

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 89 OF 2019

(Subject –Transfer)

DISTRICT:AURANGABAD

Rajendra s/o Anandrao Jehurkar,)
Age:51 years,Occu. :Service as,)
Superintendent, in the office of)
Superintending Engineer, P.W.D. Circle,)
'Bandhkam Bhavan', Adalat Road,)
Aurangabad.)
R/o Jagat-Pushpa Residency, 176/6,)
Ulkanagari, Garkheda Parisar,)
Aurangabad.)

.. APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**)
Through : The Secretary,)
Public Works Department,)
Mantralaya, Mumbai- 32.)
- 2) **The Chief Engineer,**)
Public Works Regional Office,)
2nd Floor, 'Bandhkam Bhavan',)
Adalat Road, Aurangabad.)
- 3) **The Superintending Engineer,**)
Public Works/Zonal Circle,)
'Bandhkam Bhavan', Snehnagar,)
Adalat Road, Aurangabad.)
- 4) **Mr. Santosh s/o Uttam Bramharakshak,**)
Age – Major, Occu. Service as)
Head Clerk (under promotion as)
Superintendent) in the office of)
Executive Engineer, P.W.D. (West))
Division, Padampura, Aurangabad.)

.. RESPONDENTS

APPEARANCE : Shri S.D. Joshi, Advocate for the Applicant.
: Shri D.R. Patil, Presenting Officer for
Respondent Nos. 1 to 3.
: Shri V.B. Wagh, Advocate for respondent No. 4.

CORAM : **SHRI BIJAY KUMAR, MEMBER (A).**

DATE : **12.08.2021.**

ORDER

1. The applicant has challenged the impugned office order No. 52, dated 29th January 2019 passed by the Superintending Engineer, Public Works Circle, Aurangabad & Coordinator Superintending Engineer, Public Works Zonal Circle, Aurangabad transferring him from the office of Superintending Engineer, P. W. Circle Aurangabad to the office of Superintending Engineer, National Highway Circle Aurangabad on a vacant post of office superintendent which is covered by the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delays in Discharge of Official Duties Act, 2005, hereinafter, for the purpose of brevity referred to as, the Regulation of Transfer Act.

2. The background facts are that the applicant has claimed to have been initially recruited in service on 6th August 1994 against the post of Junior Clerk reserved for Disabled Category. He claims to have earned promotion to the posts of senior clerk on 27th October 2004 followed by promotion to the post of Head Clerk in the year 2012 and the First clerk in the year 2015. Thereafter, the applicant was further promoted from the post of First Clerk to the post of Superintendent and posted in the office of Superintending Engineer, National Highway Circle Aurangabad vide office order of Superintending Engineer, Public Works Circle, Aurangabad & Coordinator Superintending Engineer, Public Works Region, Aurangabad bearing office order no. आ. परि/ १२७, दिनांक- २१ अक्टोबर २०१६. However, due to subsequent modification in the said order made upon receipt of a communication from the S.E. N. H. Circle, the applicant was posted in the office Superintending Engineer, P. W. Circle Aurangabad on 27th November 2016 and since then he was working there.

3. It is undisputed by the parties that there are 5 sanctioned posts of Superintendent in the whole region out of which 2 posts were vacant at the given time of January 2019.

Regional Coordination Committee had its 107th meeting on 17th January 2019 and decided a number of issues including filling up two vacant posts of Superintendent and effecting their posting. At this point of time, transfer proposals for existing Superintendents were also approved. It is in this process that following transfers and postings were ordered-

Offices with Five Sanctioned Posts of Superintendent (vacancy position indicated)					Offices providing Superintendent on promotion	
S.E. P.W. Circle Aurangabad	S. E., N. H. Circle Aurangabad	Chief Engg.P.W . Regional Office, Aurangabad	S.E. P.W Circle, Nanded	P.W. Circle, Osmanabad	P. W. Beed	P.W. Division West Aurangabad
	vacant	vacant				
Applicant----->		<----S.N. Pedapalli				
			←-----W.M. Wanole			
				←-----S.N. Misal		
←-----					Respondent 4	

4. As has been shown in above chart, the applicant has been transferred from the office of S. E. P.W. Circle Aurangabad and posted in office of S.E. National Highway Circle, Aurangabad vide office order No. 52, dated 29th January 2019 and respondent no. 4 has been posted in his place on promotion to the post of

Superintendent. It may be noticed in the above chart that two officers had been promoted to the post of superintendent by decision of the Regional Coordination Committee taken in its 107th meeting held on 17th January 2019 and respondent no. 4 is one of them. Another superintendent on promotion is one Shri S. N. Misal, who has been shifted from Beed and posted as superintendent in the office of P.W. Circle Osmanabad against resultant vacancy caused due to transfer of Shri W. M. Wanole from Osmanabad to Nanded.

5. The applicant has challenged the impugned office order No. 52, dated 29th January 2019 passed by the Superintending Engineer, Public Works Circle, Aurangabad & Coordinator Superintending Engineer, Public Works Zonal Circle, Aurangabad transferring him from the office of Superintending Engineer, P. W. Circle Aurangabad to the office of Superintending Engineer, National Highway Circle Aurangabad on a vacant post of office superintendent mainly on following grounds-

- a. The applicant holds Group C post. As per the provisions of *Regulation of Transfer Act*, being holder of a Group C post, the applicant is entitled to be retained in one office for the period of two tenures of three years each i.e. for the period

of 6 years. In the instant case, considering the posting of the applicant on the present post of Superintendent on 27th November 2016, the applicant was entitled to be retained on the present post till 26th November 2022. The applicant cannot be said to be due and eligible for transfer till then.

- b. The applicant belongs to physically handicapped (partially blind) category. He has joined the services in the year 1994 from the said category. One Mr. S. U. Bramharakshak has joined the service as a junior clerk in the year 1997 from orthopedically handicapped category. However, he has been appointed on the post on compassionate ground. The applicant has earned promotion to the post of Sr. Clerk in 2004 whereas said Mr. S. U. Bramharakshak was promoted as Sr. Clerk in 2005. It was since then, he had some grievance regarding his belated promotion as Sr. Clerk and it was since then, all the while, he was asking for grant of deemed date of the post of Sr. Clerk as the one on which, the present applicant was promoted. The said Mr. Bramharakshak, for no reason, was behind the applicant although he could have sought the redressal of his grievance by making representations to the competent

Authority or by approaching the appropriate forum. However, the said did not happen.

- c. The transfer order has been issued not only in the midst of the term but also in the midst of tenure. As per provisions of Section 4 (4) of the Regulation of Transfer Act, transfer of the Government servant are permitted to be effected in the month of April and May only. Since the impugned order of transfer is not only mid-term but mid-tenure as well, the respondent no. 3 ought to have complied with the provisions of Section 4(4) (ii) and the provisions of Section 4 (5) of the Regulation of Transfer Act which provides that, in the event of effecting mid-term transfer, the competent authority has to satisfy itself as regards prevalence of exceptional circumstances or special reasons which are to be recorded in writing and furthermore, the Superintending Engineer ought to have taken prior approval of the Chief Engineer who happens to be his next higher authority. In the present case, the bare reading of the impugned order clearly goes to show that the respondent no 3 does not refer to any prior approval having been taken from the office of Chief Engineer before effecting the transfer and reference no. 1 to 3 mentioned in the impugned order are silent to

that effect. Therefore, for want of compliance of the *Regulation of Transfer Act*, the impugned order dated 29th January 2019 is rendered bad in law and as such, the same deserves to be quashed and set aside.

- d. The applicant has a reason to believe that the respondent no. 4 was deeply interested in getting himself posted on promotion on the post held by the applicant. The applicant could lay hands to the communication dated 16th January 2019 addressed by the Assistant Superintending Engineer, National Highway Circle, Aurangabad to the office of Superintending Engineer, P.W. Circle thereby, specifically requesting posting of some other experienced superintendent other than the present applicant.
- e. The applicant has made representation dated 30th January 2019 to the office of respondent no. 3, thereby, requesting to retain him in the said office only.

6. **The applicant has prayed for following reliefs-**

“[A]. The Original Application may be allowed

[B]. By issue of an appropriate order or direction, the impugned order bearing Outward No. 52, dated 29th January 2019, thereby, transferring the applicant

from the post of superintendent in the office of Superintending Engineering, P.W. Circle, Aurangabad to the office of Superintending Engineer, National Highway Circle, Aurangabad, may kindly be quashed and set aside.

- [C]. By issue of an appropriate order or direction, the respondent 1 to 3 may kindly be directed to retain the applicant on the present post and station till completion of his normal tenure till November, 2022.”

The Applicant has also sought interim relief in following terms-

- “a). Pending hearing and final disposal of this Original Application, the execution, operation and implementation of the impugned order bearing Outward No. 52, dated 29.1.2019, thereby transferring the applicant from the post of Superintendent in the office of Superintending Engineer, P.W. Circle, Aurangabad to the office of Superintending Engineer, National Highway Circle, Aurangabad, may kindly be stayed.
- b). Pending the hearing and final disposal of this Original Application, the respondent No. 3 may kindly be restrained from relieving the applicant from the post of Superintendent.
- c). Pending the hearing and final disposal of this Original Application, status-quo ante as on 29.1.2019 may be directed to be maintained by the parties.

d). Any other relief to which the applicant is deemed entitled in the interest of justice may kindly be granted.”

7. The affidavit in reply on behalf of respondents No. 1 to 3 had been filed on 14th March 2019 and copies of the same served on the applicant. Affidavit in reply on behalf of respondent no. 4 was also filed on 29th March 2019. Affidavit in rejoinder to the reply was filed on behalf of the applicant on 18th July 2019 in response of which Sur-rejoinder to the rejoinder was filed on behalf of respondent no 1 to 3 on 6th November 2019.

8. The learned Presenting Officer filed certain documents which are as listed as follows:-

- (a) Letter from Superintending Engineer, National Highway Circle, Aurangabad, dated 12.08.2020 addressed to the Superintending Engineer, Public Works Circle, Aurangabad.
- (b) Communication of the Superintending Engineer, Public Works Circle, Aurangabad & Coordinating Superintending Engineer, Public Works Circle, Aurangabad informing the competent transferring authorities for Grade B and C officers / employees in the region as per govt. notification no. बदली-2006/प्र.क्र.160 / सेवा-4, दिनांक 16 जून २००६.

- (c) Letter from Superintendent, National Highway Circle, Aurangabad dated 24.08.2020 addressed to the Superintending Engineer, Public Works Circle, Aurangabad.
- (d) Copy of minutes of 107th meeting of the Regional Coordination Committee dated 17.01.2019.

9. The matter was finally heard on 22nd July 2021 which was continued on 27th July 2021 and thereafter, the parties were given opportunity to file brief notes on arguments made by them and copies of case laws/ orders relied upon. In response, the learned advocate for the applicant submitted copies of two case laws relied upon by him whereas, the learned advocate for respondent no 4 submitted a brief note on arguments made and copies of five case laws / orders relied upon by him along with details of tenure of the applicant showing his stay at Aurangabad district HQ for a long time.

10. **Gist of arguments made by the parties-**

(a) Arguments for the applicant-

(a)(i) The learned advocate for applicant has argued that the transfer of the applicant was not only mid-term but mid-tenure as well. He has drawn reference to provisions of S. 4 (4) (ii) and section 4 (5) of the Transfer Act according to

which the competent authority has to satisfy itself as regards prevalence of exceptional circumstances or special reasons and record the same in writing. Thereafter, approval of next higher authority ought to have been taken before issuing transfer orders. On reading of the impugned transfer orders is evident that the prescribed mandatory provisions of the act have not been complied with which renders the order bad in law. The learned advocate for the applicant has drawn reference to para 10 of the affidavit in reply submitted on behalf of respondents no 1 to 3. To quote –

“10.....I say and submit that, the respondent no.2 and 3 have complied with the provisions of section 4 (4), 4 (4) (ii) and section 4 (5) of the Regulation of Transfer Act, 2005. I further say and submit that, the prior approval of the Chief Engineer is not necessary as the respondent no. 3 is the appointing authority as well as transferring authority of the applicant. Therefore, the respondent no. 3 while issuing the transfer order to the applicant has followed the procedure laid down in Regulation of Transfer Act.”

(a)(ii) The learned advocate for the applicant has further argued that the contents of para 11 of the affidavit in reply filed on behalf of the respondent no. 1 to 3 contradicts

above quoted submissions made by the respondents. For ready reference, the part of para 11 of the said affidavit in reply is being quoted below-

“During the midst, as there was immediate need and exigency due to heavy pressure of works to fill up two vacant posts of Superintendent, by promotion, for doing smooth administration work, all these exercise of transfers and postings have been made by the present respondent no. 3 that too in consultation with respondent no. 2 who is head of the region.”

(a)(iii) Responding to the point raised in para 11 of the affidavit in reply submitted on behalf of the respondents that the applicant has been transferred from one office to another which are situated in the same building in Aurangabad city, the learned advocate for the applicant has argued that the definition of the word ‘transfer’ under section 2 (i) of the Regulation of Transfer Act, does not support the arguments made by the respondents which reads as follows-

“(2) (i). ‘Transfer’ means posting of a Government servant from one post, office or Department to another post, office or Department;”

(a)(iv) The learned advocate for the applicant has cited following judgments:-

- i. *Judgment dated 21st October 2011 by the Hon'ble High Court of Judicature at Bombay, Civil Appellate Jurisdiction, Writ Petition No. 7960 of 2011, Harish Maganlal Baijal Vs. The State of Maharashtra and Ors.*
- ii. Writ Petitions (C) No. 82 of 2011 with No.234 of 2011, decided on 31st October 2013, T.S.R. Subramanian and Ord Vs. Union of India and Ors, (2013) 15 Supreme Court cases 732.

(b) Arguments on behalf of respondent No. 1 to 3. The learned Presenting Officer argued the case for Respondent No. 1 to 3.

(b)(i) The Presenting Officer has, at the outset, pointed out that the contention of the applicant that he was recruited in service against the post reserved for disabled category is not true and correct. He was recruited in service as the nominee of freedom fighter. He has further argued that prior approval of the Chief Engineer is not necessary in this case as the respondent no. 3 is the appointing authority as well as transferring authority of the applicant. Therefore, there is no violation of provision of section 4 (4), 4 (4) (ii) and 4 (5) of the Regulation of Transfer Act.

(b)(ii) The learned Presenting Officer further argued that the impugned order has been issued after carrying out exercise of transfers and postings made by respondent no.

3 in consultation with respondent no. 2 who is head of the Region. The applicant has been transferred on administrative ground in view of Section 4 (1) and Section 4(2) of the Regulations of Transfer Act, 2005. The transfer of the applicant has been made to meet the requirement of an experienced Superintendent in the office of Superintending Engineer, National Highway Division, Aurangabad as communicated by the Assistant Superintending Engineer, National Highway Circle Aurangabad vide his letter dated 16th January 2016 enclosed as Annexure A-4 of the O.A., on page 15 of paper book. Moreover, the transfer of the applicant has been made from one office to another situated in the same building. He has now been posted in the office of Superintending Engineer, National Highway Circle as the services of an experienced were required there. It has also been mentioned during argument that the applicant was not totally averse to his transfer as is evident from his letter dated 30th January, 2019 addressed to the Superintending Engineer, P. W. Circle, Aurangabad, which is marked as Annexure A-5 of the Original Application, at page no. 16 of the paper book. Instead, he was comfortable if he had been

transferred to the post of Superintendent in the office of Chief Engineer, P.W. Regional Office, Aurangabad. The learned Presenting Officer has further stated that the applicant has already joined in the office of S. E. National Highway Circle on 2nd February 2019 (Before Noon). In Presenting officer further stated that the applicant has submitted a request letter dated 12th August 2020, addressed to the Superintending Engineer, National Highway Circle requesting him to recommend his posting in the office of Chief Engineer, Aurangabad Region at Aurangabad (a copy of the said joining report of the applicant and the request letter under reference have already been submitted by the learned Presenting Officer on earlier dates of hearings, which were taken on record) which shows that the applicant has attempted to get yet another transfer whereby he could get posting in the office of Chief Engineer, P.W.D., Aurangabad Region at Aurangabad. The learned Presenting officer, as per instructions of the Tribunal, submitted the proceedings of the Establishment Board by which the proposed transfer of the applicant has been approved which has been taken on record.

(c) Arguments for respondent No. 4:-

(c)(i) Learned advocate for Respondent No. 4 has submitted gist of his argument which is at page 66 to 168 of the paper book, mainly highlighting that the applicant had enjoyed postings at Aurangabad district HQ from year 1999 onwards and by the impugned order of transfer he is again posted at Aurangabad district H.Q. from one office to another office situated in the same building. The learned Advocate has cited and also argued that promotion of the applicant to the post of Superintendent was in deviation with rules and therefore, instead of cancelling order of his promotion the authorities have taken sympathetic view of transferring him. The learned advocate has cited following case judgments of Hon'ble High Court of Judicature at Bombay, to support his argument that transfer from one office to another in the instant case does not qualify for definition of transfer under Regulation of Transfers Act-

- i. *Judgment of Hon'ble High Court of Bombay, Bench at Aurangabad in Writ Petition (C) No. 3301 of 2010, Shri Ramesh Pandurang Shivdas Vs. The State of Maharashtra and Ors., dated 11th October 2010.*
- ii. *Judgment of Hon'ble High Court of Bombay, Bench at Aurangabad in Writ Petition No. 11093 of 2018,*

Venkat Naganna Mittewad Vs. The State of Maharashtra and Ors, dated 9th October 2018.

iii. Judgment of Hon'ble High Court of Bombay, Bench at Aurangabad in Writ Petition No. 3318 of 2017, Shri Bharat Ramkisan Shingade Vs. The State of Maharashtra and Ors., dated 17th April 2017.

iv. Judgment of Hon'ble High Court of Bombay, in Writ Petition No. 7554 of 2013, Pradip Balkrushna Lonandkar Vs. The State of Maharashtra and Ors., dated 22nd November 2013.

v. Judgment of Hon'ble High Court of Bombay, Nagpur Bench in Writ Petition No. 2629 of 2017, Mandeep Singh Kohli and Anr. Vs. Union of India and Ors., dated 5th February 2020

The matter was closed for orders on 3rd August 2021.

11. **Analysis of Facts-**

(a) First of all, relevant provision of Regulation of Transfer Act are analyzed to determine whether the impugned order in the instant matter is according to law which is as follows :-

“Section 2.*The terms ‘post’ and ‘transfer’ have been defined under Section 2 of the Regulation of Transfers Act as under:*

*“2. (g). the ‘**post**’ means the job or seat of duty to which a government servant is assigned or posted”*

“2. (i): ‘Transfer’ means posting of a government servant from one post, office, department to another post, office or department”

Section 3(1) of the Regulation of Transfers Act provides as under:

“For All India service officers and all Group A, B and C state government servants or employees, the normal tenure shall be three years;

Provided that when such employee is from the non-secretariat services in Group C, such employee shall be transferred from the post held on his completion of two full tenures at that office or department to another office or department.

Provided further that, when such employee belongs to secretariat services, such employee shall not be continued in the same post for more than three years and shall not be continued in the same Department for more than two consecutive tenures.”

Section 4. Tenure of Transfer. –

“4. (1). No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.”

4. (4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May:

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:-

(i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;

(ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.

4.(5) Notwithstanding anything contained in section 3 or this section the competent authority may, in special cases, after recording reasons in writing and with the prior approval of the immediately superior to the Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

From a plain reading of these legal provisions and the facts of the case, it is clear that the transfer of the applicant by the impugned order is covered by the definition of “Transfer” under the Regulation of Transfers Act 2005 and the applicant has been transferred in the month of January 2019 before completion of his normal tenure of three years and tenure prescribed for non-secretariat post of six years.

(b) Respondent No. 1 to 3 through their affidavit in reply, have claimed that the transfer of applicant has been made on administrative grounds u/s 4 (1) and 4 (2) of the Regulation of Transfers Act and that the said transfer has been ordered by the competent Transferring Authority i.e. the Superintending Engineer of PWD Circle, Aurangabad for which prior approval of Chief Engineer as next higher authority is not necessary. At the same time, the respondent no. 1 to 3 have submitted in subsequent paras of the affidavit in reply that the transferring authority i.e. the Superintending Engineer of PWD Circle Aurangabad & the Regional Coordinator had issued the impugned order , in consultation with the next higher authority.i.e. chief engineer of the region.It is seen that the said Chief Engineer and the Superintending Engineer have filed common affidavit in reply thereby, confirming the statement of consultation by the transferring authority with the next higher authority.

(c) The Respondents No. 1 t 3 have submitted that the impugned order of transfer of the applicant has been made to meet the requirement of an experienced Superintendent in the office of Superintending Engineer, National Highway

Division, Aurangabad as communicated by the Assistant Superintending Engineer, National Highway Circle Aurangabad vide his letter dated 16th January 2016 enclosed as Annexure A-4 of the OA, on page 15 of paper book. However, the stated reason does neither find mention in the minutes of 107th meeting of Regional Coordination Committee of PWD region, Aurangabad nor has been stated in any other record which shows that impugned order transferring the applicant had been passed taking into account the same.

(d) Now, referring to the case laws relied upon by the learned advocate for the applicant, it is noticed that in TSR Subramaniam and Ors. Vs. Union of India and Ors [(2013) 15 SCC 732] deals with the subject of need for having fixed tenure of senior civil servants, having civil services Board need for transparency in the working of government offices and timely disposal of pending references. In this matter Hon'ble Supreme Court had issued directives in respect of issues under its consideration. Another case cited by Learned Advocate for Applicant is the judgment of Hon'ble High Court of Judicature at Bombay in Writ Petition No. 7960 of 2111, Harish Maganlal Bajjal vs. State of

Maharashtra,. In the instant case, transfer had been ordered stating the pending complaint against the concerned employee as the reason for transfer. In that case, the Hon'ble High Court had quashed and set aside the order passed by the Tribunal in OA 556/2011 by which the transfer ordered dated June 24, 2011 was upheld by the Tribunal. At the same time, the Hon'ble High Court did not give relief in terms of allowing the applicant in the original application to join at the original post but granted relief only in terms of restoring headquarters at Nashik ton a different post, considering subsequent development and unique nature of the case. This shows that employee may not be restored in the original post/office, if the facts of the case so warrant even through the transfer orders are quashed and set aside.

(e) The learned Advocate for Respondent no 4 had made allegation of undue favour having been granted to the Applicant while promoting him without passing prescribed department examination in three attempts within prescribed period of four years and instead of terminating his services. The learned Advocate for R4 has cited 5 case laws as mentioned earlier. In the first case decided by

Hon'ble High court of Judicature at Bombay in Writ Petition No. 3301 of 2010, Ramesh Pandurang Shivdasand Ors. Vs. State of Maharashtra & Ors., observation in respect of the definition of the term 'transfer' had been made highlighting the danger in interpreting the said term literally. To quote the relevant part of the judgment in that regard :-

“8.....The ambit of the term “transfer” as defined under the Act, we are afraid, is likely to lead to a very dangerous situation and if literally interpreted, it is possible that a police officer may safely retire from Mumbai without going out of Mumbai at any time during his entire tenure. In our opinion, therefore, it would be appropriate for the State Government to visit the Transfer Act and more particularly to amend the definition of the term “transfer”. ”

The second case law cited by R4 decided by Hon'ble High Court of Judicature at Bombay in Writ Petition No. 11093 of 2018, Venkat Naganna Mittewad Vs. State of Maharashtra & Ors., the Hon'ble High Court has taken into account that if there is no change in place of posting and proper reasons for effecting transfer are recorded and procedure has been followed then any malice or malafide of the State cannot be inferred. In the cited case, the

Petitioner was transferred from National Highway Division, Nanded to PWD, Nanded. In the third judgment of Hon'ble High Court of Judicature in Writ Petition No. 3318 of 2017, Bharat Ramkisan Shingade vs. State of Maharashtra and Ors. cited by the respondent No. 4, the transfer of an Executive Engineer by following procedure laid down in sub-section 4(ii) and 5 of Section 4 have been complied, the proposal was not recommended by the Civil Services Board, the Tribunal had set aside the transfer order. However, the Hon'ble High Court allowed the writ petition and the order of the Tribunal was quashed and set aside. The 4th judgment in Pradip Balkrushna Lonandkar Vs. State of Maharashtra and Ors cited by respondent No. 4 can be distinguished on facts since in that case the police officer had been given law and order related duty at a place other than his place of posting therefore may not have bearing of the present matter. Ratio in the fifth judgment relied upon by respondent no. 4, passed by Hon'ble High Court of Judicature in Writ Petition No. 2629 of 2017, Mandeep Singh Kohliand Anr. Vs, Union of India and Ors., appears to have bearing on the instant matter too as there is element of misrepresentation by the applicant and pick and

choose strategy adopted by him. To quote para Nos. 36 to 38 of the said judgment which is as follows:-

“36. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make “full and true disclosure of facts”. (Refer : [Tilokchand H.B. Motichand & Ors. v. Munshi & Anr.](#) [1969 (1) SCC 110]; [A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr.](#) [(2012) 6 SCC 430]; [Chandra Shashi v. Anil Kumar Verma](#) [(1995) SCC 1 421]; [Abhyudya Sanstha v. Union of India & Ors.](#) [(2011) 6 SCC 145]; [State of Madhya](#)

Pradesh v. Narmada Bachao Andolan & Anr. [(2011) 7 SCC 639]; *Kalyaneshwari v. Union of India & Anr.* [(2011) 3 SCC 287].

37. *The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim jure naturae aequum estneminem cum alterius detrimento et injuria fieri locupletioem, which means that it is a law of nature that one should not be enriched by the loss or injury to other, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.*

38. *No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required*

to be dealt with for contempt of court for abusing the process of the court. {K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12 SCC 481].”

12. Finding of analysis of facts :-

12(a) On considering the facts of the present case and arguments advanced by advocates of the Applicant and Respondents no 1 to 4, it is inferred that the transfer of the Applicant was mid-term transfer and before the completion of the normal tenure for which reason of requirement of an experienced superintendent in the office of National Highway has been advanced by the respondent no. 1 to 3 in affidavit in reply filed on their behalf. However, no mention of this is found in the minutes of 107th meeting of the Regional Coordination Committee of PWD held on 17th January 2019. Similarly, we find that there is nothing on record that prior approval of higher authority had been taken. However, affidavit in reply filed jointly on behalf of the Superintending Engineer, Chief Engineer and the Secretary, PWD, the three respondents have submitted that the respondent no. 2, the Chief Engineer was consulted by respondent no. 3 i.e. the transferring authority. Thus, there are technical infirmities in the impugned transfer order.

But, no malice or mala-fide is observed in respondent Nos. 1 & 3 passing the impugned transfer order.

12(b) However, there is peculiarity in this case, firstly, due to the fact that the applicant has made statement that he had been initially appointed against quota of Physically Handicapped which, based on documentary evidence adduced by the learned Presenting Office, is found to be factually incorrect. In this context copy of appointment order dated 4th August 1994 issued by the Superintending Engineer, P.W. circle Aurangabad as nominee of freedom fighter as per orders of Maharashtra Administrative Tribunal, Bench at Aurangabad in 7485/94 dated 5th July 1994 is referred to which is enclosed as Annexure R-1 at page 27 of the paper book. The applicant has opted not to respond to this issue directly in rejoinder to the Affidavit in Reply filed by him on 18th July 2019 which amounts to implied admission. Secondly, the Applicant had communicated with Superintending Engineer, Public Works Circle Aurangabad through letter dated January 30, 2019 (Annexure – A5/page 16) expressed his apprehension that he may not be allowed to join National Highway circle, Aurangabad based on his past experience and accordingly

he had proposed two alternatives, (i). to allow him to complete his tenure of three years in his post of Superintending Engineer, PWD Aurangabad; or (ii). in alternative, transfer him to the office of Chief Engineer, Regional Office, Aurangabad. This shows that the applicant was not totally averse to his mid-tenure, mid-term transfer rather he would have been satisfied in he had been transferred to the office of Chief Engineer, P.W. Regional Office, Aurangabad. Relevant part of the said letter of the applicant dated 30th January 2019 is reproduced as follows-

“ सद्यस्थितीत रा.मा.मंडळ कार्यालयात अधिकारी व कर्मचारी वर्ग तोच असल्याने मला त्या कार्यालयात पुन्हा बदलीवर रुजू करून घेतील किंवा कसे याबाबत माझ्या मनात संभ्रम निर्माण झालेला आहे. व या बाबीची सत्यता आपण व्यक्तिशः परिमंडळ शाखेत उपलब्ध नसतीलवरून प्रत्यक्ष शहानिशा करू शकता. तेंव्हा माझी नम्रतेची विनंती आहे की, मला एक तर माझा तीन वर्षांचा नियमानुसार बदलीचा प्रोटोकाल संपुष्टात येईपर्यंत याच कार्यालयात ठेवावे. किंवा माझी बदली मुख्य अभियंता सा.बां. प्रादेशिक विभाग औरंगाबाद येथील रिक्त पदी करावी ही पुनश्चः नम्र विनंती.”

It is after trying to get posting in the office of Chief Engineer, P.W. Regional Office, at Aurangabad, that the present O.A. was filed on 31st January, 2019.

12(c) Thereafter, the applicant joined the office of Superintending Engineer, National Highway Circle Aurangabad on 2nd February 2019 (B.N.). Within 6 months of joining his new post in National Highway circle, Aurangabad, the applicant has again submitted his request vide his letter dated 12th August 2020 (page 74 of paper book) to get posted in the office of Chief Engineer, P. W. Regional Office, Aurangabad on retirement of the present incumbent Shri Pedapalli, which was due in month of October 2020. Though, in view of the pendency of the present O.A., the applicant had later on, on 24th August 2020 withdrawn his said request letter for transfer to the office of Chief Engineer, P.W. Regional office at Aurangabad. It is undisputed that the three offices i.e. PWD, Aurangabad Circle, National Highway Circle, Aurangabad and office of Chief Engineer, Regional Office, Aurangabad are situated in the same building which does not make difference for the applicant even if he is not posted in any of the offices of S.E., P.W.D., Aurangabad circle of office of the Chief Engineer, P.W.D. Regional Office at Aurangabad. Therefore, it is amply clear that the applicant was not only not totally averse to his mid-term

transfer by impugned order but desired to get the post of superintendent in office of Chief Engineer, P.W. Regional Office at Aurangabad for peacefully accepting transfer vide impugned orders. Even after joining the office of Superintending Engineer, National Highway Circle, Aurangabad he had eye on the post in the office of Chief Engineer, P.W. Regional Office, Aurangabad, for which he was willing to accept yet another mid-term transfer and mid-tenure transfer.

12 (d) Due to above mentioned peculiarity, it is inferred that the Applicant has not approached this Tribunal with clean hands. He has not hesitated in making statement regarding his first appointment based on facts which knew to be untrue and has not addressed to this issue even after the same has been brought to his notice by respondents through their affidavit in reply. It is also amply clear that the applicant has not been averse to his mid-term transfer, if given posting in the offices of his choice and has taken recourse of approaching this Tribunal and contesting his case under the Transfer Act 2005 just to get avoid posting in the office of Superintending Engineer, National Highway Circle Aurangabad vide the impugned

transfer order by getting the same quashed and set aside and get back his posting in PWD Circle Aurangabad as he has not succeeded in getting posting in office of Chief Engineer, PWD Regional Office Aurangabad. This act of suppression of facts on the part of the applicant and abuse of process to pick and choose posting of choice deserves to be viewed with due seriousness so that abuse of process of judicial review of administrative action can be prevented.

13. In view of the discussions in foregoing paragraphs, I pass following order :-

ORDER

The Original Application stands dismissed with no order as to costs.

PLACE : AURANGABAD.

DATE : 12.08.2021.

(BIJAY KUMAR)

MEMBER (A)

KPBS.B. O.A. No. 89 of 2019 BK 2021 Transfer