

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO. 200 OF 2016
With
MISC. APPLICATION NO.101 OF 2012
IN
ORIGINAL APPLICATION NO. 200 OF 2016**

ORIGINAL APPLICATION NO. 200 OF 2016

Shri Ravindra Shivnarayansing)
Pardeshi, Aged 48 yrs, working as)
Executive Engineer, Public Works)
Division No.3, (Building and)
Communication) Zilla Prishad,)
Nashik, having office at Nashik,)
R/o. President Tower, Flat No.12,)
Chandak Circle, Nasik.)
Address For Service Of Notice:)
As above.)....**Applicant**

VERSUS

1. The State of Maharashtra,)
Through the Additional Chief)
Secretary, Public Works Deptt.,)
Having Office at Mantralaya,)
Mumbai - 400 032.)
2. Shri Anil Janardan Patil,)
Aged Adult, Working as)
Executive Engineer,)

Maharashtra State Road)
 Development Corporation Ltd.)
 [on Deputation], Having Office at)
 Bandra [W], Mumbai – 50.)

3. The Chief Executive Officer,)
 Zilla Parishad Nashik,)
 Having Office at Nashik.)....**Respondents**

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

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent No.1

Shri M.D. Lonkar, learned Presenting Officer for the Respondent No.2.

Shri A.R. Kapadnis, the learned Advocate for the Respondent No.3.

With

**MISC. APPLICATION NO.101 OF 2012
 IN
 ORIGINAL APPLICATION NO. 200 OF 2016**

Shri Anil Janardan Patil)
 Executive Engineer,)
 Z.P. (B & C) Division NO.3,)
 Nashik Z.P., District Nashik and)
 Having residential address as)
 Chinar Bunglow, Sahdeo Nagar,)
 Gangapur Road, Nashik.)...**Applicant**
(Orig.Respondent.No.2)

VERSUS

1. Shri Ravindra Shivnarayansing)
 Pardeshi, Aged 48 yrs, working as)
 Executive Engineer, Public Works)
 Division No.3, (Building and)
 Communication) Zilla Prishad,)
 Nashik, having office at Nashik,)
 R/o. President Tower, Flat No.12,)
 Chandak Circle, Nasik.)
)....Respondent
(Orig. Applicant)

AND

1. The State of Maharashtra,)
 Through the Additional Chief)
 Secretary, Public Works Deptt.,)
 Having Office at Mantralaya,)
 Mumbai - 400 032.)
)(Orig.Respt. No.1)
2. The Chief Executive Officer,)
 Zilla Parishad Nashik,)
 Having Office at Nashik.)
)(Orig.Respt. No.3)

Shri M.D. Lonkar, learned Advocate for the Applicant (Orig. Respondent No.2).

Shri A.V. Bandiwadekar, the learned Advocate for the Respondent No.1 (Orig. Applicant).

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent (Orig. Respondent No.1).

Shri K.R. Jagdale, learned Advocate holding for Shri A.R. Kapadnis, learned Advocate for the Respondent (Orgi. Respondent No.3).

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 20.04.2016

ORDER

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant, Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent No.1, Shri M.D. Lonkar, learned Presenting Officer for the Respondent No.2. and Shri A.R. Kapadnis, the learned Advocate for the Respondent No.3 (in O.A.No.200 of 2016).

And also heard Shri M.D. Lonkar, learned Advocate for the Applicant (Orig Respt.No.2), Shri A.V. Bandiwadekar, the learned Advocate for the Respondent No.1 (Orig. Applicant), Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent (Orig. Respondent No.1), Shri K.R. Jagdale, learned Advocate holding for Shri A.R. Kapadnis, learned Advocate for the Respondent (Orgi. Respondent No.3)-(M.A.No.101 of 2016 in O.A.No.200 of 2016).

2. This O.A. has been filed by the Applicant challenging the order dated 30.1.2016 passed by the Respondent No.1 transferring the Respondent No.2 to the post of Executive Engineer, Public Works Division No.2, Zilla Parishad, Nasik (the said post) displacing the Applicant.

3. Learned Counsel for the Applicant argued that the Applicant was posted as the Executive Engineer, Public

Works Division No.2, Zilla Parishad, Nasik by order dated 17.7.2014. The Applicant had not completed his tenure of 3 years, when by impugned order dated 30.1.2016, the Respondent No.2 was posted in the post he was occupying on administrative grounds. Learned Counsel for the Applicant argued that the Applicant was not given any posting. The order transferring the Applicant was issued in the month of December, before he had completed his tenure. Exceptional circumstances and special reasons were required to transfer the Applicant under Section 4(4) (ii) and 4(5) of the Maharashtra Government Servants Restrictions on Transfers and Prevention of Delays in Discharge of Official Duties Act, 2005 (hereinafter called the Transfer Act). However, no such reasons were given. The proposal of transfer was not placed before the Civil Services Board as required pursuant to the decision of Hon'ble Supreme Court in the case of **TSR Subramaniam and others Vs. Union of India & Others: AIR 2014 S.C. 263**. Learned Counsel for the Applicant argued that the order of transfer the Applicant has been issued in violation of provisions of the Transfer Act and without placing it before the Civil Services Board. He, therefore prayed that the order dated 30.1.2016 may be quashed and set aside.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent No.1 that the Respondent No.2 has been posted as Executive Engineer, P.W.D. no.2 Zilla Parishad, Nasik with the approval of Hon'ble C.M., as required under Section 6 of the Transfer Act. It was not necessary to place

the matter before the Civil Services Board as Hon'ble C.M. has approved the proposal that transfer of officers from the rank of Deputy Engineer to Chief Engineer in P.W.D. may not be placed before Civil Services Board. Learned P.O. stated that order does not suffer from any legal infirmity.

5. Learned Advocate Shri M.D. Lonkar argued on behalf of the Respondent No.2 argued that the order has been issued within the four corners of the statutory provisions and no case has been made out for judicial intervention.

6. Learned Advocate Shri K.R. Jagdale holding for learned Advocate Shri A.R. Kapadnis argued on behalf of the Respondent No.3 that his role is limited to implementing the order of the Respondent No.1 issued on 30.1.2016. The Respondent No.2 has joined the said post on 20.2.2016 and the Applicant stood relieved on that date.

7. I find that the impugned order dated 30.1.2016 reads:-

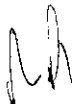
“ महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन व शासकीय कर्तव्ये पार पाडतांना होणा-या विलंबास प्रतिबंध अधिनियम, २००५ मधील तरतुदीनुसार व सक्षम प्राधिका-याच्या मान्यतेने, सार्वजनिक बांधकाम विभागातील श्री.अनिल जनार्दन पाटील, कार्यकारी अभियंता, महाराष्ट्र राज्य रस्ते विकास महामंडळ मर्यादित, मुंबई यांची बदली प्रशासकीय सोयीस्तव जिल्हा परिषद, नाशिक (पूर्व) या श्री. आर.एस.परदेशी यांच्या बदलीने रिक्त होणा-या पदावर करण्यात येत आहे.”

From this it is clear that the order simply states that the Respondent No.2 is posted in the said post which was falling

vacant due to transfer for the Applicant. It is also clear that no order transferring the Applicant has been issued till date. It is not understood, as to how there was a vacant post to accommodate the Respondent No.2, when the Applicant was not transferred at all.

8. Admittedly the Applicant was posted to the said post by order dated 17.7.2014. As a Group 'A' officer, he has a tenure of 3 years. He had not completed his tenure, when order dated 30.1.2016 was issued. As per Section 4(5) of the Transfer Act, such a transfer can be made by the competent authority in special cases, after recording reasons in writing with the prior approval of immediately superior Transferring Authority mentioned in the table of Section 6. The competent authority and the immediately superior Transferring Authority in this case is Hon'ble C.M. However, when the Applicant is not transferred, there is no question of recording that it was a 'special case' to transfer him.

9. The aforesaid order is issued in the month of January. Section 4(4) of the Transfer requires that all order of transfers should be issued in the month of April or May, otherwise, Section 4(4) (ii) is attracted and a transfer in a month other than April or May can be issued only in exceptional circumstances or for special reasons. As mentioned above, no such exceptional circumstances or special reasons for transferring the Applicant have been made out simply because no order of his transfer has been issued.



10. Coming to the issue of the Civil Services Board, Government has issued a G.R. dated 31.01.2014 forming Civil Services Board. Though this G.R. was stayed for some time, now there is no doubt that it is fully operational. This G.R. has been issued as directed by Hon'ble Supreme Court in the case of TSR Subramaniam Vs. Union of India (supra). It is mandatory that all transfers are approved by the Civil Services Board, though competent authority may not accept its recommendations in all cases. In the present case, learned P.O. has made available the concerned Mantralaya file for my perusal during the hearing on 24.2.2016. I have recorded as follows in the interim order dated 24.2.2016.

“3. Learned Presenting Officer, Shri Bhise placed the concerned Mantralaya file for my perusal. It is seen from perusal of file No. POG 1116/PC-7/Services I that a general exemption has been granted to P.W.D. not to be governed by the Divisional Cadre Allotment Rules of 2015 and also no proposal for transfer of officers from the rank of Deputy Engineer to Chief Engineer is required to be placed before the Civil Services Board. Accordingly the proposal posting Respondent No.2 in place of the Applicant does not have approval of the Civil Services Board and the whole proposal transferring 17 officers of the level of Executive Engineer does not include the name of the Applicant. From this, it is clear that no decision to transfer the Applicant has yet been taken.”

11. From the above discussion, it is clear that the Applicant has been transferred from the post of Executive Engineer, P.W.D., Z.P., Nasik by order dated 30.1.2016 in violation of provisions of the Section 4(4) (ii) and 4(5) of the Transfer Act, if he can be said to be transferred at all. The

case of transfer of the Applicant was obviously not approved/ considered by the Civil Services Board. It is not understood as to how a particular department can be exempted from the provision of a G.R., issued as per direction of Hon'ble S.C. and also exempted from the provisions of the statutory rules. The said decision that transfer of officers in P.W.D. need not be placed before Civil Services Board has no legal validity. The transfer of the Respondent No.2 also has not been approved by the Civil Services Board. No exceptional circumstances or special reasons for his (Respondent No.2's) mid-term transfer have been placed before Hon'ble C.M. The order dated 30.1.2016 is unsustainable and has to be quashed and set aside. Accordingly this O.A. is allowed. Order dated 30.1.2016 is quashed and set aside. The Respondent No.1 & 3 will ensure that the Applicant is allowed to resume duties of the post of Executive Engineer, P.W.D., Z.P. Nasik within a period of two weeks from the date of this order. O.A. is allowed accordingly with no order as to costs. The Respondent No.1 is directed to give a suitable posting to the Respondent No.2 in the ensuing general transfer 2016.

12. The Respondent No.2 has filed the Misc. Application seeking quashing of interim order of this Tribunal dated 24.2.2016, staying the transfer of the Applicant. However, the Applicant was relieved on 20.2.2016 itself and the Respondent No.2 took charge of the said post as can be seen from the affidavit of the Respondent No.3. Interim order dated 24.2.2016 could not be implemented.

Now, as the O.A. has been decided on merits, it is not necessary to decide the M.A., which has become infrutuous and it is disposed of accordingly.

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 20.04.2016

Place : Mumbai

Dictation taken by : SBA

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