

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.396 OF 2015
WITH
ORIGINAL APPLICATION NO.397 OF 2015

DISTRICT : PALGHAR

ORIGINAL APPLICATION NO.396 OF 2015

Shri Avinash Pandurang Bhanushali,)
Aged 52 Yrs, Working as)
Sectional Engineer, Having Office)
at Wada Public Works Sub Division)
Wada, Dist. Palghar,)
R/O. Saraswati Niwas, A/P/T. Wada,)
Dist. Palghar.)
Address For Service Of Notice:-)
Shri Arvind V. Bandiwadekar,)
Advocate, Having Office at 9,)
"Ram-Kripa", Lt. Dilip Gupte Marg,)
Mahim, Mumbai – 400 016.)...**Applicant**

VERSUS

The State of Maharashtra)
Through Principal Secretary,)



Public Works Department,)
 Having Office at Mantralaya,)
 Mumbai – 400 032.).....Respondent

WITH

ORIGINAL APPLICATION NO. 397 OF 2015

Shri Prakash Madhukar Patkar,)
 Aged 54 Yrs., Working as)
 Sectional Engineer, Having Office)
 at Vikramgad Public Works sub)
 Division Vikramgad, Dist. Palghar,)
 R/O. Dighe Niwas, A/P. Tal. Wada,)
 Dist. Palghar.)
Address For Service Of Notice:-)
 Shri Arvind V. Bandiwadekar,)
 Advocate, Having Office at 9,)
 “Ram-Kripa”, Lt. Dilip Gupte Marg,)
 Mahim, Mumbai – 400 016.)....Applicant

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 Public Works Department,)
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 Mumbai – 400 032.)....Respondent

Shri A.V. Bandiwadekar, Advocate for Applicants.

Smt. K.S. Gaikwad, Presenting Officer for Respondent.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 03.08.2015

JUDGMENT

1. These two Original Applications have got essentially the identical facts involved and hence, can best be disposed of by this common order. The challenge herein is posed by the two Sectional Engineers currently posted at Wada Public Works Division, Sub-Division as far as the Applicant Shri A.P. Bhanushali is concerned and Vikramgad Public Works Department as far as the Applicant Shri P.M. Patkar is concerned. Both these places fall within Palghar District. Both of them have been transferred to Gadchiroli in the same capacity by the order dated 28.5.2015 which is at Exh. 'A' (Page 13 of the OA 396/2015).

2. The Applicants were two of the five Sectional Engineers transferred to PWD Gadchiroli by the impugned order. It appears that the 3 others had also filed similar OAs which came to be withdrawn by them. Now, therefore, the matter is restricted to these two Applicants. I shall by and large treat OA 396/2015 as a representative OA because as already mentioned above barring a few matters



of detail, which do not touch the core of the issue the fact situation and the facts at issue are essentially identical. The Applicants began their careers as Muster Karkoons from 22.1.1985 and 17.1.1985 respectively. Thereafter, they functioned as Technical Assistants, Civil Engineering Assistants and then with effect from 1.8.1992 and 8.7.1992 respectively as Junior Engineers on promotion. On 1st April, 2003, they came to be promoted as Sectional Engineers. The details of the various postings since the beginning till now have been set out in what is Exh. 'B' to the OAs. The present facts are such that the said details need to be set out herein below in relation to both the Applicants. Its significance must become clearer as the discussion progresses.

3. In so far as the Applicant Shri Bhanushali is concerned, he functioned as Muster Karkoons from 21.1.1985 to 30.11.1986 at Bhivandi in District Thane. He was Technical Assistant from 1.12.1986 to 1.1.1989 at Bhivandi, Thane. From 1.1.1989 to 31.7.1992, he was in regular establishment as Technical Assistant at Bhivandi, Thane. From 1.8.1992 to 31.3.2003, he was Junior Engineer posted at Jawhar, District Thane. From 1.4.2003, he was posted at Wada, District Thane as Sectional Engineer, Selection Grade (शाखा अभियंता दर्जाप्राप्त). He

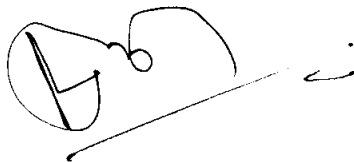


was under PWD, Thane (Bhivandi) from 21.1.1985 to 31.7.1992. From 1.8.1992 to 15.7.1998, he was under Executive Engineer, PWD, Jawhar. From 16.12.1998 to 7.6.2007, he was under PWD, Thane Sub Division, Murbad. From 19.6.2007 to 14.5.2010, he was under PWD, Jawhar in Sub-Division Wada. From 3.6.2010 to 2.7.2013, he was under Executive Engineer, PWD, Thane in Sub-Division, Shahapur. From 1.10.2013 till the end of May, 2015, he was under PWD, Jawhar Sub-Division, Wada. Be it noted that in challenging the impugned order of transfer, the Applicant Shri Bhanushali has taken 1.10.2013 as the date which according to him should be the date from which his posting thereat should be counted.

4. In so far as the Applicant Shri Patkar is concerned (OA 396/2015), from 17.1.1985 to 30.11.1986, he was Muster Karkoon under PWD, Thane. From 1.12.1986 to 1.1.1989, he was Technical Assistant in Sub-Division 3, Thane. From 1.1.1989 to 7.7.1992, he was on regular establishment as Technical Assistant, PWD, Vasai, District Thane. From 8.7.1992 to 30.4.2003, he was Junior Engineer and from 1.4.2003, he became Sectional Engineer Selection Grade.



5. From 17.1.1985 to 12.9.1988, he was under PWD, Thane. From 12.9.1992 to 15.7.1994, he was under Executive Engineer, PWD Jawhar. It appears from Exh. 'B' in his OA that he has not mentioned the details from 13.9.1988 to 11.9.1992. However, for the dispute resolution hereof that may not be of much significance and I can proceed further. Picking up the thread from that point, from 15.7.1994 to 15.10.1996, he was under PWD Thane Sub-Division, Shahapur. From 16.10.1996 to 26.2.1999, he was under PWD, Thane Sub-Division, Jawhar. From 1.3.1999 till the end of May, 2015, he was under Executive Engineer, PWD, Jawhar Sub-Division, Kokhada. It needs to be noted, however, that he came to be posted on 20.1.2005 at Wada Sub-Division. On 20.1.2006, he came to be suspended pending the departmental enquiry and was reinstated on 22nd March, 2012 at Wada itself. From 22nd March, 2012 to 31.12.2013, he was posted at Jawhar and from 1.1.2014 till the end of May, 2015, he was posted in the Sub-Division, Vikramgad. He just like the Applicant Shri Bhanushali tends to count for the purposes hereof the date 1.1.2014 for the computation for the purposes hereof.



6. The Applicant Shri Bhanushali was born on 15.12.1963 while the Applicant Shri Patkar was born on 5.12.11962. Both of them have crossed 50.

7. At this stage, reading the impugned order of transfer which is dated 28.05.2015 (in Marathi), the said order deals with the transfer of the Junior Engineers, Sectional Engineers and others for administrative reasons (प्रशासकीय कारणास्तव). In the concluding Para thereof, it has been clarified that the transfers were being effected, taking into consideration the Government Resolution of GAD dated 18.12.2009 and the Government Resolution dated 28.10.2010 detailed therein. The said orders were directed to be issued immediately and further direction was given that the transferred Engineers be relieved, so that they joined at the transferred destination immediately.

8. I may as well read to the extent necessary the two G.Rs. quoted in the impugned transfer order. The first one is dated 18th December, 2009, a copy of which is at Exh. 'E' (Page 30 of the representative OA). That G.R. pertains to filling up of the vacancies in all the cadres with immediate effect in Gadchiroli District. It was therein mentioned that it was necessary to fill up urgently the vacant posts in the Tribal areas of the Vidharbha Region of

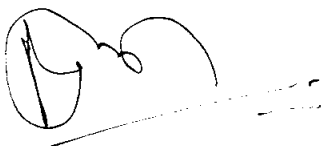


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the State, in which connection, a reference was made to earlier instruments issued by the Government. That was especially so in case of Gadchiroli District. The implementation of the schemes had been held up, and therefore, the directions were given to fill up the vacancies in time bound manner latest by 31st January, 2010. Secondly, it was provided that as far as Group 'A' and 'B' Officers were concerned on the State level and in Revenue Department, those Officers that were due for transfer within the provisions of "The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act hereinafter) certain provisions were made for the employees of Group 'C' and 'D'. It was made clear that steps should be taken to ensure compliance with Section 4(4) Proviso (ii) of the Act as well as Section 3 and 4(5) read with Section 6 thereof. By way of other clauses, it was mentioned that urgent steps must be taken and in case of any lapse, the controlling authorities would be held responsible.

9. The 2nd G.R. which is dated 28th October, 2010, a copy of which is at Exh. 'F' (Page 32 of the paper book), it was mentioned inter-alia that even as the guidelines had been laid down in the matter of transfers to Tribal / Naxal affected areas, it was observed that even after the orders of

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transfers were issued, attempts were made to get them cancelled. Therefore, the directions were given to initiate disciplinary proceedings against the erring Officials. Similarly, a reference was made to the G.R. of 18th December, 2009 above referred to. But it was observed that even those directions were not being complied with. The Officers transferred to Gadchiroli District were not reporting for duty because of which the development of Gadchiroli District got adversely affected. It was, therefore, laid down that those Officers who would not join the duties at Gadchiroli within 10 days of the issuance of the transfer order, immediate action would be taken against them and they would be placed under suspension. The concerned Secretaries of the Departments would be personally responsible therefor. Certain other directions were given in order to facilitate achieving the said object and in that connection, one of the directions was to comply with the provisions of the Transfer Act.

10. I shall presently examine the provisions of the Transfer Act. But before I did that, it will be necessary to examine the facts set out in the OA to the extent necessary and the response of the Respondent in that behalf. The Respondent hereto is the State of Maharashtra through Principal Secretary, Public Works Department.



11. After setting out the facts which have already been noted herein above, the grounds on which the impugned order is assailed *inter-alia* are that the Applicant has worked in Tribal area only, for the last several years and as per a G.R. of 11.7.2000 (Exh. 'C' of the paper book), the Applicant claims to have become entitled to what has been described as choice posting. The said G.R. provides that those State Government employees, who worked in difficult conditions in a satisfactory manner for five years would become entitled to a choice posting. In that connection, a Circular of 7th January, 1991 has been referred to. As far as the Group 'A' and 'B' employees are concerned, the said G.R. provided that if they had functioned for two years in difficult Tribal areas, they would be entitled to the post of their choice thereafter. This is the gist of the said G.R. and it is not really necessary for it to be read verbatim. The Applicants are aggrieved by the fact that instead of giving them choice posting, they have been posted in Naxal affected Gadchiroli District.

12. According to the Applicants, a G.R. of 6th August, 2002, a copy of which is at Exh. 'D' to the OA is inapplicable because according to their reading of Clause

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5, they having crossed 50 years of age, their posting in such areas was, "barred".

13. Further, it is the case of the Applicants that in accordance with Clause 3 of the G.R. above referred to, the Respondent should have scouted for those young Officers who fell in the category of promotees and balance, if any, of the vacancies ought to have been filled up by those that did not complete 50 years of age. According to the Applicants, the Circular of 11.7.2000 would prevail over the G.R. of 6th August, 2002, and therefore, the impugned order of transfer deserved to be set aside.

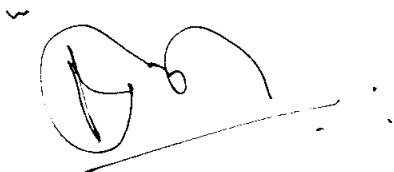
14. In so far as the G.R. of 18.12.2009, a copy of which is at Exh. 'E' referred to in the impugned order which deals with the situation arising out of vacancies in the sensitive Gadchiroli District, it is the case of the Applicants that the said instrument was valid only up to 31st January, 2010, and therefore, the same could not have been pressed in to the service in 2015 to transfer the Applicants. Further, the Applicants have assailed the Respondents for having not considered Para 3 of the said Circular which speaks about the proviso (i) or (ii) of Section 4(4) of the Transfer Act, which according to the Applicants exempted them from being transferred to Gadchiroli.

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15. The Applicants have tried to find fault with the impugned order on the ground that the competent authority, probably referring to the Transfer Act, was Minister In-charge could have acted in consultation with the Secretary of the Department. He should have been satisfied that the impugned transfer was necessary to be effected in view of the exceptional circumstance or special reason, etc. and that too, with the prior approval of the next higher authority. That having not been done, the impugned order which according to the Applicants did not refer to any particular special reason cannot stand. Further, to the knowledge of the Applicants, no prior approval of the Hon'ble Chief Minister was taken.

16. According to the Applicants, they being Group 'B' Gazetted Officers had not completed the normal tenure of three years as contemplated by the Transfer Act thereby attracting Section 4(5) of the Transfer Act and also Para 3 of the Circular of 18.12.2009 and then again, they have referred to their information that the Hon'ble Chief Minister did not approve of their transfers.

17. The Applicants have further assailed the impugned order relying on a Circular dated 28.10.2010 which according to them was not at all applicable to the

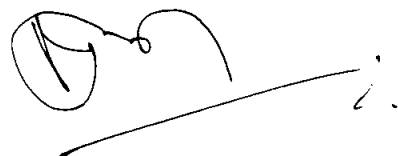


present facts, because that would come into play in the event of disciplinary proceedings, etc.

18. The Applicants have further set up a ground that the Respondent had not been notified as head of the department as per the Circular dated 26.11.2014, a copy of which is at Exh. 'G'. According to the Applicants as per Para 4 thereof, there had to be a Notification to that effect under Section 7 of the Transfer Act, which is not the case here.

19. Further, according to the Applicants, the impugned order has been made without following the mandate of the G.R. of 31.1.2014, a copy of which is at Exh. 'H'. The Civil Service Board had to be constituted and in as much as there was no reference to such a Board nor is there a reference to any meeting having taken place, the Government was in breach of the mandate of the Hon'ble Supreme Court in Writ Petition (Civil) No.82/2011, dated 31.10.2013.

20. The Applicants then alleged discrimination to assail the impugned order because according to them, they have been in one Division in Thane / Palghar District for a



period of 18 to 23 years while there were others, who were in the same District for a much longer period.

21. The Applicants have cited family reasons and hardship that would be caused to them were they to be transferred to Gadchiroli.

22. Before I proceed further, it will be pertinent at this stage to note that the above discussed grounds are the only grounds urged to assail the impugned order of transfer. There is no allegation of personal or institutional bias or any other vice affecting the impugned order. There is no allegation of factual or legal malice. If these allegations are not there, they are not there and if need be, the effect thereof may have to be considered at an appropriate stage.

23. There are at least three Affidavits-in-reply, all filed by Shri Phulchand S. Meshram, the Deputy Secretary in the office of Additional Chief Secretary, Public Works Department. The first one was to oppose the grant of interim relief and was probably, therefore, titled as short Affidavit-in-reply. The details of the various postings of the Applicants have been set out which facts have already been set out hereinabove. It is the case of the Respondents that

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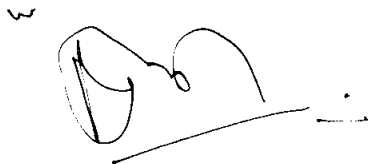
the Applicants have continuously worked in Public Works Circle, Thane at different places ever since they joined their first posting till the impugned order was issued. Let me call this as a ground of long stay. Another ground to justify the impugned order of transfer is that Shri Vivek Patil, MLA had made a complaint of corruption on 31.10.2013 against the Applicants. A similar complaint was made by one Shri Kundan Patil, the President of Central and State Schemes Control Committee, Taluka Wada, District Thane. The copies of the said complaints have been annexed to the first Affidavit-in-reply. There is a reference to the two Government Circulars of 18.12.2009 and 28.10.2010, copies whereof are at Exh. 'E' and "F" and which have already been discussed hereinabove. Provisions of Section 4(4) (proviso (ii)) have been referred to in justification of the issuance of the impugned orders of transfer. It is pleaded that the approval from the Hon'ble Chief Minister was accorded to the impugned transfer, after it was submitted to him. The need to fill-up the vacancies in Tribal areas has been emphasized. In the second Affidavit-in-reply, in Para 6, it is pointed out that the Applicants having worked in Public Works Circle, Thane ever since 1985 till date had never moved the Government for transfer all these years. In that Affidavit also, there is a reference to the complaints made by Shri



Vivek Patil and Shri Kundan Patil. This Affidavit-in-reply seems to rely on "exceptional circumstance" aspect of the matter as enshrined in the Transfer Act. It is further mentioned that as per the provisions of the Circular dated 26.11.2014, the Respondent has delegated the powers to all Chief Engineers (Civil) for which a Notification was issued on 15.1.2015. A copy thereof is annexed to this Affidavit-in-reply.

24. In Para 13 of the above referred Affidavit-in-reply, it is pleaded that the Government in this Department had not constituted Civil Services Board so far, but it would be constituted shortly. The Chairman of the Board would be Additional Chief Secretary of P.W.D. and the Member will be Secretary of the said Department. But according to the Respondent, sanction to transfer the Applicants at Gadchiroli had already been given by the Chairman of the Board.

25. Before I deal with the third Affidavit-in-reply, the facts preceding the same need to be briefly mentioned. It so happened that in this furiously contested matter, the original file was produced before me. It did quite clearly show that the proposal was cleared by the various authorities which clearance was required in accordance

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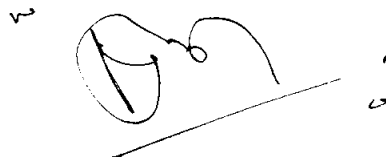
with it. However, equally true is the fact that even at this initial stage, this particular episode has at least quasi penal overtones, and therefore, there must be some convincing prima facie material for this Tribunal to act against the wrong, if any. That is called mens-rea in the field of Criminal Law. I do not think that on the basis of the material such as it is, I can form a prima-facie view of such an attempt having been made although the explanation given of the "secondary reason" is nothing but amusing. I do not want to add anything except that there cannot be, in the facts like these, anything like primary, secondary or tertiary reason. Either the grounds are there or not there. It will be for the judicial forum to examine the worth of the grounds urged and parties can never be allowed to rank the grounds urged as per their preference, at least not in the circumstances like these. I am conditioned by the present facts, and therefore, in this behalf, I prefer not to enter into any academic discussion. In this set of circumstances, therefore, I would be so inclined as to close this aspect of the matter and further hold that no action needs to be taken against anybody as far as the scoring off is concerned.

27. It is clearly established by the documents in the file that the impugned transfers had Chief Ministerial

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with the provisions of the Transfer Act. The approval of the Hon'ble Chief Minister was also there. The causes of the transfer namely the long tenure and the complaints were mentioned atop, but there was some scoring off. This aspect of the matter generated some heat at the Bar which of course is not unusual. I directed an Affidavit to be filed to explain this aspect of the matter. The said Deputy Secretary named above responded. In dealing with the point of the "eraser by an ink pen", it is pleaded that the two grounds had been mentioned as just noted. When the file was being processed, discussions were held with Additional Chief Secretary, PWD. There were three other Sectional Engineers, who were also transferred, and against them, there was no complaint and it was for that reason that the scoring off by ink was effected. However, as far as the Applicants were concerned, the fact of the, "complaints" was what has been described as, "secondary reason".

26. I am deeply conscious of the fact that if there is an attempt to tamper with the Court record or even the record that the Court was likely to peruse for being used for the purposes of the matter pending before it, then it is a serious matter. Nobody howsoever high or mighty can be allowed to get away lightly with an attempt to tamper

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approval. Pertinently the Applicants, for the better part of the life span of these O.As insisted that the approval of the Hon'ble Chief Minister was a sine-qua-non to clothe legality to the impugned orders and assailed them for having been made without the approval of the Hon'ble Chief Minister. But once the fact of the said approval was proved then in a last ditch attempt at clutching to any straw available, it was sought to be contended that there was nothing to show that the powers were delegate to the Secretary by the minister PWD. My attention was invited to the "Adhisuchana" (Notification) from Public Works Department dated 15.01.2015 (Exh. 'R-1a') by the Respondents. Therein there is a reference to Section 6 and 7 of the Transfer Act. For Sectional Engineers the competent authority is the Chief Engineer while for the purposes of Section 6 of the Transfer Act the immediately next higher authority is Additional Chief Secretary PWD/Secretary Road (रस्ते)/ Secretary (Construction i.e. बांधकाम).

28. In so far as the above discussed case of the Applicants and the Respondents is concerned, I find that as at the present moment this discussion is based on the presumption that the impugned orders are midterm transfers. If, however, it is ultimately held them not to be the mid-term transfers, then almost the entire sting of this



argument would have "gone". Secondly, even if I assume and I must emphasize that it is only an assumption that as per the contention of Shri Bandiwadekar the Learned Advocate for the Applicants Section 6 of the Transfer Act needed to be amended for matters like this one all the transfers cannot be brought to a grinding halt especially in view of the fact that regard being had to the nature of the original plea in this O.A. the belatedly conceived submission could as well be of convenience if not desperation. If there is a delegation of powers to a lower authority the higher authority being a source for such a delegation is not denuded of his original powers unless there are stipulations traceable to an appropriately higher source like an Act, Judgments etc to that effect. No such instrument or judgment has been cited to show that the Hon'ble Chief Minister lost his powers to consider and grant necessary approval for effecting the transfers. I must therefore hold that there is nothing even irregular far less illegal in the approval granted by the Hon'ble Chief Minister. The arguments to the contrary are rejected.

29. The above discussion, therefore, must have made it clear as to what the factual parameter is all about. There are certain factual deductions which are in fact capable of being drawn at this stage itself although in the

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discussion to follow, I shall examine this OA from every possible angle. It is very clear that the Applicants are in the Thane Circle for almost their entire career from 1985 or thereabout. The discussion based essentially on the provisions of the Transfer Act and the judgments in that field is in store. However, at this stage, it may only be noted that broadly speaking the case of the Respondents is that of long tenure as well as the complaints. Except for the recitals and the averments about the complaints in the Affidavits-in-reply, there is no other material to show the fact that the complaints were got examined and in that sense verified and some substance was found therein. The complaint of Shri Vivek Patil was of 31.10.2013 while the complaint of Shri Kundan Patil was received going by the seal of the Office on that very day. There were allegations against the Applicants of corruption. However, even without going into the finer details, I find that there is absolutely no material on record to show that there was even an attempt to examine the complaints much less has the truism thereof been established. It can safely be mentioned without the fear of any contradiction that the authorities did not even make any attempt to go into that aspect of the matter. The significance of the matter lies in the fact that the complaints do not by themselves become actionable until


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and unless, they are got diligently examined because if the rampant corruption affects the society quite seriously, it is equally true that by the very nature of things, the nature of the functions of the public servants is such as is prone to cause displeasure and irritation in certain section of the Society and it is possible that, that section of the Society may be what can be called "influential". Therefore, if it is necessary to root out corruption, it is equally necessary to make sure that the public servants, who discharge their duties are not hounded just because they might rub a particular section of the Society the wrong way. Therefore, in case of complaints that are sought to be made the basis for effecting transfers, if it appears that in the first place, they had almost become stale having been made in the latter half of 2013, if one were to consider the event of transfer in the year 2015, then the stale complaints by themselves may not constitute a good ground to visit the adverse consequences on the concerned public servants. Secondly, if the complaint was not verified and still the public servant concerned is made to suffer on account thereof, then for all practical purposes, it might tantamount to laying down an administrative precedent when a complaint by itself regardless of the proof of its contents would be sufficient to cause prejudice to the concerned public servant. That quite clearly is not the

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intent of any civilized system of public administration. In this behalf, one can usefully refer to a G.R. SRV-2014/MUS-34/Pra.Kra. 379/12, dated 11th February, 2015 which provides guidelines in the matter of effecting transfers and in Para 8 thereof, the issue of complaint is dealt with. It is made very clear that just because the complaints have been received, that by itself should be no reason to effect transfer of the concerned employee. It would be necessary for the superior authorities to examine the worth thereof and in case, there was some substance found therein, then the disciplinary proceedings should be commenced and may be the transfer could be one of the measures to be adopted. That in fact may be the case also in the proceedings under the Disciplinary and Appeal Rules as well. However, on unverified complaints, it would not be permissible to effect the transfers, and therefore, at this stage itself, I can safely conclude that as far as the ground of transfer is concerned, the Respondents have no case against the Applicants on the ground of complaints, and therefore, in the discussion to follow, I would not discuss this aspect any further. I hold that the ground of complaints against the Applicants fails and falls.

30. Another ground is that the Civil Service Board has not been constituted and in that connection as already

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mentioned above, reliance is placed on a G.R. of 31st January, 2014 (Exh. 'H', Page 36 of the paper book). If one were to trace the history preceding this G.R. as well as some averments in the Affidavits-in-reply herein, it would become very clear that the Hon'ble Supreme Court was moved with **Writ Petition (Civil) No.82/2011 (T.S.R. Subramaniam and others Vs. Union of India and others with Writ Petition (Civil) No.234/2011** and a Bench of His Lordship the Hon'ble Shri Justice K.S. Radhakrishnan and His Lordship the Hon'ble Shri Justice Pinaki Chandra Ghosh (dated 31st October, 2013) laid down certain important guidelines in so far as the public services are concerned. In that connection, in so far as the Police establishment is concerned, guidelines in the same line were laid down by the Hon'ble Supreme Court in what has come to be known as **Prakash Singh's** case **(Prakash Singh Vs. Union of India, W.P.(Civil) No.310/1996, dated 22.09.2006.** It appears that thereafter the State Government issued necessary instrument constituting the Board, but that remained practically ineffective till it was revived early this year. In that light, I have already noticed the averments in the Affidavit-in-reply dated 16.6.2015 in Para 13. I can proceed on the basis that the Board has either been recently constituted or is still in the process of being constituted. If there is a lethargy on the part of the



State Government in complying with the mandate of the Hon'ble Apex Court that is a matter of great regret and dismay. That it is a serious matter pregnant with equally serious consequences is a point that all concerned have to bear in mind. Having said that in so far as this pair of OAs is concerned, the issue would be as to whether the failure, assuming it were there is fatal to the very issuance of the orders of transfer. The mandate of the Hon'ble Apex Court has got to be followed in letter and spirit. The Boards have got to be constituted and then again in accordance with the law laid down by the Hon'ble Supreme Court, steps have to be taken. However, for all this period of time, the administrative exigencies are such that the transfers would have to be effected. That being the state of affairs, even as those who may have been guilty of being slow in implementing the directions of the Hon'ble Supreme Court may have to face the consequences, but then the transfers effected of the Applicants as well as all others as I can read the judgment above referred to and the G.Rs., etc. cannot be stopped. On that ground, therefore, I do not think, the Applicants can succeed. In that connection, Mr. Bandiwadekar referred me as and by way of a sample to an order in Higher and Technical Education Department, dated 25.5.2015. It appears from the said document that at State levels and various levels, the authorities have been

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constituted for the purposes relevant hereto. Mr. Bandiwadekar also relied upon **Harish Baijal's** case (supra) with a particular reference to Para 17 thereof in order to buttress his contention with regard to the significance of the reference to the Board before the competent authority finalizes the transfers. In **Baijal's** case (supra), **Prakash Singh's** case came to be referred to which related to Police establishment.

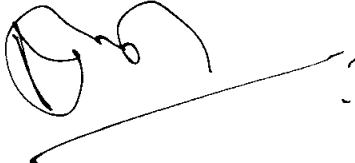
31. Now, as far as the present matters are concerned, as already mentioned above, it will not be possible for me to hold that transfers cannot be effected at all although those who are guilty of dragging their feet along may have to face the consequences.

32. Proceeding further, the inaugural ground in fact is that the Applicants have been working in Tribal Area almost since the beginning and now again, they have been transferred to an area which is not only Tribal but also Naxal affected. In that connection, they have referred to a Circular dated 11th July, 2000, a copy of which is at Exh. 'C'. According to them, they are now in fact entitled for what has been described as choice posting and Gadchiroli was certainly not of their choice. When I am on this aspect of the matter, it needs to be emphasized quite clearly that

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Maharashtra is probably the only State in which the transfer of the State Government employees is regulated by an enactment viz. the Transfer Act. I shall presently discuss some of its provisions which are relevant herefor. However, it will be quite pertinent at this stage to quote a passage from an unreported judgment of a Division Bench of Hon'ble Bombay High Court in **Writ Petition No.7960/2011 (Harish M. Baijal Vs. State of Maharashtra, dated 21st October, 2011.** In fact, Para 10 thereof needs to be fully reproduced in order to have a clear view of the legal position such as it is.

“10. We are, therefore, required to consider whether the order passed by the Tribunal calls for interference. It is well settled that transfer of a Government servant is an incident of service and the courts should not interfere with such transfer orders, ordinarily. A government servant holding a transferable post has no vested right to continue at a particular posting or at one place or the other. However, in the State of Maharashtra the transfer orders are governed by a special statute i.e. the Transfer Act and if the procedure, as set out in the said Act, is not followed while issuing the transfer order, such

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order would be unsustainable. Similarly, if an order of transfer suffers from malice or if it has been issued by way of victimization or by way of a penal action, the court would be justified in setting aside such orders. In the case of National Hydro-electric Power Corporation Ltd. Vs. Bhagwan [AIR 2001 SC 3309], the Supreme Court held that unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders, as though they were the appellate authorities substituting their own decision for that of the management. On the point of malice as the ground to interfere with the order of transfer, the Supreme Court in Somesh Tiwari's case (Supra) stated, inter-alia, thus,

“Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily in incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is

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proved. Mala fide is of two kinds-one malice in fact and the second malice in law.

The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. On the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”

33. It may be recalled that the issue of malice, etc. has already been adverted to briefly hereinabove. Therefore, the Tribunal has to scrutinize the record in order to judge the legality and validity of the impugned transfer order essentially on the touch stone of the law enshrined in the Transfer Act. If the State Government does not fall foul of the said provisions, then in accordance with the above extract, it is clear that the basic position of



the employer being the best judge of the requirement of posting of man-power will still be in-tact provided of course, it does not offend any of the provisions of the Transfer Act. Be it noted that the parameter laid down by the Hon'ble High Court in the above extract will have to be borne in mind in respect of each and every aspect hereof.

34. Returning to the factual feature under discussion, it is the case of the Applicants that in so far as the G.R. dated 6th August, 2002 (Exh. 'D'), the same cannot be used against them especially because they are now on the wrong side of 50. Now, reading both the G.Rs, I find in the first place that if the Applicants were so much insistent on their right to have a choice posting after two years or three years, then after the first G.R. was brought into existence in the year 2000, they could have taken steps to assert their right. Mr. Bandiwadekar, the learned Advocate for the Applicant told me that despite this right, the Applicants continued to be in the Tribal area without murmur and are now at least entitled to a choice posting and not a posting at Gadchiroli. I am unable to agree with the learned Advocate in this regard. When a particular right is being asserted avowedly relying on the instruments like G.Rs, then in that event, the past conduct though not conclusive but would still be relevant and the Tribunal will

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have to closely examine this aspect of the matter. Further, as far as the first G.R. (11.7.2000) is concerned, the language (Marathi) is such as to be directory and for guidance and to be used preferably as it were. It is not necessary for me to fully reproduce that G.R, but then the Marathi word, "देण्यात याव्यात" read alongside the words that these two words keep company with, would make the whole thing very clear from Para 4 of the said G.R. that it should be by and large the course of action to be adopted. Very pertinently, Section 4(5) of the Transfer Act itself provides some kind of a ceiling on the number of transfers i.e. 30% etc. which provision will be presently referred to. Therefore, can it be argued that while effectuating this G.R, it should be so construed as to override the duly enacted law. The answer must be in the negative.

35. Turning to the G.R. of 6th August, 2002 regarding the Naxal affected areas, it is in the first place a G.R. that provides encouragement to the Government servants and Officers to render service in Naxal affected areas. In the Government decision (शासन निर्णय) itself, it has been clearly mentioned that those are guiding instructions (मार्गदर्शक सूचना) and even otherwise much as one would like to expect a fool proof process and procedure of transfer and posting, but then unless the move violates the express provisions of the



Transfer Act, a scope has to be left for administrative maneuvering and I am not using this word in a derogatory sense. The exigencies of service conditions in each district in the State are an administrative reality of life, and therefore, even the adjudicatory body like this Tribunal can ill-afford to lose sight of this very basic aspect of the matter.

36. Therefore, I am unable to agree with Mr. Bandiwadekar, the learned Advocate for the Applicants that it is mandatory to post only those Officers who are in the category of having been promoted, or those below 50. By the very nature of things and in interpreting the language, it again is not compulsory that others cannot be transferred. As far as those that have crossed 50 years, as mentioned in Clause 5 of the said G.R, the Marathi word, "शक्यतो" would exemplify, in my view, the fact that it is not compulsory or mandatory but as far as possible those Officers who have crossed 50 may not be considered for a posting there at Gadchiroli. But to espouse a theory that the said transfer of such Officers is barred as apparently is the case of the Applicant, to my mind is inaccurate. Here again, having noticed the salient features of the present facts, it is not necessary for me to closely read each and every Paragraph of the said G.R. which runs into 8 closely printed pages. Suffice it to mention that by that reason



only, the impugned orders cannot be successfully challenged, and therefore, in my opinion, if the two instruments viz. Circular at Exh. 'C' and the G.R. at Exh. 'D' can be safely harmonized all attempts should be made to do so. I am unimpressed by the submission on behalf of the Applicants that the Circular must prevail over the G.R. But, I am not on any academic discussion in the field of interpretation of the Government instruments and I have to decide this OA on hard facts. I leave it at that.

37. staying with the issue of the Naxal affected area of Gadchiroli District, the Applicants have relied upon what is Exh. 'E' viz. a G.R. of 18.12.2009 which has already figured in the above discussion. The reading of the Applicants apparently is that the life-span of that G.R. was till the last date of 2009, and therefore, it can no more be pressed into service in seeking support for the impugned transfer orders. In fact, there are two Government instruments namely the one of 18th December, 2009 and the other one being dated 28th October, 2010 at Exh. 'F'. Now again, it is not necessary to read each and every line of these two G.Rs and reproduce them here. The gist of the matter is and it is common knowledge which needs no formal proof that the border district of Gadchiroli and in fact also Chandrapur and Gondia are riddled with socio

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economic problems and the Government naturally has to address itself to that kind of a situation. The difficulties have multiplied because of the Naxal menace. It is possible that in such circumstances, the public servants may not necessarily be very keen or happy in getting a posting there, and therefore, taking into consideration the administrative exigencies and requirements, the Government does and in fact has to regulate the transfer aspect of the matter by way of issuance of such Government instruments. Digressing for a moment, to mention a fact which is quite relevant, I find that in the object and reasons for enactment of the Transfer Act, the only reason apparently was that the aspect of transfers governed by executive instruments in field then did not yield results, and therefore, it was decided to have a duly enacted law.

38. If that be so, then in my view, in interpreting the G.Rs like these two, the judicial forum will have to show awareness to the object sought to be achieved thereby, if need be, even de hors the Transfer Act. What has been stated therein is that compliance should be made by the last day of the year 2009 and if the compliance was not made by 31.1.2010, then serious action would be taken. I do not think that this by any stretch of imagination can be

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so construed as to mean that after January, 2010, the circumstances giving rise to regulate the issue of transfer to Gadchiroli have ceased to exist. As a matter of fact, in my view, even without the Act and the G.R, it is not as if the Government was powerless to take such a decision in day to day running of the administration. For that if need be the legal procedures would have to be followed. In so far as the present facts are concerned, the issuance of the G.Rs further formalized those powers, but I do not think that circumstances have ceased to exist at the stroke of mid-night of 31.12.2009 or even 31.01.2010, and therefore, the same could not have been cited as a ground by the Government to transfer the Applicants to Gadchiroli. It is erroneous in my view to contend that the conditions obtaining in the year 2010 do no more obtain in 2015. It has to be a long drawn out toil, for administration to tackle the situation obtaining there and to insist on some hard evidence because of the lapse of five years to justify the move by the Government would be an approach too pedantic to be true and real.

39. The facts with regard to the compliance with the provisions of the Transfer Act and the approval of the Hon'ble Chief Minister have already been discussed in

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extenso hereinabove. That is not something that the Applicants can rave about.

40. In so far as the provisions in the Circular of 28.10.2010 (Exh. 'F') which provides for disciplinary proceedings against the Government servants if they failed to report at Gadchiroli, the Applicants' case is that, it is not applicable to them. Now, in my opinion, in the first place, this provision indicates the seriousness with which the Government wants to enforce the postings of the Officers and employees at Gadchiroli depending upon the needs there. It is not possible for me to comprehend as to why those postings should necessarily be construed as adverse. If the instruments under discussion are read in their entirety, it is easily possible to find that the employees who are of high caliber and ability can also be posted there. In case, the transfer is what in common administrative parlance is called, "by way of punishment", I should have thought that there would be clear language in that behalf which is absent in the case of the Applicants. If it was by way of punishment, then the concerned employee would have to seek his remedy under other set of rules and regulations which it is not necessary for me to go into, because they are not relevant for these OAs.

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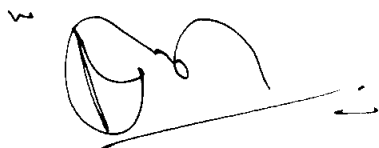

41. Discrimination is alleged in the sense that a large number of similarly placed personnel who have put in more number of years in the district than the Applicants have, in fact, not been transferred to Gadchiroli and in the manner of speaking, the Applicants have been singled out for special treatment. Really huge bunch of documents showing the said position has been annexed to the OA. I do not think it necessary to read their names and mention them over here. Let me proceed on the assumption that there are Officers who have been longer in and around Thane, than the Applicants have been.

42. I have already mentioned above that as observed by the Hon'ble High Court in the passage quoted above from **Baijal's** case, the Court will have to enforce the law enshrined in the Transfer Act. Remaining within those confines, it is clear that subject to those provisions, the powers of the employer to decide about the postings of the employees taking into consideration all aspects of the matter to the different destinations is something which the judicial forum would by and large not interfere with and in case, the employee concerned still invokes the jurisdiction of this judicial forum, he has to place on record the justifying circumstances for this judicial forum to intervene. Useful reference could be made in that

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connection to a judgment of the Division Bench of the then Chief Justice of Hon'ble Bombay High Court in **V.B. Gadekar Vs. MHADA, 2008 (2) Mh.L.J. 640** (Gadekar's case). In the present set of circumstances and remaining within the confines of the Transfer Act, I do not feel it necessary to employ the words like, "rare, exceptional, etc." in so far as the interference by the judicial process is concerned. If for example, there is sufficient material on record to indicate that there were vitiating circumstances warranting the judicial intervention like malice, bias, etc. being some of them, then the judicial forum may intervene or interfere somewhat unhesitatingly. But as already mentioned above, no such ground is urged far less established. In that view of the matter, merely because some other persons who according to the assessment of the Applicants ought to have been transferred before them, would after-all be the Applicants' view of the matter and only on their *ipse-dexit*, I do not think the judicial forum would strike down the impugned order of transfer. The principles of equality before law enshrined in the various Articles of the Constitution which are relevant for matters such as this one are sacrosanct and they must be enforced by the judicial forum which is the creature of the constitution or of a statute under the mandate of the Constitution. However, on facts, a case of discrimination

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has got to be made out so that the judicial forum could judge it on the anvil of whether it is hostile or it is just the self-serving estimate of the party concerned, because after-all and this is meaning, no disrespect to anybody, transfer to a place which the party concerned dislikes, he might consider it to be an instance of discrimination or even hostile discrimination. The record of these OAs do not permit me to conclude that just because several other personnel who may have been there since before the Applicants have not been touched that may not *ipso-facto* be a ground to impeach the impugned order of transfer. As I mentioned a short while ago, it could as well have been the fact that the Applicants might have been found more suitable for the onerous responsibility than the others, though there is no specific recital to that effect in the Affidavit-in-reply. But once the story of complaint falls and fails, then in my view, there is nothing to suggest that there is any hostility underlying the making of the impugned orders and here, I must repeat times out of number that it was for the Applicants, if they were so minded, to place on record the circumstances sufficient to impute motives for the impugned transfers. I remain thoroughly unimpressed by this aspect of the matter as well as, put forth by and on behalf of the Applicants. Therefore, in this set of circumstances, I cannot substitute

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my own views for the views of the concerned authorities that the Applicants could have been transferred to a nearer place rather than the distant Gadchiroli. The authorities are the best judges and if there is no vitiation vice capable of being found in their action, I would be slow to interfere.

43. The above discussion must lead me to conclude that on facts such as they are and even assuming that it was an instance of mid-term transfer to which the provisions of Transfer Act apply, still there is nothing worth taking exception to and this discussion, therefore, is sufficient to decide these OAs. However, in these fiercely contested OAs, there was profuse reference to case law to serve as guidance for the manner of exercise of jurisdiction and adoption of necessary course of action under the Transfer Act.

44. Now, at this stage, therefore, I must make it very clear that even as I proceed to the discussion of the aspect just referred to, it must be clearly understood that the case of the Respondent that the Applicants have been in the same Thane Circle for all these years from 1985 till 2015 has its own significance. Mr. Bandiwadekar, the learned Advocate for the Applicant made detailed submissions to press home the point that in the context of these facts, the


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terminus-a-quo would be the date from which the Applicants joined their present posting as Sectional Engineer which admittedly is for a period of less than three years (They being Group 'B' Officers), and therefore, according to Mr. Bandiwadekar, the Applicants were not due for transfer.

45. The Respondents in their pleadings and through the submissions of Mrs. Gaikwad, the learned Presenting Officer has countered these submissions. The P.Os including Mrs. Gaikwad advance their submissions at the Bar with great industry and sincerity. But then, it is not always that a clearer picture emerges from the pleadings which are naturally based on the instructions from the concerned Department. Reading of the Affidavit-in-reply would give an impression that the Respondents probably were so disposed as to canvass a case of they being fully within the ambit of the Transfer Act. They have repeatedly mentioned that the Applicants have been in the Thane Circle for all these years and in as much as the impugned transfers were made in the month of May 2015 in that line the provisions of Section 4(4) were most probably invoked. That would prima facie not be an instance of mid-term transfer because the said provision lays down that the transfers of Government servants would ordinarily be made

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only once in a year in the month of April or May. However, I must hasten to add that if the Applicants' case prevails that they having been there for just about two years were not due for transfer, then of course, a case that falls within the bracket of, "exceptional circumstances" or (special reasons) in Section 4(4), proviso (ii) will have to be established by the Respondents. There lies the significance of a finding with regard to the postings at various places within Thane Circle only over the period of more than 25 years. If all these postings are not to be clubbed as it were, then the case of the Respondents would be vulnerable and the Applicants would be able to carry the day. If the converse were to be true, then it would be the other way round. Therefore, the crucial issue is as to whether each and every posting at different places within Thane Circle should be or should not be counted for the purpose of computation of the duration under the Act. Be it noted clearly and without any hesitation that otherwise, the first blush impression is that the Applicants are there within Thane Circle for more than 25 years, and therefore, they cannot be heard to say that they were not due for transfer and if they were transferred in the month of May, 2015, then on the first principles under the Transfer Act, they cannot be held to have suffered. That would be regardless of whatever stand the Respondents have taken

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in their Affidavits-in-reply expressly or by implication. That is because in the ultimate analysis, it is for this Tribunal to determine the worth of the rival cases. The pleas and the arguments of both the parties are highly relevant, but the Tribunal has to enforce the law as any law has to be enforced by the presiding authority. This of course would be subject to the fact that the judicial authority would be slow in granting a relief for which there is no foundation in the plea. However, each and every reasoning does not have to be located into the pleadings because after-all, it is for the judicial authority to reason out its findings and in deserving cases even mould the relief.


46. Turning to the provisions of the Transfer Act to the extent, they were relevant hereto, as already mentioned earlier that at my request, Mrs. Gaikwad, the learned P.O. placed for my perusal the statement of objects and reasons of the Transfer Act. It would become very clear from the bare perusal of the long title of the Transfer Act itself that it has broadly speaking two limbs. The first one is regarding regulation of transfers of the Maharashtra Government servants which we are immediately concerned with herein and the other aspect is with regard to tackling the issue of delay in discharge of official duties.

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47. The statement of object and reasons is dated 6th December, 2003. To the extent relevant for my present purpose, the same needs to be reproduced.

“The Government had issued guidelines for general transfers of Government Employees from time to time. All such comprehensive guidelines were recently issued in a consolidated form under Government Circular, General Administration Department No.SRV-1097/C.R.20/97/XII, dated the 27th November 1997, and by Government Circular, dated the 7th February, 1998. However, it was noticed by the Government that these directions were not being followed scrupulously at various levels in the administration and were not having the desired effect.

Under the circumstance, to ensure strict compliance with the Government transfer policy, Government considered it expedient to make a suitable law for regulating transfers of all Government servants.”



48. The rest of the said statement pertains to the delay in discharge of duties aspect of the matter. It is, therefore, very clear that the legislature decided to enact a law regulating the transfers of the Government servants because the governmental directions contained in instrument therein mentioned were not being faithfully complied with. But I think, it can safely be taken that the ingredients of the transfers and the various factors that govern the same would be required to be borne in mind. It may not be necessary to exhaustively enumerate them. But then, it would basically fall within the parameter of ensuring smooth running of administration *inter-alia* by ensuring that the Government employees did not get their roots firmly entrenched so as to avoid deleterious effect, which of course is a matter of common knowledge. But at the same time, there must be security of tenure and the guarantee that there would not be any hardship caused to the Government servant by frequent transfers. There is no reason to believe that these factors though not specifically mentioned in the objects and reasons and in fact, no clear guiding light being there, even in the enactment should not be borne in mind.

49. Turning to the relevant provisions of the Transfer Act. Section 2 is the definition clause. Sub-clause (b)

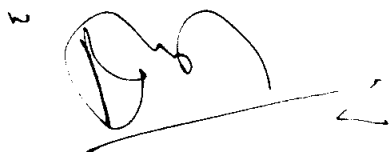
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thereof defines the word "Competent authority" in so far as these OAs are concerned to mean transferring authority specified in Section 6. Clause (g) defines the word, "Post" to mean the job or seat of duty to which a Government servant is assigned or posted. Clause (i) defines the word, "Transfer" to mean posting of a Government servant from one post, office or department to another post, office or department. Clause (j) defines, "Transferring authority" to mean the authorities mentioned in Section 6.

50. Section 3 prescribes the normal tenure for the employees of group 'A', 'B' and 'C' is three years. The proviso thereto are not relevant herefor and so also the Section 3(2). Section 4(1) reads as follows :

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

51. Section 4(4) has already been discussed hereinabove partly. The proviso thereto lays down inter-alia that if the transfers were to be made, "any time in the year in the circumstances as specified below, ... namely". It is probably this language which has coined the word, "mid-term transfer". Second proviso in effect lays down

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that if the transfer was found essentially to be made due to “exceptional circumstances” or “special reasons”, then the same will have to be recorded in writing and with prior approval of the next higher authority. Even this aspect of the matter has figured in the foregoing discussion. Section 4(5) lays down in effect that regardless of the provisions of Section 3 or of Section 4 itself, the competent authority would be empowered, “in special cases” after recording reasons in writing and with the prior permission of the immediately preceding transferring authority mentioned in the Table of Section 6 to effect the transfer, even before the completion of the tenure. Section 5(2) lays down that in order to make sure that the work of the Government did not get adversely affected on account of large scale transfers not more than 30% of the employees would be transferred from any office or department at a time in a year.

52. Section 6 *inter-alia* lays down a Table prescribing the competent transferring authorities to effect the transfers of the various groups of Government servants therein set out. Even this aspect of the matter figured in the earlier discussion. The second proviso reserves the right of the competent authority to delegate his powers generally or by a special order to any subordinate

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authority. Section 7 provides that a list would be published of the competent authorities.

53. I may now refer to the authorities cited at the Bar. It needs to be mentioned quite clearly, however, that at places more than one, the said judgments make it clear that the issue of transfer cannot be placed in a straight jacket and it is something which is fact specific.

54. Secondly, although in according a proper construction to the provisions of the Transfer Act and seeking guidance from the case law, it would appear that the words, "Post" and "Transfer" will have to be construed carefully. It is, however, quite natural that the issue of transfer has got a lot to do with personalized aspect. It is the person who in the event of a long stay establishes his roots and again it is a person who for obvious reasons needs protection by way of a safe-guarded tenure for reasons which are very obvious, and therefore, a mechanical and lifeless construction to the aspect of the transfer would not be a proper approach. No sweeping generalization can be made, but the fact remains that the approach of the judicial forum must be such as to give a meaningful effect to the Transfer Act in application of its principles to the facts. Technalities one way or the other

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should not be allowed to overweigh the essence of the matter.

55. **The State of Maharashtra and 2 others Vs. Dr. Mrs. Padmashree S. Bainade and 2 others (Writ Petition No.9781/2014, dated 17th December, 2014 (DB))** was a matter where the issue of recording of special reasons arose for consideration and it seems that there the Tribunal took a particular view on facts which was such that the Hon'ble High Court did not consider it proper to interfere with under Article 226 of the Constitution of India. For principles, Their Lordships were pleased to rely upon **Somesh Tiwari Vs. Union of India and others (2009) 2 SCC 592 and Harish Baijal (supra)**. It appears that Mr. Bandiwadekar referred to the said judgment in support of his contention that the impugned transfer orders have been issued without assigning reasons. The above discussion may be recalled. Some more discussion is in store and it would become clear as the discussion progresses that the conclusions envisaged by Mr. Bandiwadekar may not be such as to be entered in the present set of circumstances.

56. **O.A.1023/2014 (Shri Vijay A. Patil Vs. The State of Maharashtra and 2 others and one other OA,**

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dated 24.12.2014), a Single Bench of this Tribunal presided over by the Hon'ble Chairman laid down certain guidelines based whereon in fact, the Government issued regular instructions. That particular OA came to be decided on its own facts.

57. Mr. A.V. Bandiwadekar also referred me to **Writ Petition No.5642/2011 (Shri Bhausahab R. Andalkar Vs. The State of Maharashtra and others, dated 17th October, 2011 (D.B)**. That was a matter pertaining to the transfer of a Police Officer and it was emphasized by Their Lordships that the compliance with the directions of the Hon'ble Supreme Court in **Prakash Singh's** case (supra) has got to be made. Then on facts that particular Writ Petition came to be decided.

58. **Writ Petition No.3301/2010 (Shri Ramesh P. Shivdas Vs. The State of Maharashtra and others, dated 11th October, 2010** (Shivdas's case hereinafter) was relied upon at the Bar in fact by both the parties in support of their respective contentions. That judgment as well as the judgment in **Writ Petition No.8898/2010 (Shri Rajendra S. Kalal Vs. The State of Maharashtra and others, dated 30th November, 2010 (D.B))** (Kalal's case) and a later judgment in the matter of **Writ Petition No.7554/2013**



(Pradip B. Lonandkar Vs. The State of Maharashtra and others, dated 22nd November, 2013 provide useful guidelines in the matters like the present one. **Shivdas** (supra) was a matter regarding the transfer of Police Officers. The factual details may not be necessary to be set out. However, it appears quite clearly that the terms, "Transfer" and "Post" came up for judicial construction before the Hon'ble Bombay High Court. It has been observed that the sweep of the word, "Transfer" in the Transfer Act is so wide as to in fact produce results which may not have been envisaged by the framers of the law. The likely undesirable results have been set out in Para 8 of **Shivdas's** case (supra) and it was held that every posting within a particular territorial limit may not amount to transfer as envisaged by the Transfer Act.

59. In **Kalal's** case (supra), the issue of transfer arose in the context of the posting of a certain Officer from one office to another at Nashik itself. In Para 4, Their Lordships made it clear that the only issue for consideration was whether the transfer of the said party within the same office at Nashik could be called unfair, illegal or by way of punishment or stigma, so as to be successfully challenged. **Shivadas** as well as **Kalal** came to be rendered by the same Bench. The judgment of the



Hon'ble Supreme Court in **Somesh Tiwari** (supra) was also relied upon and before concluding, it was emphasized that internal transfers cannot be termed as transfers as the term is understood within the domain of the Transfer Act which could be brought before this Tribunal in the form of an OA.

60. **Pradip Lonandkar's** case (supra) was with regard to the transfers of Police Personnel. The issue was in the first place as to whether the directions amounting to transfer described by any other name should be considered as transfer. The Hon'ble Division Bench then referred to **Kalal's** case (supra) as well as **Shivdas's** case (supra) and held that the label or the nomenclature given to a particular order could not be held decisive or conclusive. If the result produced was that of transfer as understood within the domain of the Transfer Act, then it would be transfer. In Para 23, Their Lordships were pleased to note that in the case at hand there, the aggrieved Petitioners were within the city of Mumbai. Their status, pay and benefits remained unaffected and they were asked to perform the same duty, and therefore, the impugned order did not result in transfers. In Para 25, it was emphasized that in each of such cases, it had to be determined as to whether the order resulted in transfer as understood under



the provisions of the Transfer Act and then only consider, if the procedure thereunder had been complied with or not.

61. Before discussing some other judgments, I must make it clear that the principles laid down by the Hon'ble High Court in the above referred three judgments are that the shifting from one place to another within the same district or metropolis from time to time may not amount to transfer as the said term is understood within the province of the Transfer Act, so that one could seek its impeachment on the ground of non-observance of the procedure of the said Act. That observance would be necessary, if the impugned action amounts to transfer as understood by the provisions of the Transfer Act.

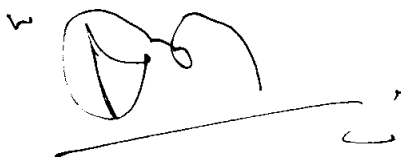
62. A Single Bench of this Tribunal presided over by the Hon'ble Chairman in deciding a batch of 8 OAs in OA 897/2014 and other (Sudam Vs. Commissioner of Police, Navi Mumbai and others, dated 19.12.2014) followed the judgment in the matter of **Pradip Lonandkar** and granted relief to the Applicants. Mr. Bandiwadekar, the learned Advocate for the Applicants referred me to another judgment of a Single Bench of the Hon'ble Vice-Chairman in **OA 69/2015 (Shri Rajveersingh S. Parmar Vs. The State of Maharashtra and 2 othes, dated 19.3.2015)**. I



have carefully perused that judgment. Therein, in fact **Pradip Lonandkar** (supra) was followed. Although the facts were such that the Applicant therein was going to retire within two months and the party concerned who was to replace him was already a recipient of the benediction of choice posting once, but that benefit was sought to be given twice over. That was held impermissible and thus the matter turned on its peculiar facts.

63. Mr. Bandiwadekar referred me to the judgment of the Hon'ble Chairman of this Tribunal in **OA 1023/2014 (Shri Vijay A. Patil Vs. The State of Maharashtra and 2 others along with other OAs, dated 24.12.2014)** (supra). The perusal of that particular order would show that therein also the issue of complaint against the Applicant and also compliance of the provisions of the Transfer Act was involved. Elaborate directions were given and the orders of transfers impugned therein were quashed and set aside. That was a matter that turned on its facts although for principles, one can take useful guidance therefrom.

64. Reliance was placed on the judgment in **Writ Petition No.7977/2012 (The State of Maharashtra Vs. Purushottam, dated 22nd August, 2012 (D.B))**. On facts therein, movement within the limits of Karad apparently



was held to fall within the definition of the word, "Transfer" in the Act. As I have mentioned already, it is the mandate of the Hon'ble High Court in several judgments that have been referred to hereinabove that generally and by and large these aspects of the matter are fact specific.

65. The above discussion must have made it clear that the postings of the Applicants in Thane Circle over a period of more than 25 years have been taken into consideration. Those observations need to be adverted to and I do not have to repeat them all over again. Shri Bandiwadekar contended that such clubbing is not permissible according to law. In support of that proposition, he referred me to a judgment of the then Hon'ble Chairman in OA 228/2007 with 2 MAs in the matter of **Shri Dharamraj D. Ombase Vs. The State of Maharashtra and one another, dated 29.11.2007.** The Hon'ble Chairman in that matter was pleased to follow an earlier judgment of the then Hon'ble Vice-Chairman in OA 260/2007 wherein it was held that such a clubbing was not envisaged by the Transfer Act. The Hon'ble Chairman recorded his agreement with the Hon'ble Vice-Chairman in that behalf. Now, apart from the fact that even that particular matter turned on its facts, I must observe with great personnel deference to the then Hon'ble Chairman

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and the Hon'ble Vice-Chairman, that as they say, much water has flown down the bridge since then. It is no doubt true that this Single Bench would have been bound by the judgment of another Single Bench of the then Hon'ble Chairman and in case, this Single Bench was of the view that it was not possible to agree with that view, then a mere dissent would not have been sufficient, but the matter would have been required to be referred to the Hon'ble Chairman for constituting a Larger Bench. That is not really necessary now in this matter because as elaborately discussed hereinabove all the crucial aspects are to be now decided on the basis of the judgments in **Shivdas**, **Kalal** and **Lonandkar's** cases. They are the judgments of the Division Benches of the Hon'ble High Court. It is, therefore, now not necessary for me to make any reference to a Larger Bench. It is very pertinent to note that in a few judgments above cited, reliance was placed on the law laid down by the Hon'ble Supreme Court in **Somesh Tiwari** (supra).

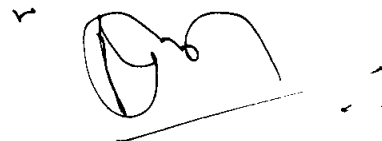
66. Mr. Bandiwadekar relied upon **Haribhau N. Khade Vs. The State of Maharashtra and 2 others (OA 546/2014, dated 16th September, 2014)** rendered by the learned Administrative Member of this Tribunal. Reading of Para 19 thereof would show that the judgments of the



Hon'ble High Court were distinguished on peculiar facts such as they obtained before the Hon'ble Administrative Member. I do not think, therefore, that it is necessary to examine the facts of that particular OA, especially because I can very safely follow the mandate of the Hon'ble High Court in the 3 judgments above referred to in extenso.

67. The learned P.O. Mrs. Gaikwad relied upon **OA 463/2013 (Shri Raju A. Bhamre Vs. The Superintendent of Police, Thane and one another, dated 20th March, 2014)** rendered by the Hon'ble Administrative Member of this Tribunal. That was an OA arising out of the transfer of a Police Personnel. The issue of an order having been made without recourse to the Police Establishment Board was involved and on certain other facts also, it was held against the employee and the order of transfer was upheld.

68. Mrs. Gaikwad, the learned P.O. then referred me to a judgment of the Division Bench of the then Hon'ble Chief Justice in **V.B. Gadekar Vs. MHADA, 2008(2) Maharashtra Law Journal 640 (supra)**. It was observed by Their Lordships in dealing with the issue of transfer of a State Government employee governed by the provisions of the Transfer Act in Para 7 that ordinarily the transfers



would be made in exercise of administrative requirements to meet with the exigencies of service and in public interest. Normally, it is a matter that does not fall within the domain of judicial scrutiny. Further, the expression, “exceptional circumstances” or “special circumstances” have to be read *ejusdemgeneris* provided the transfers may be made any time in the year in question. Other circumstances came to be set out from the said provisions of the Transfer Act. The discretion of the authorities in such matters have been held to have been reserved provided they acted within the domain of the said enactment.

69. It may be recalled that I have discussed the facts hereof, hereinabove and also extracted a passage from **Harish Baijal's** case (supra). The same needs to be recalled.

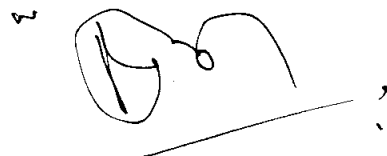
70. Mrs. Gaikwad, the learned P.O. then referred me to **Hardev Singh Vs. Union of India, AIR 2012 SC 286.** That in fact was a matter arising out of an issue of promotion and the observations of Their Lordships in Para 25 which Mrs. Gaikwad emphasized will have to be studied in that context. It is common knowledge that the



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instrument that govern the issue of promotion may, but need not necessarily be the same as in case of transfers.

71. Having considered all the authorities cited at the Bar and having taken guidance therefrom, I conclude by holding that the uninterrupted postings of the Applicants in Thane Circle for more than 25 years is not a matter which is innocuous. Therefore, if one could not consider the duration of their last posting only which was less than three years as the period to be counted from, then the impugned transfer order was not a mid-term transfer. It was effected in the month of May, 2015 and as to the question of the merit of the matter, I have discussed it sufficiently hereinabove and I am very clearly of the view that it is not possible for me to sit in judgment over the decision taken by the concerned authorities after the approval granted by the Hon'ble Chief Minister. That is not because I cannot do so, but because within my jurisdiction, I find no case for judicial interference or even intervention. This jurisdictional limitation is a very real concept of law, and therefore, in an undeserving matter, the judicial forum would not rush in where the administrators have already treaded. Examining it from any possible angle, even if it was an instance of mid-term transfer, as per the discussion earlier made, I hold that

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there was nothing worth taking exception to and the provisions of the Transfer Act were they applicable have not been offended. This is, therefore, not a matter where any relief can be granted to the Applicants.

72. For the foregoing, both the Original Applications stand hereby dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
03.08.2015

Mumbai

Date : 03.08.2015

Dictation taken by :

S.K. Wamanse.

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