and posted in Dhule Irrigation Division, Dhule and accordingly she joined the said promotional post on 5.11.2018. Admittedly she worked on the said post for 10 months and thereafter she has been transferred from the post of Executive Engineer, Dhule Irrigation Division, Dhule to the post of Executive Engineer, Canal Design Division No. 2, Nashik by the impugned order dated 17.9.2019 passed by the respondent no. 1. There is no dispute that the Collector, Dhule reserved 45.44 mcft and 69.15 mcft drinking water from Malangaon dam for the villages of

Sakri taluka and sakri city. Admittedly the applicant released excess water without seeking permission from the Collector, Dhule. Thereafter the Collector, Dhule made a report to the Chief Engineer, T.I.D.C. for taking appropriate action against the applicant and other officers and also requested to transfer them. On the basis of the same the Department placed the proposal of transfer of the applicant before the Civil Services Board. Admittedly on the basis of the recommendations of the Civil Services Board the impugned order has been issued by the competent transferring authority transferring the applicant from the post of Executive Engineer, Dhule Irrigation Division, Dhule to the post of Executive Engineer, Canal Design Division No. 2, Nashik.

9. Learned Advocate for the applicant has submitted that the applicant has joined the post of Executive Engineer on 5.11.2018 in Dhule Irrigation Division, Dhule and she has completed hardly 10 months' tenure on the said post at the time of the impugned transfer. She has not completed her normal tenure of posting on the said post. But she has been abruptly transferred by the impugned order. Therefore it is midterm and mid tenure transfer order. He has submitted that the applicant has been transferred from Dhule to Nashik in view of the provisions of section 4(5) of

the Transfer Act, but the respondents had not complied the mandatory provisions of the said section. No exceptional circumstances have been made out while effecting the transfer of the applicant and no special reasons have been recorded while making the impugned transfer and therefore it is illegal.

10. Learned Advocate for the applicant has submitted that the applicant has been transferred on the basis of complaint filed by the Collector, Dhule, which has been forwarded to the respondent by the Chief Engineer, T.I.D.C., Dhule. He has submitted that the Collector, Dhule made allegations against the applicant that she had released the excess water from Malangaon Dam for the different villages of Sakri taluka and Sakri town and thereby caused loss to the Government. He has submitted that the applicant has not committed any misconduct in releasing the water to the villages as sufficient water was required to reach the water to the said villages. He has submitted that the applicant has not committed any negligence while discharging her duties. But on the basis of the letter issued by the Collector, Dhule the respondent no. 1 made her transfer. He has submitted that the respondents ought to have made an enquiry in to the allegations and the complaint made by the Collector, Dhule regarding her alleged misconduct in view of the provisions of M.C.S.(Discipline &

Appeal) Rules, 1979. Instead of that the respondents made her transfer, which is in the nature of punishment and therefore the same is illegal and same is required to be quashed by allowing the O.A.

11. In support of his above contentions the learned Advocate for the applicant has placed reliance on the judgement of the Hon'ble Supreme Court in the case of **Somesh Tiwari Vs. Union of India & Ors.** reported at **2008 DGLS (SC) 1675**, wherein it is observed 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.”

12. Learned Advocate for the applicant has further submitted that the applicant is drawing the salary in the pay scale of Rs. 15,600 to 39,100 with grade pay of Rs. 6600/-. He has submitted that in view of the provisions of section 6 of the Transfer Act, 2005

the Hon'ble Chief Minister is the competent transferring authority for making the transfer and Hon'ble Chief Minister is the superior competent transferring authority for approving the transfer of the applicant. Transfer of the applicant is made in view of the provisions of section 4(5) of the Transfer Act, 2005. He has submitted that the Hon'ble Chief Minister delegated the powers for transfer under section 4(4) and 4(5) of the Transfer Act, 2005 to the Hon'ble Minister of the concerned department by the G.R. dtd. 25.4.2016. But the powers to approve such transfers have been retained with Hon'ble Chief Minister. The impugned transfer is made by the Hon'ble Minister without prior approval of the Hon'ble Chief Minister as required under section 4 of the Transfer Act and therefore it is illegal, hence it requires to be quashed.

13. Learned Advocate for the applicant has submitted that the impugned order has been issued in the form of punishment to the applicant. He has submitted that 2 posts Executive Engineer are vacant at Dhule and the applicant ought to have been accommodated there. But the respondents with mala-fide intention transferred her at Nashik, which is a inconvenient transfer to her.

14. Learned Advocate for the applicant has submitted that on perusal of record of the Civil Services Board regarding transfer of the applicant it reveals that the said record has been manipulated by the Department. He has submitted that different dates are recorded by the Members of the Civil Services Board below their signature. The impugned order has been issued only with an intention to harass the applicant. Therefore, he prayed to quash the impugned order by allowing the present O.A.

15. Learned Chief Presenting Officer for the respondent no. 1 and the learned Advocate for the respondent nos. 2 & 3 have submitted that in the year 2018 and 2019 there was scarcity of drinking water in 16 villages in Sakri Taluka and Sakri city. Therefore the Collector, Dhule reserved 45.44 mcft and 69.15 mcft drinking water for those villages from Malangaon reservoir. Accordingly the Collector, Dhule directed the concerned authorities not to release the water reserved for drinking purposes without his prior permission. They have submitted that the applicant was governed by the G.Rs. dated 7.1.2004, 10.8.2004, 10.3.2015 and 3.8.2017 while releasing the water. They have submitted that the Collector, Dhule issued communications dated 27.12.2018, 27.2.2019 and 2.4.2019 regarding releasing of water and the applicant was bound by the said communications. They

have submitted that the applicant released excess water without seeking prior permission from the Collector, Dhule into rotations. Because of excess water released by the applicant the Collector, Dhule was required to make arrangement of tankers for providing drinking water to villages of Sakri taluka and Sakri Town. They have submitted that in the first rotation the Collector had directed to release 5 mcft water and in the second rotation it was directed to release 10 mcft water. Furthermore in the third rotation it was directed to release 10 mcft water. They have submitted that the said quantity was modified at the request of applicant and it was directed to release 20 mcft water vide order dtd. 15.4.2019. Accordingly, in the first rotation the applicant was bound to release 15 mcft water, but she has released 34.80 mcft in the first rotation and 20.83 mcft water in the second rotation for Sakri villages and Sakri town thereby released total 55.63 mcft excess water. They have submitted that while releasing third rotation to villages of Sakri taluka and Sakri town, the applicant submitted the report to the Collector, Dhule that instead of 25 mcft water if 45 mcft water is released then it will be possible to provide water for the said 16 villages. They have submitted that the applicant released excess water without seeking prior permission of the Collector, Dhule into rotations. They have further submitted that as excess water was released by the applicant, the Collector,

Dhule was required to make arrangement of tankers for providing drinking water to villages of Sakri and Sakri Town. Because of misdeed of the applicant the Collector, Dhule was required to face the critical situation regarding the drinking water. They have submitted that as the applicant has committed negligence in discharge of her duties heavy loss has been caused to the Government. They have further submitted that due to negligence committed by the applicant hardship has been caused to the villagers and administration and therefore the Collector, Dhule made a report to the Chief Engineer, T.I.D.C., Jalgaon to transfer the applicant and others and also to take action against them under the provisions of M.C.S. (Discipline & Appeal) Rules, 1979. The Chief Engineer, T.I.D.C. forwarded the report to his higher authority and requested the competent authority for taking appropriate decision in the matter. They have submitted that on the basis of the report of the Chief Engineer a proposal of midterm and mid tenure transfer of the applicant on the non-executive post was submitted to the Civil Services Board. The Civil Services Board after considering the matter recommended the transfer of the applicant on the post of Executive Engineer, Canal Design Division No. 2, Nashik as it was vacant due to retirement of Shri Gangurde. On the basis of the recommendations of the Civil Services Board the competent transferring authority by obtaining

approval of the immediate superior authority i.e. Hon'ble Minister of Water Resources Department decided to transfer the applicant from the post of the Executive Engineer, Dhule Irrigation Division, Dhule to the post of Executive Engineer, Canal Design Division No. 2, Nashik. On the basis of the said decision the order dtd. 17.9.2019 has been issued in view of the provisions of section 4(5) of the Transfer Act, 2005.

16. They have submitted that in view of the provisions of section 6 of the Transfer Act, 2005 Hon'ble Chief Minister was the competent transferring authority for the transfers of Group-A Officers drawing salary in the pay scale of Rs. 10650 to 15850 and above as per the 5th Pay Commission. In the 6th Pay Commission the pay scale of Rs. 15,600 to 39,100 with grade pay of Rs. 6600 is the corresponding scale to the said pay scale. They have admitted the fact that the Government issued notification dtd. 25.4.2016 in view of the second proviso to section 6 of the Transfer Act and delegated the powers of the Hon'ble Chief Minister to make transfers of Group-A Officers having pay scale of Rs. 10,650 to 15,850 as per the 5th Pay Commission (i.e. Rs. 15,600-39,100 with grade pay of Rs. 6600 as per 6th Pay Commission) to the Principal Secretary and Hon'ble Minister of Water Resources Department. They have submitted that in view

of the said delegation, the powers to make transfer under section 4(4) and 4(5) of the Transfer Act, 2005 have been delegated to the Hon'ble Minister of the Water Resources Department. Since the Hon'ble Chief Minister delegated the powers, the Hon'ble Minister of the department is the competent transferring authority to make the transfer of Group-A officers as well as highest superior / next competent transferring authority to grant approval to the transfers made under the provisions of section 4(4) and 4(5) of the Transfer Act. The Hon'ble Minister of the Water Resources Department accepted the proposal submitted by the department along with the recommendations of the Civil Services Board. He being the superior next higher competent transferring authority for approving the transfer approved the said proposal and therefore there is compliance of the provisions of section 4(4) and 4(5) of the Transfer Act, 2005. They have submitted that exceptional circumstances have been made out by the department for the transfer of the applicant and special reasons have been recorded while making transfer of the applicant. They have submitted that due to negligent act of the applicant villagers in Sakri taluka and Sakri town have been suffered and to satisfy their demand of drinking water the Collector, Dhule was required to make arrangement of tankers for supplying them drinking water. Therefore, in the said exceptional circumstances, the transfer of

the applicant has been made. There is no illegality in the impugned order. Therefore they justified the impugned transfer order and prayed to dismiss the O.A.

17. Learned C.P.O. for respondent no. 1 and learned Advocate for respondent nos. 2 & 3 have submitted that in spite of the impugned transfer order the applicant has not joined the new posting and committed misconduct. They have submitted that the respondents have issued show cause notice to the applicant and called her explanation as to why departmental enquiry should not be initiated against her. They have submitted that the transfer of the applicant has been made for the reasons recorded in the impugned order and it is not in the nature of punishment and therefore it cannot be said that it is vindictive and illegal order.

18. On going through the documents on record, it reveals that in the year 2018 and 2019 there was scarcity of drinking water in 16 villages of Sakri Taluka and Sakri city. Therefore the Collector, Dhule reserved 45.44 mcft and 69.15 mcft drinking water for those villages from Malangaon reservoir. The Collector, Dhule directed the offices of the respondents as well as the applicant not to release water without his prior permission. Thereafter the Collector issued the order to release the water to different villages

of Sakri taluka and Sakri town. But the applicant released excess water without obtaining prior permission from the Collector. Due to excess water released by the applicant the Collector could not be able to supply sufficient water to the said villages in the next rotations. Therefore, the Collector, Dhule was required to make arrangement of tankers for providing water to the villages of Sakri taluka and Sakri town. Therefore, the Collector issued a letter to the Chief Engineer, T.I.D.C. and requested to take appropriate action against the erring officers including the applicant and to transfer them. On the basis of the said letter, the Chief Engineer forwarded the proposal to the competent authority for transfer of the applicant. On the basis of the said report, the Department prepared a proposal regarding midterm and mid tenure transfer of the applicant on the non-executive post for the reasons recorded therein. The said proposal was placed before the Civil Services Board and the Civil Services Board approved the said proposal and recommended the transfer of the applicant from Dhule to Nashik. Thereafter the Civil Services Board recommended the transfer of the applicant from the post of Executive Engineer, Dhule Irrigation Division, Dhule to the post of Executive Engineer, Canal Design Division no. 2, Nashik. Thereafter the recommendations of the Civil Services Board along with the proposal of transfer of the applicant had been placed before the

Hon'ble Minister of Water Resources Department and it was approved by him. The notification dtd. 25.4.2016 shows that the powers to transfer under section 4(4) and 4(5) of the Transfer Act have been delegated by the Hon'ble Chief Minister to the Minister of the said Department. In view of the said notification the Hon'ble Minister being the Competent Transferring Authority approved the transfer of the applicant. In view of the said notification Hon'ble Minister became the highest / superior competent transferring authority. In that capacity he has approved the proposal and therefore it can be said that the prior approval of the next competent authority as required under section 4(5) of the Transfer Act, 2005 has not been taken while effecting transfer of the applicant. Because of the misconduct of the applicant of releasing excess water hardship has been caused to the villagers of Sakri Taluka and Sakri town and financial loss has also been caused to the Government. For the said reasons the transfer of the applicant was proposed and it was approved by the competent transferring authority on the recommendation of the Civil Service Board. The exceptional circumstances for making the transfer under section 4(5) of the Transfer Act, 2005 have been made out. Reasons have also been recorded by the Competent Transferring Authority while making transfer of the

applicant. Consequently the impugned order has been issued by the respondents.

19. All these facts and circumstances show that the competent transferring authority made out a special case for the transfer of the applicant. They have recorded the reasons in writing while making the transfer of the applicant. It further reveals that the transfer of the applicant was due to exceptional circumstances and in the public interest. Therefore, in my view, the respondents have made the compliance of the mandatory provisions of section 4(4) and 4(5) of the Transfer Act and therefore I find no illegality in the impugned order.

20. I have gone through the record produced by the respondents as well as the copies of it produced on record. I find no illegality in the impugned order. There is no discrepancy regarding the dates put in by the Members of the Civil Services Board under their signature. Therefore, I find no substance in the submissions made by the learned Advocate for the applicant in that regard.

21. I have also gone through the judgment of the Hon'ble Supreme Court in the case of **Somesh Tiwari Vs. Union of India & Ors.** (supra) relied by the learned Advocate for the applicant. I have no dispute regarding the settled legal principles laid down

therein. The facts in the above cited case are different than the facts in the present case. In that case the applicant was transferred on the basis of the allegations made against him in the anonymous complaint. In the present case the Collector, Dhule made the report regarding alleged misconduct of the applicant due to which loss has been caused to the Government as well as hardship caused to the villagers of Sakri taluka and Sakri town and on the basis of the said allegations the transfer of the applicant has been made. Therefore, it cannot be said that it is in the nature of punishment. In these circumstances, in my view, the said decision of the Hon'ble Supreme Court is not much useful to the applicant in this case.

22. Considering the above said facts, in my view, the impugned transfer order has been issued by the Competent Transferring Authority by recording sound reasons and by making a exceptional circumstances. The impugned transfer order has been issued by the respondents by following the provisions of section 4(5) of the Transfer Act and there is no violation of the said provision. There is no illegality on the part of the respondents while issuing the impugned order. Therefore no interference is called for in the impugned order. There is no merit in the O.A. Consequently it deserves to be dismissed.

23. In view of the discussion in foregoing paragraphs the present Original Application stands dismissed. There shall be no order as to costs.

(B.P. PATIL)
VICE CHAIRMAN

Place : Aurangabad
Date : 30.6.2020

ARJ-O.A. NO. 836-2019 BPP (TRANSFER)