

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 846 OF 2019
(Subject – Transfer)**

DISTRICT : AURANGABAD

Shri Ramesh S/o Heeraman Sapkal,)
Age : 57 years, Occu. : Fisheries)
Development Officer, Office of Regional)
Deputy Commissioner, At Aurangabad,)
Tq. and Dist. Aurangabad – 431 001.)

.. **APPLICANT**

V E R S U S

1) **The State of Maharashtra,)**
Through its Secretary,)
Department of Agricultural, Dairy)
Development and Animal)
Husbandry and Fisheries,)
Mantralaya, Mumbai - 32.)

2) **The Commissioner of Fisheries,)**
Co-operative Societies Maharashtra)
State Taraporwala Aquarium,)
Netaji Subhash Road, Charni Road)
Mumbai – 400 002.)
E-comm_fisheries@maharashtra.gov.in)

.. **RESPONDENTS**

APPEARANCE : Shri M.U. Shelke, Advocate for the Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer
for Respondents.

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

RESERVED ON : **25.02.2020.**

PRONOUNCED ON : **28.02.2020.**

ORDER

1. The applicant has challenged the order dated 28.08.2019 passed by the respondent No. 1 transferring him from the post of Fisheries Development Officer in the office of the Regional Deputy Commissioner of Fisheries at Aurangabad to the post of Fisheries Development Officer in the office of the Assistant Commissioner of Fisheries at Gondia by filing the present Original Application and prayed to quash and set aside the said order.

2. The applicant has been appointed on the post of Assistant Fisheries Development Officer in the office of Fisheries Deputy Director (in Land) at Mumbai department of Fisheries, Taraporwala Aquarium at Mumbai on 30.06.1992. The applicant rendered service for 27 years and 3 months. Considering his work and research, he was promoted from time to time. The applicant is going to retire w.e.f. 30.06.2020 on attaining the age of superannuation.

3. On 25.04.2018, the respondent No. 1 informed the District Development Officer (Class-II) to give first preference of Revenue Department in order to promote them in the year 2017. The applicant by letter dated 02.05.2018 informed the

respondents that he is suffering from heart decease and suffers from other ailments and therefore, he has prayed to transfer on promotion at Aurangabad Region. Considering his case, the respondent No. 1 promoted the applicant by the G.R. dated 21.06.2018 and appointed in the office of Deputy Regional Commissioner of Fisheries at Aurangabad. Accordingly, the applicant was relieved from the office of Assistant Commissioner of Fisheries at Osmanabad. Thereafter, he joined his duties in the office of Regional Deputy Commissioner of Fisheries at Aurangabad on 30.06.2018. Since then, the applicant was working in the office of Regional Deputy Commissioner of Fisheries at Aurangabad. The applicant rendered clean and unblemished service of 27 years and his work was appreciated by the superiors from time to time. It is his contention that since his initial date of appointment, he devoted himself for development of fisheries and made various researches regarding development of good quality seeds to increase the production of fish. Therefore, he was conferred with the benefit of increment from time to time.

4. It is contention of the applicant that the Assistant Commissioner of Fisheries, Aurangabad by his order dated 28.09.2017 sanctioned the lease rent of Phulambri Tank to one

Mahatma Phule Magas Matsyavyavasay Co-operative Society Ltd. Phulambri for the period from 01.07.2017 to 30.06.2022 by imposing certain terms and conditions. In the year 2018-19, the Mahatma Phule Magas Matsyavyavasay Co-operative Society Ltd. Phulambri failed to deposit the lease amount of Phulambri Tank and therefore, the Assistant Commissioner of Fisheries, Aurangabad by the letters dated 04.05.2018 and 06.06.2018 called upon the fishery society to deposit the lease / rent amount with interest before 30.06.2018 and informed them that their lease will be cancelled, if they fail to deposit the amount. Instead of various communications, Mahatma Phule Magas Matsyavyavasay Co-operative Society Ltd. Phulambri failed to deposit the lease amount. Therefore, the Assistant Commissioner of Fisheries, Aurangabad by the order dated 10.08.2018 cancelled the lease regarding Phulambri Tank on account of non-deposit of lease amount and breach of terms and conditions by the Mahatma Phule Magas Matsyavyavasay Co-operative Society Ltd. Phulambri and also held that from 01.07.2018 onwards the Mahatma Phule Magas Matsyavyavasay Co-operative Society Ltd. has no any rights over the Phulambri Tank. It is his contention that the Phulambri Tank was auctioned and local fishermen were permitted for fishing.

Therefore, the president of Mahatma Phule Magas Matsyavyavasay Co-operative Society Ltd. Phulambri raised quarrel and assaulted the local fishermen who were legally permitted for fishing over Phulambri Tank.

5. The applicant is working as Fisheries Development Officer in the office of Regional Deputy Commissioner of Fisheries, at Aurangabad since 30.06.2018. The local fisherman made complaint against the Mahatma Phule Magas Matsyavyavasay Co-operative Society Ltd. Phulambri to the applicant and prayed to take appropriate action. In pursuance of the complaint, the applicant had taken action against the Mahatma Phule Magas Matsyavyavasay Co-operative Society Ltd. Phulambri. Therefore, the president of Mahatma Phule Magas Matsyavyavasay Co-operative Society Ltd. Phulambri viz. Raju Pradhan and his son threatened to the applicant. The applicant issued letter dated 31.01.2019 to his superior authorities and prayed to take appropriate action against the Raju Pradhan and his son. The president of Mahatma Phule Magas Matsyavyavasay Co-operative Society Ltd. Phulambri i.e. Raju Pradhan was politically influence person and therefore, he made attempt to assault the applicant and to transfer the applicant from Aurangabad.

6. The Talav Theka Committee, Aurangabad held Chronicle Meeting dated 16.07.2019 for continuation of lease period. The subject regarding the decision in the alleged complaint was considered in the meeting. The committee failed to appreciate the representation made by the local fisherman to include the name of Mahatma Phule Magas Matsyavyavasay Co-operative Society Ltd. Phulambri in the blacklist for further six years. The members of the committee observed that the G.R. dated 03.07.2019 does not prescribed procedure or mechanism to include the name in the black list on account of breach the terms and conditions of the agreement. It is his contention that the said observation is against and contrary to the Clause No. 19 of the G.R. dated 03.07.2019. Therefore, he sent letter dated 19.07.2019 addressed to his superior authority in that regard. It is his contention that the president of Mahatma Phule Magas Matsyavyavasay Co-operative Society Ltd. Phulambri made every attempt to transfer him. It is his contention that he has not signed the proceeding of chronicle meeting dated 16.07.2019 and therefore, his superior authorities made attempt to transfer him and consequently, he has been transferred from Aurangabad to Gondia by the impugned order. It is his contention that the impugned order of transfer order is in contraventions of the

provisions of Section 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short “the Transfer Act 2005”). The mandatory provisions of Section 4(4) and 4(5) of the Transfer Act, 2005 had not been followed by the respondent No. 1 while effecting his transfer. It is his contention that the impugned transfer order has been issued in the midst of term though he has not completed normal tenure of posting at Aurangabad and therefore, it is illegal. It is his contention that he is going to retire w.e.f. 30.06.2020. He is on the verge of retirement, but the respondents had not considered the said aspect and issued the impugned order of transfer. It is his contention that his daughter is taking education at Aurangabad, but the respondents had not considered the said aspect while issuing the impugned order and therefore, he has prayed to quash and set aside the same by allowing the present Original Application.

7. The respondent Nos. 1 and 2 have filed their affidavit in reply and resisted the contention of the applicant. They have denied that the impugned order has been issued in violation of the provisions the Transfer Act, 2005. They have denied that the impugned order has been issued without just ground. They have denied that the applicant rendered unblemished service. It is

their contention that the respondents had issued many memos to the applicant regarding his misbehavior in working on 01.03.2019, 08.03.2019, 08.04.2019, 23.04.2019, 25.07.2013 & 26.09.2014, but the reply given by the applicant to the said memos were not satisfactory. It is their contention that as per the service record, the punishment was imposed on the applicant and his absentee for six days was treated as without pay. They have denied that the applicant is suffering from heart decease and he has produced the documents in that regard. It is their contention that it is a part of job of Development Officer to deliver lectures with detailed information regarding fisheries and the concerned Government scheme regarding development of fisheries and therefore, the Principal of Shri Asaramji Bhandwaldar Art's Commerce and Science College, Aurangabad organized the programme. It is their contention that the applicant had given regular increments and those are not based on his good performance. It is their contention that the case of Phulambri Tank has no concern with the transfer of the applicant and the decision in the said case has been taken by the District Level Tank Lease Committee constituted vide G.R. dated 03.07.2019 and there is provision to prefer appeal before the appellate authority i.e. Commissioner of Fisheries and revision

before the Revisional authority i.e. Secretary, Animal Husbandry, Dairy Development and Fisheries Department. The case is pending before the appellate authority i.e. the respondent No. 2, as well as, the Hon'ble High Court of Bombay Bench at Aurangabad. It is their contention that because of misbehavior and misconduct of the applicant, the proposal for withdrawal of the charge of the applicant was sent to the higher authorities. The applicant was not attaining the office regularly and punctually and therefore, proposal regarding his transfer has been made. It is their contention that the Regional Deputy Commissioner of Fisheries, Aurangabad submitted report on 21.12.2013 and 10.05.2019 stating that it is a tendency of the applicant to divert the subject from main point and put irrelevant matter to distract the authority from cause of action. The applicant has mentioned irrelevant matters to distract the attention from the facts that he had misbehaved and remained absent in the office. It is their contention that the applicant misbehaved with his officer and considering all these facts, after following the due process of law, the respondents transferred him by the impugned order. It is their contention that there is no illegality in the impugned order and therefore, they have justified

the impugned order of transfer and prayed to reject the present Original Application.

8. I have heard Shri M.U. Shelke, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

8. Admittedly, the applicant was initially appointed on the post of Assistant Fisheries Development Officer in the office of Fisheries Deputy Director (in Land) at Mumbai department of Fisheries, Taraporwala Aquarium at Mumbai on 30.06.1992. He rendered service for 27 years and 3 months till filing of the present O.A. In the year 2018, he was promoted on the post of Fisheries Development Officer and posted in the office of the Regional Deputy Commissioner of Fisheries at Aurangabad. Accordingly, he has been relieved from the office of Assistant Commissioner of Fisheries at Osmanabad on 22.06.2018. He joined the office of the Regional Deputy Commissioner of Fisheries at Aurangabad on 30.06.2018 and since then he was working there. Admittedly, the applicant has been transferred by the impugned order i.e. on 28.08.2019 and posted as Assistant Commissioner of Fisheries at Gondia.

9. Learned Advocate for the applicant has submitted that the applicant has joined the office of the Regional Deputy Commissioner of Fisheries at Aurangabad as Fisheries Development Officer on his promotion on 30.06.2018 and since then, he was working there. He has submitted that the applicant has hardly worked for one year and one month in the office of the Regional Deputy Commissioner of Fisheries at Aurangabad. He has not completed his normal tenure of posting in view of the provisions of the Transfer Act, 2005. He was not due for transfer, but the respondents abruptly transferred him by the impugned order dated 28.08.2019 and posted him in the office of Assistant Commissioner of Fisheries at Gondia. He has submitted that the applicant is suffering from heart decease and on that count he has been posted at Aurangabad previously. Not only this, but the applicant's daughter is taking education in the Government Medical College and Hospital, Aurangabad and his wife is also suffering from ailments. But the respondents had not considered the said aspects and transferred him before completion of his normal tenure in the midst of term in violation of the provisions of the Transfer Act, 2005. He has submitted that the respondents have issued the impugned order on administrative ground, but no special reasons have been

recorded while effecting the mid-term and mid-tenure transfer. He has argued that the respondents had not considered the family problems of the applicant and transferred him at Gondia, which is at a distance of 600 k.ms. from Aurangabad. He has submitted that because of the impugned order of transfer, inconvenience is caused to the applicant and the said order has been issued vindictively and arbitrarily and therefore, it requires to be quashed and set aside by allowing the present Original Application.

10. Learned Advocate for the applicant has submitted that the applicant is going to retire on 30.06.2020 on attaining the age of superannuation. He was on the verge of retirement. He should not have been transferred when he was on the verge of retirement, but the respondents had not considered the said aspect and illegally transferred him from Aurangabad to Gondia and therefore, he has prayed to quash and set aside the said order of transfer.

11. Learned Advocate for the applicant has further submitted that the applicant has rendered unblemished service for 27 years and his work was appreciated by the higher authority from time to time. But the respondents had not

considered the said aspect and illegally transferred him and therefore, he has prayed to quash and set aside the impugned order by allowing the present Original Application.

12. Learned Chief Presenting Officer has submitted that the applicant joined the office of Regional Deputy Commissioner of Fisheries at Aurangabad on 30.06.2018. His work in the office of Regional Deputy Commissioner of Fisheries at Aurangabad was not satisfactory. He misbehaved with his superior authority. He remained absent in the office during the office time and that's why the show cause notices have been issued to him. Not only this, but he remained absent in the office without prior approval of the higher authorities and therefore, the punishment has been imposed on him. Not only this, but he behaved arrogantly with his superior officer and harassed her and therefore, show cause notices have been issued to him. Not only this, but he has exceeded his power and filed criminal complaint against his predecessor without obtaining sanction from the higher authority. He has argued that one Mrs. H.A. Dixit is serving as a Regional Deputy Commissioner of Fisheries at Aurangabad and the applicant was working under her. The applicant misbehaved with her and therefore, she had filed report to her superior authority and prayed to make her transfer from Aurangabad. He

has submitted that because of the misbehavior of the applicant with his superior officer, the higher authority requested the respondents to withdraw the charge of the applicant and also proposed his transfer. The proposal of mid-term and mid-tenure transfer of the applicant was placed before the Civil Services Board duly constituted and the Civil Services Board after considering the complaints and its seriousness and misconduct of the applicant, recommended the transfer of the applicant from Aurangabad. The said recommendation was placed before the competent transferring authority and the competent transferring authority issued the impugned order of transfer. He has submitted that the impugned order has been made on administrative ground because of the complaints of serious nature filed against the applicant. He has argued that the transfer of the applicant was necessary for smooth running of office at Aurangabad and therefore, he has been transferred. He has submitted that the impugned order has been issued after following mandatory provisions of Section 4(4) and 4(5) of the Transfer Act, 2005 and there is no illegality in it. Therefore, he justified the impugned order of transfer and prayed to reject the present Original Application.

13. On perusal of the record, it reveals that the applicant was serving in the office of the Regional Deputy Commissioner of Fisheries at Aurangabad since 30.06.2018. The record produced by the respondents show that the applicant was not attaining the office regularly and punctually. The respondents produced the details regarding attendance of the applicant and the time when he was attaining the office during the period from 01.02.2019 to 31.08.2019. On perusal of the said record, it reveals that the applicant was in habit of not attaining the office during the official hours and he never attained the office punctually. Not only this, but he had not followed the directions and orders issued by the higher authorities. He has not put his thumb impression for recording his attendance in the biometric machine. Several show cause notices have been issued to him because of his misbehavior and misconduct and illegal act done by him while discharging the duties. The said fact is evident from documents produced by the respondents at paper book page Nos. 117 to 127. Because of the show cause notices issued to him, he started making wild allegation against the Regional Deputy Commissioner of Fisheries at Aurangabad viz. Mrs. H.A. Dixit. Not only this, but he himself misbehaved with her and therefore, Mrs. H.A. Dixit applied with her higher authorities and

sought her transfer from Aurangabad. Because of the misconduct of the applicant, the higher authority made proposal to their superior authority for withdrawal of the work assigned to the applicant. On the basis of report made by the higher authorities of the applicant, the department prepared the proposal regarding transfer of the applicant on administrative ground. The said proposal was placed before the Civil Services Board duly constituted and the Civil Services Board after considering the various show cause notices issued to the applicant, report made against the applicant and the seriousness in the allegations made against the applicant, decided to recommend the transfer of the applicant before completion of his tenure in the midst of term on administrative ground. The reasons have been recorded by the Civil Services Board while making recommendation. The said recommendation was placed before the competent transferring authority. The competent transferring authority accepted the recommendation and decided to transfer the applicant from Aurangabad to Gondia. All these facts show that the impugned transfer order has been made in view of the provisions of Section 4(4) and 4(5) of the Transfer Act, 2005. In order to run administration smoothly in the office of Regional Deputy Commissioner of Fisheries at Aurangabad, the

competent transferring authority decided to transfer the applicant before completion of his tenure and that too in the midst of term. Therefore, in my view, there is no illegality in the impugned order of transfer. The impugned order of transfer has been issued in view of the provisions of Transfer Act, 2005. By recording the adequate reasons and special reasons, the competent transferring authority decided to transfer the applicant from Aurangabad and therefore, in my view, there is no violation of provisions of the Transfer Act, 2005. The mandatory provisions of Section 4(4) and 4 (5) of the Transfer Act, 2005 have been followed by the competent transferring authority while issuance of the impugned order of transfer dated 28.08.2019 and therefore, in my view, no interference is called for in the impugned order. There is no merit in the present Original Application. Consequently, the O.A. deserves to be dismissed.

14. In view of the discussions in the foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

PLACE : AURANGABAD.
DATE : 28.02.2020.

(B.P. PATIL)
ACTING CHAIRMAN