

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.300 OF 2020

Shri Rajesh Gopalrao Lande)
Aged 55 years, working as Joint Director)
(Finance and Accounts), in Samagraha Shiksha,)
Abhiyan.(Maharashtra Primary Education Council),)
Having office at Bal Bhavan, Charni Road, Mumbai.)
R/o. Flat No.B-20, Building No.13,)
Government Colony,)
Near Mahalaxmi Race Course,)
Haji Ali, Mumbai – 13)

Address for Service of Notice :

Shri Arvind V. Bandiwadekar, Advocates,)
Having office at 9, “Ram-Kripa”, Lt. Dilip Gupte)
Marg, Mahim, Mumbai 400 16.)

...Applicant

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
(Accounts and Treasuries),)
Finance Department,)
Having office at Mantralaya,)
Mumbai 400 032.)

2. The State Project Director,)
 Maharashtra Primary Education Council,)
 Mumbai having office at Mumbai.)
3. The State of Maharashtra,)
 Through the Additional Chief Secretary,)
 (Smt. Vandana Krishna),)
 School Education Department,)
 Who also held additional charge of the post of)
 Project Director, (M.S.) Mumbai between)
 11.12.2018 to 16.12.2019,)
 Having office at Mantralaya,)
 Mumbai 400 032.) **...Respondents.**

Shri Arvind V, Bandiwadekar, learned Advocate for the Applicant.

Shri R.S. Apte, learned Senior Counsel with Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : JUSTICE MRS. MRIDULA BHATKAR,

RESERVED ON : 22.09.2020.

PRONOUNCED ON : 06.10.2020.

J U D G M E N T

The Applicant, Super Class-I Officer in the cadre of Joint Director (Finance and Accounts) challenges the transfer order dated 22.6.2020 and order of relieving him dated 24.06.2020.

The facts of the case are as follows:-

2. On 24.6.2018, applicant was promoted to the cadre of Joint Director (Finance & Accounts) falling in Category of grade pay of Rs.7600/-. His service record throughout is very good and all the Annual Confidential Reports (ACR) show 'A', 'A+' or twice 'B+' remarks. It is his case that he was in School Education Department working in Accounts Section and was transferred by order dated 3.9.2019 by Respondent no.2 without any specific reason but on administrative grounds. The applicant challenged the said order in O.A.No.878/2019 in Maharashtra Administrative Tribunal (M.A.T.). The said order of 3.9.2019 was stayed on 5.9.2019 by M.A.T.

3. Respondent no. 3, Secretary, School Education Department, relieved the applicant by order dated 16.12.2019 irrespective of the stay granted by this Tribunal. So another Original Application No.1225/2019 was filed challenging the order dated 19.12.2019 relieving him. When the matter came up before the Single Bench on 19.12.2019, at that time, the Respondents withdrew both the orders, i.e. the original order of transfer dated 3.9.2019 and the order relieving him dated 16.12.2019.

4. It is contended in the application that though Respondent no. 3, Secretary, School Education bereft of the proper authority moved proposal of the transfer of the applicant to Finance Department and he was transferred

by order dated 22.6.2020, which is the subject matter of challenge in the present Original Application.

5. The Applicant was promoted to the post of Joint Director on 24.08.2018 and was posted in Maharashtra Primary Education Council (M.P.E.C.). The Applicant is challenging his transfer order dated 22.06.2020 and order dated 24.06.2020 relieving him, issued by the Respondent No.2 and Respondent No.3 respectively.

6. Learned Counsel Mr. A.V. Bandiwadekar for the applicant has submitted that the transfer of the applicant is a vindictive action, violating the procedure required to be followed under the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred as 'ROT Act 2005' for brevity). Only the parent department, i.e. the Finance Department has powers to transfer the applicant and not the Secretary, School Education Department, where he is deputed to work. The learned Counsel relied on the G.R dated 4.5.2020, issued by then Chief Secretary, Mr. Ajoy Mehta in the name of His Excellency Governor, where the guidelines of recruitment and transfer during the time of COVID-19 pandemic are mentioned. In view of the present unprecedented situation of Covid-19 pandemic, recruitment and transfers were to be effected by the guidelines in the said G.R. issued by the Finance Department, wherein, no transfer or recruitment was allowed. By G.R dated 7.7.2020 the Government allowed 15% of the transfers till

31.8.2020. It was pointed out by learned Counsel that though there was an absolute ban on transfer till 7.7.2020, the applicant was erroneously transferred on 22.6.2020.

7. Learned Counsel further argued that applicant being in grade pay of Rs.7600/-, i.e. Group-A as per 6th Pay Commission he falls in pay scale of Rs.12000-16500. Therefore, the competent authority to transfer such Super Class-I Officer is only the Hon'ble the Chief Minister. The transfer was not approved by the Hon'ble the Chief Minister. Moreover, the constitution of Civil Services Board (CSB) was not in accordance with G.A.D. circular and was not approved by the Hon'ble the Chief Minister.

Learned Counsel challenges the proposal of transfer of the applicant for want of proper approval of the Hon'ble the Chief Minister and has placed reliance on the following judgments :-

- (1) Writ Petition No.9781/2014, State of Maharashtra & 2 Ors. V/s. Dr. (Ms.) Padmashri Shriram Bainade & 2 Ors. dated 17.12.2014.
- (2) O.A.No.172/2020, Sudarshan S. Pagar Versus The State of Maharashtra & 2 Ors. dated 08.07.2020.
- (3) Writ Petition.5652/2009, dated 16.10.2009, Shriprakash M. Waghmare Vs. State of Maharashtra & Ors. 2010(3) LISOFT 158.
- (4) O.A.No.633/2019, Dr. Anna Balajirao Marakwar Versus The State of Maharashtra & Anr. dated 02.03.2020.
- (5) S.B. Bhagwat Versus State of Maharashtra & Ors. W.P.(L)No.1940 of 2011 decided on 24.01.2012.

8. Learned Counsel has further argued that the correspondence between the Respondent No.3 and the Applicant will disclose harassment and malice.

The allegations made by the Respondent No.3 are false. However, continuously the Respondents went on sending letters after letters with only agenda to transfer the applicant and get rid of him.

9. Shri R.S Apte, learned Senior Counsel for the Respondents has submitted that the applicant was promoted on 24.8.2018 on ad hoc basis to the post of Joint Director, (Finance and Accounts) and he was transferred on 3.9.2019. The Tribunal stayed the said order of transfer on 5.9.2019. Subsequently, the Respondents withdrew the said transfer order with liberty to issue fresh order in accordance with law. The reasons for initiating the transfer are mentioned in various letters sent by the Respondent-authority to the Applicant. The complaints against the applicant were communicated to him by letters and his explanations were also sought. Learned Senior Counsel Shri Apte relied on the communication and correspondence wherein letter dated 14.11.2019 was issued by the Respondent No.3 to Respondent No.2 seeking explanation from Respondent No.2. Further notice dated 4.12.2019 was issued by Respondent No.2 to the Petitioner as to why he should not be held responsible for the delay in executing the work. Letter dated 9.12.2019 is the explanation given by the Petitioner to Respondent no. 2. By order dated 16.12.2019 the applicant was relieved by Respondent no. 3. Learned Senior Counsel further relied on the noting and order dated 26.12.2019, that the applicant had invested Rs.120 crore of Primary Education Department in Yes Bank, which is not a Nationalized Bank and

without prior approval. He is facing the allegations of corruption and mismanagement of the accounts in Primary Education Department. Learned Senior Counsel pointed out the noting on the file at page no.207 and also the letters dated 13.12.2019 issued by Respondent No.3.

10. By order dated 26.12.2019, the Government has cancelled the earlier transfer order of the applicant in view of the order passed by this Tribunal in O.A 878/2019. Learned Senior Counsel has invited attention to the minutes of the meeting of the Civil Services Board dated 10.2.2020 held for transfer of officers working in Maharashtra Finance and Accounts Services. He submitted that on receiving specific oral as well as written allegations in respect of accounts and behavior the Respondents decided to transfer him. The Senior Counsel argued that the contention of the applicant that no real reasons were placed before the Hon'ble the Chief Minister, especially the letter dated 10.6.2020, which is the main ground and so is referred in the submission dated 22.06.2020 made by Under Secretary for transfer of the Applicant is not correct. The said letter dated 10.6.2020 was one more added incident of allegations against the applicant in a continuous flow of allegations and complaints about his behavior and wrongful acts since 2018, i.e. prior to the first transfer. Therefore, the Hon'ble the Chief Minister who had signed the transfer order between 11.5.2020 to 5.6.2020 has considered those allegations and has approved the transfer. Therefore, the reference of letter dated 10.6.2020, in the submission dated 22.06.2020, only helped the

process of transfer to hasten. It is an additional reason, but was not a foundation of the transfer.

11. Learned Senior Counsel has further submitted that transfer is an incidence of service. The procedure laid down under Section 4(4)(ii) and 4(5) of the 'ROT Act 2005' has been followed and the statute itself empowers the competent authority to transfer any public servant mid-term and mid-tenure with reasons. He argued that the Government Resolution dated 4.5.2020 was issued by the Government putting bar for transfers. However, that bar can be lifted under Section 4(4) of 'ROT Act 2005' by the Hon'ble the Chief Minister who is the competent authority to transfer the applicant. On the point of 'ROT Act, 2005', learned Senior Counsel relied on the ratio laid down in the case of :-

- (i) State of Maharashtra Vs. Ashok Ramchandra Kore, 2009 (4) Mh.L.J 163.
- (ii) IVO Almeida Coutinho and others Vs. P.M Naik and others 2012 (3) Mh.L.J 627, on the point of weightage and importance of hierarchy, law, statute, bye-laws and G.R.
- (iii) Awdhesh Narayan K. Singh Vs. Adarsh Vidya Mandir Trust and another, 2004 (1) Mh.L.J 676. It is stated that the ruling of Vanmala relied by learned counsel for the applicant is overruled (page 59).

Learned Senior Counsel has argued that the submission of the learned Counsel for the applicant that the complaints were not verified is baseless. Learned Senior Counsel submitted that the Government Resolution (G.R.) dated 04.05.2020 is to be read with the statute and cannot

be read in isolation. When the statute permits then the G.R which stands on a lower hierarchy cannot be interpreted differently. Respondents have made out a special case with special reasons and thus while reading both, the G.R and the statute one has to apply a purposive interpretation. He submitted that the directions in G.R are directory and not mandatory. Learned Senior Counsel relied on the decision of the Hon. Supreme Court in ***State of Harayana & Ors Vs. Raghubir Daya (1995) 1 SCC 133.***

12. Learned Senior Counsel further submitted that the Civil Services Board was constituted on the basis of G.R issued by the G.A.D. However, no relief is sought against the said G.R of Finance Department so that cannot be objected once the G.R is accepted. He further submitted that the G.R issued by Finance Department in respect of composition of the Civil Services Board refers to the G.R issued by General Administration Department. Learned Senior Counsel has further submitted that the applicant was working in Finance Department as a Government employee and the services are controlled by the Government. The officers are routinely transferred to various bodies. The Maharashtra Prathamik Shikshan Parishad (MPSP) has forwarded the complaint about the applicant to the Government. He relied on the reply given by the Respondent No.3 dated 04.08.2020 and the rules and regulations of the Maharashtra Prathamik Shikshan Parishad, wherein the composition of governing body of MPSP is mentioned. He pointed out that Respondent no.3, Ex-officio is the Member of the Governing Council so

she has power to recommend the transfer of the applicant on constitution of CSB. Lastly, learned Senior Counsel submitted that no serious prejudice is caused to the applicant by transfer as it is in Mumbai only. No case is made out that there is violation of the procedure. Moreover, the principles of natural justice are applied, if at all irregularities are caused, they can be cured.

13. The transfer is a necessary incidence of service. Unless the order of transfer is in conflict with law and rules or appear patently arbitrary, the Tribunal would decline to interfere in such matter. The State and the Appointing Authority has every power to transfer the Public Servant who is in the employment of the State of Maharashtra. For officers falling in A and B category the tenure of the posting under Section 3 of the 'ROT Act 2005' is ordinarily fixed for three years. In the table appearing in Section 6 of 'ROT Act 2005' the competent authority having power to transfer the public servant are named. Admittedly, the Applicant, Joint Director (Finance and Accounts) then was working in (Samagraha Shiksha Abhiyan) (Maharashtra Primary Education Council) falls in A Group because of his higher pay grade and the Hon'ble the Chief Minister is the competent authority to transfer him.

14. The submission of Shri A.V. Bandiwadekar, learned Advocate for the Applicant that the G.R. dated 04.05.2020 places absolute bar on the transfer of any Government servant is not acceptable. To certain extend

transfers of all the Government servants after 04.05.2020 were barred. However, it is not correct to say that it took away the power of the competent authority to transfer any Government servant under exceptional circumstances or for special reasons or if special case is made out under Section 4(4)(ii) and 4(5) of 'ROT Act 2005'. It is true that the exceptional circumstances is to be understood in context with service jurisprudence. A circular or a G.R. is a policy decision of the Government which is issued time to time to meet erstwhile issues/ exigencies for the purpose of smooth administration. However, it is settled position of law that such G.R. or any circular should be consistent with the Statue. The Statue is enacted by the legislature i.e. by the elected representatives of the people. The circulars or G.R's are issued by the Government, i.e. by the Ministry through the Executives or by the Executives. Thus, as argued by learned Senior Counsel Shri Apte, the Statue always stands on the higher pedestal than a G.R. or a circular. In the present case, the 'ROT Act 2005' has fixed the normal period of tenure of Government servants falling in Group-A and Group-B category as three years. However, shuffling by the transfer or postings is very much required to improve the efficiency and set the tone of the better administration. The suitability is also one more aspect of transfer as the capacity of each and every person varies.

15. On this point it is useful to refer to relevant portion from HOTA Committee Report 2004.

“It would be expedient all before the officer is sought to be transferred in the public interest when he has not completed his tenure with administrative enquiry of summary nature is held to ascertain if the transfer is justified as the matter of public policy. The rationale for keeping the restrictions on transfer or giving the fixed tenure of transfer is to avoid inconsistency, insecurity and instability in the working of the public servant who are officiating their respective courses. Thus the officers have to work under different Ministers who are representatives of people due to reasons of political expediency or even due to unwholesome reasons, the Ministers are not able to make proper use of the powers vested in them for transfer of their departmental officers. Therefore, if there is good reason to ask the transfer of the officer then the procedure is to be followed.”

16. Keeping in tune with HOTA Committee report, Section 4 of ‘ROT Act 2005’ was enacted which gives power to the competent authority to transfer the Government servant under certain circumstances as contemplated under the said Section. Section 4(4) and 4(5) of ‘ROT Act 2005’ states as follows :-

“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.

(5) Notwithstanding anything contained in section 3 of this section, the competent authority may, in special cases, after

recording reasons in writing and with the prior [approval of the immediately superior]. Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

17. The applicant is transferred before the completion of his normal tenure on the ground that oral and written complaints of corruption, inefficiency in working and misconduct were made against the applicant. Therefore, the Respondents are required to follow strictly the procedure contemplated under Section 4 of 'ROT Act 2005' under which the powers to shorten the normal tenure in special case are bestowed upon the competent authority. In **O.A.No.172 of 2020 (Sudarshan Sahebrao Pagar Versus State of Maharashtra &Ors.** on the point of discretion for relaxation of G.R. dated 04.05.2020, the Tribunal has passed order on 08.07.2020. In the impugned matter the Government employee was transferred on 26.05.2020. The said order passed by the Government was quashed and set aside mainly on the ground that no exceptional circumstances was made out and there was no compliance of Section 4(4) and 4(5) of 'ROT Act 2005'. In the case of **O.A.No.633/2019 (Dr. Anna Balajirao Marakwar Versus State of Maharashtra & Ors. dated 02.03.2020,** the first order of transfer was passed on 31.05.2019. However the Government did not act upon it and thereafter fresh order was passed on 04.07.2019 and that on the same date it was issued. It was mid-tenure transfer. The proposal of fresh transfer dated 04.07.2019 was not placed before CSB, though mandatorily required. If earlier transfer order dated 31.05.2019 was

cancelled totally, then it is obligatory on the part of Respondents to place the matter before the CSB afresh. The approval to such mid-tenure transfer by the competent authority is a must and is the crux of the matter. Therefore, firstly let me address the point of compliance under Section 4 of the 'ROT Act 2005'. The proposal and record of the transfer of the applicant were processed and placed between the span of August, 2019 to June, 2020 before the Hon'ble the Chief Minister.

18. As pointed out by Mr. Bandiwadekar this matter has a baggage of previous litigation of O.A.No.878 of 2019 on the point of similar issue of transfer, hence without referring to it, this matter cannot be taken further. It is the case of the Petitioner that by order dated 27.09.2019 the work in respect of important subjects was withdrawn from the applicant by the office of Respondent no.3. The Respondents albeit the interim stay given by the Tribunal, issued order on 16.12.2019 ex-party repatriating the services of the Petitioner to the original Department i.e. Financial Department on the ground that his services are no longer required to the State Project Director. The Petitioner again challenged the said order before the Tribunal by filing O.A.No.1225 /2019. The said order in fact amounted to the Contempt of the Tribunal. The Respondents made statement before the Tribunal of withdrawing the transfer order dated 03.09.2019 and also order on 16.12.2019. On accepting the statement of the Respondents the Tribunal disposed off the matter with specific directions that if at all the Respondents

want to transfer the applicant it can be done by following proper procedure in accordance with law. On this background of two illegal orders of transfers, the Department is obviously required to follow the correct procedure of placing the matter before the Civil Services Board for recommendations and thereafter it is to be placed before the Hon'ble the Chief Minister for his approval.

19. Both the Counsel have elaborately argued and placed reliance on two files of the transfers which were placed before the Hon'ble the Chief Minister for his approval i.e. which is called, NASTI No.164 of 2019 and NASTI No.37 of 2020, hence, the record of the two NASTI needs to be analysed.

20.

NASTI NO.164 OF 2019

NASTI No.164 of 2019 shows that this file of transfer was prepared in the year 2019. Therefore, the earlier notings of transfer are reiterated. The proposal of transfer was put up by Section Officer, Shri M.V. Jadhav on 26.08.2019 because applicant was responsible for financial misappropriation in Maharashtra Primary Education Council. The said file was placed before the higher officers including Principal Secretary, Shri Gadre on 26.08.2019 and then on 27.08.2019 it was moved again before the higher authority. The subject of transfer was not placed before the Civil Services Board. which is mandatory. It was placed before the Minister (Finance) and the Hon'ble the Chief Minister has signed the said

submissions and again Shri Gadre has lastly signed on 28.08.2019. Thus, on this background, the Respondents initiated the transfer process afresh thereafter. Therefore, the signature of the Hon'ble the Chief Minister on this NASTI obtained for the first transfer, is of no use for fresh transfer, especially, when there is time gap of more than nine months. On 26.12.2019 the Section Officer has put up submissions that applicant's transfer is cancelled on which the Under Secretary, the Joint Director and Shri Gadre, the Principal Secretary have signed.

21. However, the said file was not closed and in continuation on 03.02.2020 Smt. Gandhi, Under Secretary made submissions that applicant's earlier transfer has been cancelled, but the Education Department has proposed that he is to be transferred immediately and permission is given by Maharashtra Administrative Tribunal to transfer the applicant by following the procedure. It is apparent that the Respondents are keen to transfer the applicant so the issue of transfer was again pursued. The Joint Director has signed on 03.02.2020 and meeting of Civil Services Board was proposed for the transfer. The Principal Secretary has signed on 04.02.2020 and gave time for meeting of CSB on 10.02.2020 at 3.00 p.m. The record of "NASTI" shows the summary of the minutes of the Civil Services Board which was held on 10.02.2020, that the subjects of transfers Shri Lande and of one Shri Uttam Sonkamble, Joint Director (Finance and Accounts), Amravati were placed before the Civil Services

Board. Shri Uttam Sonkamble has opted for his transfer from Amravati to Aurangabad on domestic ground. The CSB has taken the decision and has recommended that the Applicant, Shri Lande should be transferred to present posting i.e. of Joint Director, Dairy Development Department at Worli and Shri Uttam Sonkamble due to his family problems to be transferred to Aurangabad.

22. The submission was put up on 13.02.2020 by Section Officer before the Under Secretary and the Principal Secretary has put remark that due to intervention of M.A.T. and only after obtaining permission from the Department of Law and Judiciary the transfer orders can be issued. On the said proposal Hon'ble Minister (Finance) has signed on 18.02.2020. However, there is no signature of the Hon'ble the Chief Minister. The file was again sent back on 22.04.2020 with note by Dr. Sudeen Gaikwad from the office of the Hon'ble the Chief Minister that the provisions 'ROT Act 2005' are to be considered for routine transfer in April – May and below Shri Gadre, Principal Secretary (Finance) has put remark that in respect of Shri Lande the approval is received on the second file and his immediate transfer is demanded.

23. On page 11A the submission pertaining to transfers of Shri Lande and Shri Sonkamble was prepared and again submitted by Section Officer on 08.05.2020; to the Under Secretary, Smt. Gandhi and Principal Secretary, Shri Gadre. This particular noting is very important as it discloses the

reasoning of the proposal and the movement of the files. It states that the proposal of transfer of Shri Lande and Shri Sonkamble was placed before the Hon'ble the Chief Minister as per page 11 and 12 (T.V). However, it is suggested from the office of Hon'ble the Chief Minister, that the transfer orders are to be issued as per the provisions of 'ROT Act 2005' in the month of April and May and only after examining compliance under 'ROT Act 2005'. Thereafter, paragraph 15 of the said G.R. is referred to with directions not to transfer any officer during this financial year 2020-2021 due to COVID-19 pandemic situation. These directions were given by the Finance Department in order to maintain balance in the Financial management and to keep continuity in the policies and the issues which are coming up due to pandemic. Paragraph 4 of the said noting discloses that in view of the present situation the Hon'ble the Chief Minister has not approved the proposal of transfer at page 11 and 12 and also due to G.R. dated 04.05.2020 no officers are to be transferred in this financial year and therefore only after receiving further directions of GAD the action can be taken in this issue. Thus, it is clear that till 08.05.2020 the officers had knowledge and it is confirmed that the Hon'ble the Chief Minister has not given approval to the transfer of Applicant Shri Lande and Shri Sonkamble and the mid-term transfer was refused on the ground of G.R. dated 04.05.2020 which barred the transfers till further directions from G.A.D..

24. It is interesting to look into the submission of Mr. Jadhav, the Section Officer dated 29.06.2020 in respect of the transfer of Shri Uttam Sonkamble wherein the G.R. dated 04.05.2020 prohibiting transfer is referred. The request for transfer of Shri Sonkamble on account of his family problems was made as a special case though Shri Sonkamble had completed his tenure and hence due for transfer. Shri Gadre, Principal Secretary has signed it and the Minister (Finance) has also signed it on the same day. I am informed that the Hon'ble the Chief Minister has signed on 01.07.2020, and only after obtaining the approval of the Hon'ble the Chief Minister Shri Sonkamble was transferred.

Thus, the record shows that only once the Hon'ble the Chief Minister has signed the NASTI No.164/2019 on 27.08.2019 i.e. in the beginning when the approval was given for the first transfer on 03.09.2019, which is of no use for the 2nd transfer.

25. **NASTI NO.37 OF 2020**

The noting dated 13.02.2020, discloses the summary of the minutes of the meeting of CSB dated 10.02.2020. It was submitted that there are complaints against the applicant of committing financial fraud and therefore his immediate transfer was demanded by Shri Narendra Pawar, the Member of Legislative Assembly and Shri Niranjan Davkhare and Shri Nago Ganar, who are the Members of Legislative Council. The earlier orders passed by M.A.T. regarding the provisions of Transfers and in last paragraph 5 the

recommendations made by CSB to transfer the Applicant as Director in Dairy Development Department, Worli, Mumbai are stated. Further it was mentioned that in view of the earlier legal proceedings the opinion of Law and Judiciary Department was to be sought. The Under Secretary, Smt. Seth has signed on 13.02.2020, Principal Secretary, Shri Gadre has signed on the same day. Accordingly, the written opinion was given by Joint Director Smt. Ashwini Saini on 12.03.2020. The Principal Secretary of Law and Judiciary Department has signed on 13.03.2020.

26. The proposal dated 14.03.2020 prepared by the Section Officer is the most important document. The reference of complaints made by the Legislative Member Shri Narendra Pawar, the Legislative Council Shri Niranjana Davkhare and Shri Nago Ganar against the applicant of committing financial fraud in Maharashtra Primary Education Council was found and demand of immediate transfer of Shri Lande was reiterated. In paragraph 4 the gist of the order of M.A.T. directing that the Applicant may be transferred only by following procedure in accordance with law is quoted. In paragraph 5 reference of the Rule 4(4) and 4(5) of 'ROT Act 2005' is found and in paragraph 6 'NASTI' file No.164/2019 is referred and approval of the Hon'ble the Chief Minister for mid-term transfer prior to the completion of normal tenure was sought. After the signatures of the Under Secretary and Principal Secretary on 14.03.2020, the Hon'ble Deputy Minister has signed on 23.03.2020. The signature of the Hon'ble the Chief Minister is seen on

the file. The endorsements disclose that the file was received by the office of the Hon'ble the Chief Minister on 11.05.2020 and it was returned on 05.06.2020. Thus, the Hon'ble the Chief Minister during the period from 11.05.2020 to 05.06.2020 has given approval for the mid-tenure transfer of the Applicant.

27. On perusal of the original record of both the NASTIS, points transpired are as follows :-

- (I) On the 2nd time process which was initiated afresh, the Hon'ble the Chief Minister has given approval during the period from 11.05.2020 to 05.06.2020 for mid-tenure transfer of the applicant.
- (II) The Government Resolution dated 04.05.2020 putting bar on transfer was issued. However, there is no reference of the said G.R. in this proposal of 14.03.2020 on which the Hon'ble the Chief Minister has given approval.
- (III) The submission of 14.03.2020 in NASTI No.37/2020 is prior to COVID-19 pandemic situation or lockdown. Thus, if at all the orders of transfer are to be issued under Rule 4(4) and 4(5) of 'ROT Act, 2005', then the mention of G.R. dated 04.05.2020 of putting bar and special reasons, for lifting said bar as the special case was made out, should have been mentioned. However, it is missing. Thus, the old submissions which were prior to pandemic were placed before the Hon'ble Finance Minister and the Hon'ble the Chief Minister. To avoid confusion it is reiterated that the prohibitory clause (15) of the G.R. dated 04.05.2020 in respect of transfer of the Government servants

does not take away the special powers of the competent authority especially the Hon'ble the Chief Minister which are conferred under Rule 4(5)(ii) and 4(5) of 'ROT Act 2005'. In the case of applicant it was not only mid-tenure transfer but it also involves lifting the bar of G.R. dated 04.05.2020. Hence, these two hurdles were to be crossed therefore, lifting of bar is specially required to be mentioned along with the special case or exceptional circumstances made out to justify the transfer. Thus, G.R. should be construed consistent with the statute and the action of the Government or orders issued by the Government should also be consistent with their own policy.

- (IV) In the present case, during the period from 14.03.2020 to 04.05.2020, there is complete change of situation due to COVID-19 pandemic, as the entire nation is facing lockdown and therefore, even the normal routine yearly April/ May transfers were postponed by the State Government till G.R. was issued by the G.A.D. (It was issued on 07.07.2020).

28. In the said file 'NASTI' No.37/2020 Smt. Madhavi Gandhi, Under Secretary put up proposal on 22.06.2020 for seeking permission for issuance of orders of transfer of the Applicant to Dairy Development Department, Worli, Mumbai. The Principal Secretary and the Hon'ble Finance Minister have signed it on the same day i.e. on 22.06.2020, but the said proposal was not placed before the Hon'ble the Chief Minister however, on the same day applicant's transfer order, the subject of this matter was issued.

29. Thus, besides the approval on proposal dated 14.03.2020 there is no approval for this transfer order dated 22.06.2020 of the competent authority. Surprisingly, the submission dated 14.03.2020 when compared with the submission dated 22.06.2020 it is found not only incomplete, but inconsistent, especially on the background of noting dated 08.05.2020 in file NASTI No.164/2019 is also contradictory. The contents of all these submissions are stated earlier, hence, only the points of contradictions are noted below :

- * There is no mention of G.R. dated 04.05.2020 in submission dated 14.03.2020. As it was issued after the submission was presented before the authority. The approval was given between 11.05.2020 to 05.06.2020 i.e. after issuance of G.R. dated 04.05.2020. The Government who draws the policy should be the first to follow the same. Hence, the mention of the said policy is the basic requirement. The argument that the proposal was initiated on 14.03.2020 and therefore State found it was not necessary to reproduce the said G.R. in the proposal, is not at all acceptable and does not sustain. If the Hon'ble the Chief Minister would have given approval prior to issuance of this G.R. dated 04.05.2020 then the situation would have been different and the said approval would have been considered as a valid approval for mid-term transfer of the Applicant. Had the applicant been transferred only after 07.07.2020, when the G.A.D issued the directions of relaxing complete prohibition of transfer policy, then it would have been a case of postponing the issuance of orders of transfer. However, it is not the case.

- * Secondly, in the said submission of 14.03.2020 the recommendation given by CSB as per meeting dated 10.02.2020 are also not mentioned but found in the proposal dated 22.06.2020. Pursuant to the directions of the Hon'ble Supreme Court in case of **T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732**, the recommendations of CSB are to be placed before the competent authority to consider. So the placing of the file of transfer before CSB and further communicating the recommendations to the competent authority is not an empty formality. The authority competent to transfer should be well informed about the relevant procedure and policy of the State and recommendations of the CSB so also the reasons of the transfers, enabling the competent authority to take correct and fair decisions.
- * Curiously submission dated 08.05.2020 in File NASTI No.164/2019, discloses that when the proposal of the transfer of the applicant along with one Shri Uttam Sonkamble was placed before the Hon'ble the Chief Minister earlier in April 2020, the Hon'ble the Chief Minister did not approve any mid-term transfer but has directed to follow the procedure of normal transfer in April – May, after examining all provisions under 'ROT Act 2005' the proposal was to be placed before the competent authority.
- * Further officers of Finance Department i.e. Section Officer, Under Secretary and Principal Secretary who prepared noting dated 08.05.2020 are the same officers and signatory of the submissions dated 14.03.02020 and 22.06.2020. Thus clearly on 08.05.2020, the Respondent State has taken decision that applicant's transfer is not required to be made in view of bar of

circular of 04.05.2020. However, the old proposal which was moved on 14.03.2020 where all these necessary information and points were missing was placed before the Hon'ble the Chief Minister and his approval was sought before 07.07.2020 when non transfer policy was partially relaxed.

30. Let me advert to the proposal dated 22.06.2020 prepared by Under Secretary, Mrs. Gandhi, on which admittedly approval of the Hon'ble the Chief Minister was not obtained. Only the approval of the Minister of Finance who is not competent to transfer for Group A officers was obtained. The argument that the Minister of Finance signed in the capacity of the Hon'ble the Deputy Chief Minister is not available to the State because 'ROT Act 2005' does not mention such office of Deputy Chief Minister in Section 6. The competent authority has power to delegate its power under the proviso of Section 6 of 'ROT Act 2005'. However no such delegation of power is produced before me. The argument of learned Counsel Shri Apte that the submission of 22.06.2020 is not main proposal of transfer but this is only a permission taken by the Secretary for the issuance of orders is not sustainable. It is interesting to see that in the said submission Under Secretary has referred to the letter dated 10.06.2020 and with remarks of Principal Secretary (Finance) this proposal of transfer was resubmitted.

31. So also the argument that the said letter is not the foundation of transfer, but there was a flow of complaints throughout and letter dated 10.06.2020 is just a straw on the camel's back and so the process of

transfer was expedited is not at all convincing. Even though it is accepted, yet the transfer order dated 22.06.2020 which is under challenge does not pass the test of legality for want of the valid approval of the authority competent to transfer. This proposal dated 22.06.2020 gives details of earlier orders in File NASTI No.164/2019 also refers to G.R. dated 04.05.2020, in paragraph 3, it refers to the approval given by the Hon'ble the Chief Minister dated 14.03.2020. In paragraph 4, the Secretary has proposed the mid-term transfer of the applicant to the post of Deputy Commissioner, Dairy Development and Financial Adviser, in the office of the Commissioner, Dairy Development Mumbai. However, in the submission / proposal on which the Hon'ble the Chief Minister has given approval on 14.03.2020 all the necessary details of bar on transfer due to G.R. dated 04.05.2020 so also the post where the officer was to be posted as per the recommendations of CSB is completely missing.

32. Let me refer to Section 2(g) and 2(i) of 'ROT Act, 2005' which defines Post and Transfer respectively,

Post – means job or seat of duty to which the Government Servant is assigned or posted.”

Transfer, “Transfer - means posting of Government servant from one post, office or Department to another post, office or Department.”

Section 6, incorporates table of the Group of Government servants and the competent transferring authority. While giving approval to the

transfer the competent authority herein the Hon'ble the Chief Minister ought to have knowledge of the posting where the applicant was to be posted. By submission dated 14.03.2020 the approval was obtained only for mid-term / mid tenure transfer of the applicant. It is obligatory on the part of the Respondents' office to further obtain the approval of the Hon'ble the Chief Minister for the transfer to another post, office or Department, therefore necessarily the details of the present posting to another post, office or Department are to be mentioned in the proposal. Thus, it is an approval half way on incomplete submission/ proposal. The Hon'ble the Chief Minister has not approved the transfer as contemplated under Section 6 of 'ROT Act 2005'. The submission on which the Hon'ble the Chief Minister has signed, only speaks about the permission for mid-term / mid-tenure transfer and is completely silent about the actual posting as Deputy Director, Dairy Development Department i.e. transfer as contemplated under Section 6 of under 'ROT Act 2005'.

33. It is to be noted that the approval is required and taken for posting and not merely for issuance of orders. The submission dated 22.06.2020 thus is not only for seeking permission for issuance of transfer orders, but it was the proposal seeking approval for posting. Thus, the approval for transfer and approval for issuance of orders of transfer are two different things and thus they cannot be substituted for each other. Under the pretext of seeking permission for issuance of transfer orders, the approval of

posting cannot be taken. This is completely misleading and therefore the impugned transfer order dated 22.06.2020 and further releasing order dated 24.06.2020 both are illegal and invalid for want of proper approval of the Hon'ble the Chief Minister as contemplated under Section 6 of 'ROT Act 2005'.

34. The order of transfer should not be the matter of punishment to a Government servant by prejudging the guilt without giving him opportunity to explain or clear the allegations in advance and therefore such order of transfer cannot sustain. Such order is arbitrary and against the principles of natural justice. ***Avinash Chander Versus Union of India 1993(3) C.S.J. 107 at page 110. Shri Kalichand Pangule Versus Union of India 1983 (1) S.L.J 307 (Calcutta)*** are relied in this ground. If the dominate motive of the employer is to punish the petitioner the transfer is bad. If it is to ensure efficiency in administration the transfer is to stand. The policy of transfer is aimed to achieve the goal of good governance. Sometimes, it is dangerously used as a weapon than a solution; such transfer puts stigma without any trial or hearing the employee. Thus, it is necessary to take out the mask of the transfer order and find out the real reason.

35. The challenge to the transfer given by Applicant is also on the ground of malice therefore the record / correspondence is produced in the matter. In the tabular form it can be self explanatory :-

Sr. No.	Complaint	Explanation
1	On 23.04.2019 explanation called by Respondent No.3.	On 24.04.2019 the explanation is submitted by the Applicant.
2	On 27.09.2019 a letter of explanation issued by Respondent No.3 (Smt. Vandana Krishna).	On 04.10.2019 the explanation by Applicant Shri Lande was submitted.
3	Letter dated 16.11.2019 issued by one Shri Menon who is Director of Accounts and Finance, who has highlighted the grievances made and the points raised by the Applicant.	
4	On 14.11.2019 recalling Shri Rajendra Pawar the explanation.	On 03.12.2019 the explanation is given by Applicant Shri Lande.
5	On 04.12.2019 the explanation was called and grievances made by Respondent No.3 (Smt, Vandana Krishna)	On 09.12.2019 the explanation is given by the Applicant Shri Lande.
6	On 09.12.2019 notice was issued by Respondent No.2.	On 27.12.2019 the explanation is given by the Applicant Shri Lande.
7	On 13.12.2019, the allegations were made and explanation called by Respondent No.3.	On 23.12.2019, the answer and explanation is given by the applicant.

At the outset, before addressing the point of malice, I would like to refer to the ratio laid in ***T.S.R. Subramanian and Ors. (cited supra)***.

“30. We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. The necessity of minimum tenure has been endorsed and implemented by the Union Government.”

36. It is made clear and to be noted that to conduct D.E. or not is entirely upto the higher authority of the applicant. This Tribunal in the present order has not expressed anything whether the allegations /complaints against the applicant are genuine or false, as it is not the scope of this application. It is up to the higher authority to initiate the D.E. or drop it. The Tribunal is only to deal with the short issue of validity of impugned transfer order.

37. Nobody will dispute that the Government should have executive freedom. There is no dispute that the Government should enjoy the full power to transfer the public servant in need of emergency, vacancy on retirement and so also if there is complete dereliction in duty on account of misconduct, but definitely not sacrificing the procedure required to be followed by the Government wherein the bonafides of the Government should be transparently manifested.

38. Thus, it is well settled law in ***Nazir Ahmed Versus King Emperor reported in 63 I.A. 372***, which is further reiterated in case of ***Ramchandra Keshav Atre Versus Govind Jati Chavari AIR 1975 SC 915***.

“When the power is given to do a certain thing in a way, the thing must be done in that way or not at all.”

Thus, it is necessary to keep in mind malady which enactment was designed to cure, so the ROTA aims to curb instability, unsustainability, unnecessary torture due to transfers.

39. Apparently from April 2019, Respondent No.3 and her Department were interested in removing the applicant from the office of Maharashtra Primary Education Council. The allegations of fraud, corruption and financial misappropriation made by the one Member of Legislative Assembly and two Members of Legislative Council are direct and yet under such circumstances the Government did not initiate the Departmental Enquiry against him by giving him proper notice. The transfer would have been justified if at all the Government by levelling charges against the Applicant would have initiated Departmental Enquiry (D.E.). No D.E. against the Applicant is yet started. No charge-sheet is given. On the other hand, it appears that the applicant has also answered and given explanation time and again in detail.

40. Before the Division Bench of Bombay High Court in ***Writ Petition No.9781 of 2014 (State of Maharashtra & Other Versus Dr. (Ms.) Padmashri S. Bainade)***, the order passed by the M.A.T in respect of mid-term transfer was challenged. Relevant provisions of 'ROT Act 2005' were discussed while upholding the order of the M.A.T. and cancelling the mid-term transfer has held that,

“Without taking any disciplinary enquiry, if the transfer is effective then it will be transfer whose foundation will be based on misconduct and it has held that transfer if made on unverified complaints or allegations, then it amounts to punishment or punitive action based upon unproved allegations.”

41. It is obligatory on the part of the State to act fairly, so the orders to be passed with reasons assuring the transparency in the administration. It is noticed that on certain occasions, the orders passed by the competent authority are not found legal for want of compliance of 'ROT Act 2005', hence they are challenged. Therefore, following points are required to be mentioned while placing the proposal/ submission for mid-term/tenure transfer under Section 4(4)(ii) and 4(5) of the 'ROT Act 2005' before the competent authority, so that further litigation can be avoided and reduced.

- (a) Special reasons or exceptional circumstances or how special case is made out.
- (b) The recommendations of Civil Services Board.
- (c) The place from where the Government servant is to be transferred to which Department and to which post.
- (d) The policy, circular or decision issued on the relevant time if relevant to transfer, is to be specified in the proposal.
- (e) Reference of earlier judicial orders, if passed by the Court/ Tribunal.

This is a minimum requirement in the proposal. If these points are incorporated in the proposal then the authority competent to transfer definitely gets a clear picture and placing the submission for approval is not formal exercise, but it is meaningful use of the power by the competent authority for efficient, clean and transparent administration. With this, the order passed is as follows :

ORDER

- (A) Order dated 22.06.2020 transferring the applicant and order dated 24.06.2020 relieving him, both are hereby cancelled.
- (B) The applicant to continue to work on the same post forthwith.

NOTE : When the order was pronounced learned Senior Counsel Shri Apte prayed that the order is to be stayed as the State would like to challenge the order before the Hon'ble the High Court. Learned Counsel Shri A.V. Bandiwadekar opposes the said prayer. For the reasons which are discussed above at length, I am not inclined to stay my order. However, it is made clear that the Respondents have power to transfer or to take action, in the case of the Applicant, however in accordance with law.

Sd/-

Place : Mumbai
Date : 06.10.2020

(Mridula Bhatkar, J.)
Chairperson

prk

D:\Anil Nair\Judgments\2020\1.8.2020\O.A 300.20, Transfer order challenged, SB. 0820.doc