

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.53 OF 2016

DISTRICT : PUNE

Shri Rababhau Sundarrao Morale)
Flat no.302, Sai Nirman Buidling,)
60 Ft. Road, Pimpale Gurav,)
Pune - 400 061.)...Applicant

Versus

1. State of Maharashtra)
Through Chief Secretary,)
Mantralaya, Mumbai - 400 032.)
2. Principal Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai - 400 032.)
3. The Collector,)
Collector Office Compound,)
Pune- 411 001.)
4. Shri. Balkrishna Pandurang)
Salunke, Circle Officer,)
Row Houses, Near Sangam Garden,)
Wada Road, Rajgurunagar,)
Taluka Khed,)
District Pune - 410 505.)

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Address for service of notice)
Same as above.)...Respondents

Smt. Punam Mahajan, Advocate for Applicant.

Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents 1 to 3.

Shri A.V. Bandiwadekar, Advocate for Respondent No.4.

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

DATE : 20.09.2016

JUDGMENT

1. The impugned orders of transfers dated 7.1.2016 and 14.1.2016 (Annexure A-3 and A-11, Pages 15 & 16 of the Paper Book (P.B)), the Applicant and the 4th Respondent both being Circle Officers were to swap places. The aggrieved Applicant is up before me by way of this Original Application (OA) thereagainst. By an interim order dated 19.1.2016 made by the then Judicial Member, status-quo is maintained.

2. I have perused the record and proceedings and heard Mrs. Punam Mahajan, the learned Advocate for the Applicant, Shri N.K. Rajpurohit, the learned Chief



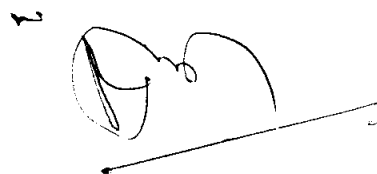
Presenting Officer for the Respondents 1 to 3 and Shri A.V. Bandiwadekar, the learned Advocate for private party Respondent No.4. The 1st Respondent is the State of Maharashtra through the Chief Secretary. The 2nd Respondent is the State in Revenue and Forest Department and the 3rd Respondent is Collector, Pune.

3. The Applicant joined the State Government as a Talathi on 3.6.1997. He was promoted as Circle Officer on 1.3.2012. Vide the order dated 2.3.2012, he was posted as Circle Officer, Chakan, Tq. Khed, District : Pune. It is the case of the Applicant that vide Government Resolution dated 31.1.2014, the transfers of Group 'B' and Group 'C' employees could be made after the approval of the Establishment Board-II and that was mandatory. A copy of the said G.R. is there at Annexure 'A-1-A' (Page 13-A of the P.B.). We are concerned therein with Clause (b) (Marathi 'ब'). The said Establishment Board-II comprises the Regional Head of the Department as the Chairman, the Regional Deputy Chief of the Department as Deputy Chairman in whose absence, the said position could be filled up by any Regional Departmental Head and the Establishment Officer of the concerned Department. I am not concerned with the other Boards for other cadres and categories of personnel. In the preamble, it has been set

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out that these Establishment Boards came to be constituted in deference to the Judgment of the Hon'ble Supreme Court in Writ Petition (Civil) No.82/2011, dated 31.10.2013 and in my opinion, this aspect of the matter provides to the said G.R. a sanctity which has its own peculiarity because it traces its origin to the law laid down by the Hon'ble Supreme Court. It came into operation on 31st January, 2014. There are some other clauses from 3.1 to 3.9 and from 4 to 6. I think I had better concentrated on Establishment Board-II which one is herein concerned with. Clause 3.2 lays down that the said Board should conduct its functions at its level. Clause 3.5 lays down that in so far as the recommendations for transfers were concerned, the provisions of "the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005" (Transfer Act) will be borne in mind and the background of the proposed transfers and actual facts should be brought to the notice of the Establishment Board. This, in my view is highly significant as would become clear from the discussion to follow.

4. Clause 3.9 lays down that it would be mandatory to comply with the provisions of the Transfer Act. Clause 5 mandates that in order to comply with the directions of the

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Hon'ble Supreme Court, the Administrative Departments and in so far as the Establishment Board-II is concerned, the Head of the Departments would issue orders.

5. Proceeding further in the light of the above background, the case of the Applicant is that by the order dated 21.7.2014, the private party Respondent No.4 was transferred from the post of Awal Karkun in the Office of the Tahsildar, Pimpri Chinchwad Haveli to the post of Circle Officer, Kanhersar, Tq. Khed, District Pune. That was a transfer as a special case effected by the Government in Revenue and Forest Department – Respondent No.2. The Applicant and the Respondent No.2 both ascribed to each other the influence in the field of politics. Bound as I am with the scope of this OA, I do not feel call upon to render any finding on this aspect of the matter and proceed further.

6. It must have become clear that Kanhersar as well as Chakan which the Applicant has been transferred from by one of the impugned orders fall within the same Taluka and District viz. Khed and Pune respectively. The dates mentioned hereinabove and those to be mentioned presently have got some significance and would need to be carefully noted.

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7. The Applicant as mentioned already is a Group 'C' employee and going by Section 3 which falls in Chapter II of the Transfer Act, it would become clear if Section 3(1) is read along with the 1st proviso that the normal tenure of the Group 'C' employees would be three years, but in so far as the Applicant and the 4th Respondent is concerned, they could be transferred from "posts held" on completion of two full tenures at that Office or Department to another Office or Department which in actual terms would mean that the normal tenure of the Applicant as well as the 4th Respondent would be six years and not three years. Both did not complete that tenure at Chakan and Kanhersar respectively and in that sense, therefore, the transfers herein impugned are the mid-tenure transfers.

8. Section 4(4) lays down that, "ordinarily" the transfers of Government servants would be made once in a year in the month of April or May and then, the proviso lays down as follows and I shall reproduce the said proviso along with Section 4(5) of the Transfer Act.

"4(5): Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:--

- (i) to the newly created post or to the posts which become vacant due to retirement,

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promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;

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

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

9. It is, therefore, very clear that reduced to actuality of the matter, neither the Applicant nor the Respondent No.4 could have been transferred from Chakan and Kanhersar respectively unless the procedure in the above quoted provision was complied with. Here, in this

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matter, it may be noted that the case of the Respondents is that such a procedure was followed and even the Ministerial or the Chief Ministerial approval was taken. Now, the cause assigned in the name of "special" or "exceptional" granting all latitude to all concerned is that the 4th Respondent addressed a brief communication to the Hon'ble Minister requesting for the transfer and ultimately, that request was accepted and the impugned orders were made. The said communication is at Page 16-F of the P.B. It was dated 8.4.2015. Quite pertinently, however, there is a communication from the Collector, Pune to the Government in Revenue and Forest Department dated 5.1.2016 wherein he mentioned *inter-alia* that for employees like the Respondent No.4, the normal tenure was six years and in so far as he was concerned, he was there at Kanhersar from 8.8.2014 and the Applicant was there at Chakan from 2.3.2012. As per the decision of the Establishment Board-II, both of them were ineligible for being transferred. The said letter was responded by the Government on 7.1.2016 (Page 16-N of the P.B.) whereby it was informed to the Collector, Pune that the Government had approved the 4th Respondent's transfer from Kanhersar to Chakan and arrangements should be made to post the Applicant elsewhere.



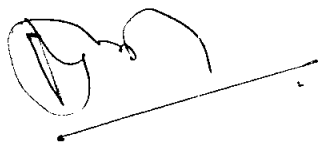
10. It was thereafter that on 16.1.2016, this OA was lodged in this Tribunal and on 19.1.2016 as already mentioned at the threshold, the then learned Judicial Member granted status quo.

11. Therefore, shorn of avoidable details, it is very clear that the only reason why the Applicant came to be transferred was to make way for the 4th Respondent whose transfer was also mid-tenure. The issue, therefore, would be that in the context of the present facts, can a transfer effected only to accommodate another employee could pass muster with the judicial test. It is no doubt true that this Tribunal's jurisdiction in such matters just like several others is of judicial review of administrative actions. It is not an appellate jurisdiction and the Tribunal does not just for the asking rushes in where the administration has already treaded without fear. However, with all those limitations, the point still remains that in this particular matter, one is governed by a duly enacted law which has got to be given effect to and if there is a tussle between the enforcement of law and the effectuation of abstract principles howsoever dated and aged they may be, the law must prevail.

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12. A Division Bench of the Hon'ble Bombay High Court in Writ Petition No.5465/2012 (Kishor S. Mhaske Vs. Maharashtra OBC Finance & Development Corporation and 2 others, dated 7th March, 2013) laid down the principle that in enforcing the provisions of the Transfer Act which is the statutory requirements the mid-term or premature special transfer has to be in accordance with law. It would be advantageous to read Para 7 of the said Judgment in Kishor Mhaske's case.

"7. We are satisfied in the case in hand that there was non-observance of the statutory requirements of the Act. The mid-term or premature special transfer has to be strictly according to law, by a reasoned order in writing and after the due and prior approval from the competent transferring authority concerned for effecting such special transfer under the Act. The exercise of exceptional statutory power has to be transparent, reasonable and rational to serve objectives of the Act, as far as possible, in public interest. Mandatory requirements of the provision under Section 4(5) of the Act cannot be ignored or bye-passed. The exceptional reasons for the special mid-term or pre-mature transfer



ought to have been stated in writing. Vague, hazy and meager expression such as "on administrative ground" cannot be a compliance to be considered apt and judicious enough in the face of mandatory statutory requirements. The impugned order of the transfer in the absence of mention of special and exceptional reasons was passed obviously in breach of the statutory obligations and suffers from the vices as above. Impugned order dated 30.05.2012 would ex facie indicate that merely because of request made by the respondent no.3 Shri Murar, the Petitioner was sought to be transferred pre-maturely to Raigad. It is therefore unsustainable for want of evenhandedness or fairness to the Petitioner Government employee concerned and we therefore quash and set aside the impugned order of transfer. This order will not preclude the respondent no.1 passing a fresh reasoned order in writing, of course as prescribed under the Act after prior approval order is obtained from the competent transferring authority and by following the mandatory requirements as prescribed under the Act. The Petitioner is allowed in above terms."



13. In this Tribunal, I had an occasion to deal with more or less the same issue in a common Judgment in OAs 396/2015 and 397/2015 (Shri Avinash P. Bhanushali Vs. State of Maharashtra and one another, dated 3.8.2015). In Para 32, I reproduced Para 10 from the Judgment of the Hon'ble Bombay High Court in Writ Petition No.7960/2011 (Harish M. Baijal Vs. State of Maharashtra, dated 21st October, 2011). The same needs to be reproduced herein as well.

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

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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."

14. In Para 47 thereof, I had an occasion to advert to the statement of objects and reasons of the Transfer Act to the extent it was relevant there and it is also relevant here. The said Para needs to be reproduced herein as well.

"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.

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“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.”

15. Very pertinently, the very enactment of the Transfer Act became necessary because of the fact that the instruments of comparatively lesser potency did not receive

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the kind of deference sincerity and seriousness from the concerned people and hence, the Act was brought into existence.

16. It is, therefore, quite clear that the Tribunal while enforcing the law enshrined in the Transfer Act, will have to show awareness to the idea behind the enactment of a regular Act to regulate the transfer aspect of the service conditions of the Maharashtra State Government employees. I have already mentioned above as to how a certain instrument discussed above was necessitated because of the Judgment of the Hon'ble Supreme Court. In Para 30 of **Bhanushali's** case, I discussed the Judgment of the Hon'ble Supreme Court in **Writ Petition (Civil) No.234/2011 as well with Writ Petition (Civil) No.310/1996, dated 22.9.2006 (Prakash Singh Vs. Union of India)**. One fall out of these two Judgments of the Hon'ble Apex Court was the establishment of the Establishment Board (**Subramaniam**) and a similar Board for Police Establishments (**Prakash Singh**). However, a perusal of these two Judgments would make it quite clear that the transfer aspect of the service conditions will be strictly in accordance with the law enacted by the legislature as well as the various instruments issued in order to achieve that object.

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17. Tested on the above touch-stone, I am quite clearly of the opinion that the transfer of Applicant when he was not really due for transfer just to accommodate Respondent No.4 would not pass muster with a reasonable quasi-judicial test.

18. It can quite certainly not be said that there is any exceptional or special reason such as the said phrases are understood in the context of the Transfer Act. It can quite surely not be said that this transfer is innocuous causing no prejudice to the Applicant. The Bench of the Vice-Chairman (SB) in **OA 69/2015 (Shri Rajivsingh S. Pawar Vs. State of Maharashtra and 2 others, dated 19.3.2015)** decided a similar case of mid-tenure transfer. The issue as to whether special reason or circumstance were constituted naturally fell for determination. All the personnel involved had not completed their tenure of three years. There the transfers were made after the approval by the Hon'ble Chief Minister. In Para 5, it was recorded that as per the notings, a particular party was transferred mid-term and mid-tenure in view of the choice posting aspect of the matter. Ultimately, this ground did not find favour with this Tribunal and the OA was allowed.



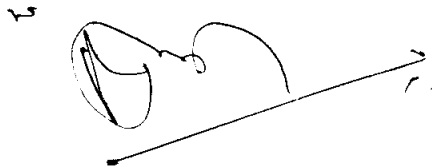
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19. The same fact of an employee having transferred in order to accommodate another one was one of the several aspects involved in **OA 1023/2014 (Vijay A. Patil Vs. State of Maharashtra and 3 others and other OAs, dated 24.12.2014) rendered by the Hon'ble Chairman** (see internal page 7(b) of the said Judgment). In Para 34 thereof, it was observed that although the power of transfer primary vests with the Government, but now the restraints provided by the Act must inform the manner of exercise of the said powers. Read as a whole, it would become clear that an order of transfer just to accommodate another one may not be legally supportable.

20. Section 1 (3) of the Transfer Act itself reads as follows :

“1(3): It shall apply to all Government servants in the State services including the All India Service Officers of the Maharashtra Cadre.”

The above provision read along with the case law above discussed would make it very clear that post enactment of the Transfer Act, the judicial task would be to effectuate the said provision and apply the principles therein to the facts.



21. It was submitted on behalf of the Respondents and more particularly, by Mr. Bandiwadekar, the learned Advocate for the 4th Respondent that the provisions of Transfer Act would not be applicable and a certain G.R. of 1995 would govern the present matter. That G.R. is on record at two places. Mr. Bandiwadekar in that connection relied upon an order made by the then Hon'ble Chairman in **OA 510/2012 (Sudhir P. Joshi Vs. The District Collector, Thane and one another)**. It was held in Para 15 that the provisions of the Transfer Act would not apply to the matters such as they were before the Tribunal in that matter. It needs to be noted that the official party Respondents in their Affidavit-in-reply have clearly and categorically mentioned that the Transfer Act is applicable in this OA. It really is as would become clear presently. I may, however, complete the discussion in that behalf.

22. Now, I have already mentioned above that I have drawn sustenance in arriving at the conclusion that I did inter-alia from an order of the Hon'ble High Court which was rendered after **Sudhir Joshi** (supra). For principles, I shall have an occasion presently to discuss a Judgment of the Division Bench of the Hon'ble Bombay High Court in **Writ Petition No.7554/2013 (Pradip Lonandkar Vs. State of Maharashtra and others and other Writ**

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Petitions, dated 22nd November, 2013). What is significant is the ratio of the Judgments of the Hon'ble High Court and that being the state of affairs, at this stage now, I do not think that binding nature of Sudhir Joshi's case would be as it was, when it was rendered. This is more particularly so because of the fact that there are subsequent High Court Judgments based whereon, there are later Judgments of this Tribunal which have held that the Transfer Act would be applicable. Even otherwise, if a particular aspect of the service condition is regulated by a duly enacted law, then in my view, unless there was some clear express, near express or easily capable of being implied justifying circumstance was there, the recourse to lesser source like a G.R. etc. in preference to a duly enacted law cannot be made. Therefore, in view of the Judgments of the Hon'ble High Court above referred to, later in point of time when compared with Sudhir Joshi's case, I am of the opinion that the provisions of Transfer Act would take precedence over any G.R. and even otherwise, the principles of interpretation have it that in the absence of a clear language to the contrary, the Act would prevail over the lesser instruments. That is the law and the question of grace, etc. would not arise. The contention to the contrary advanced by Mr. Bandiwadekar are, therefore,

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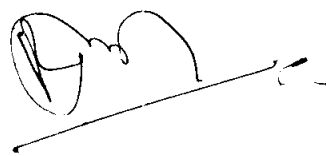
rejected and it is not at all necessary to make a reference to the larger Bench of this Tribunal.

23. Shri Bandiwadekar relied upon **Santosh N. Dalal Vs. State of Maharashtra, 2016 (1) MLJ 45 (DB)**. The principle which in all probability Mr. Bandiwadekar wanted to highlight as laid down in **Santosh** (supra) is that in such matters, the Courts and the Tribunals are not an appellate authorities over the decisions of the administrative authorities. I have already indicated above that I have already acted on this mandate. The point is with regard to the manner of exercise of jurisdiction. I must repeat that here, there is supporting material in the form of the Judgments of the Hon'ble High Court which show that the Tribunal must act in accordance with the provisions of the Transfer Act and there are Judgments which hold the view that if the only justifying cause for transfer is to accommodate another employee, that would not be something that could pass muster with the judicial anvil. The facts, after-all, are bound to differ. What is significant is the application of the principles of law. Significantly, in **Santosh Dalal** (supra) while mentioning that the Minister can correct the mistakes of the subordinate authority, Their Lordships have no doubt laid down that in the administrative functioning Ministers have a role to play




and the judicial and quasi-judicial authority would act with circumspection in dealing with such discretions exercised by the Ministers. However, the facts were clearly distinguishable in that matter. The point was that the transfers were necessary and the allegations of favouritism were required to be considered. However, it has not been laid down in **Santosh Dalal's** case that the Ministerial action is completely and totally immune from judicial scrutiny. The manner of exercising the power of judicial scrutiny is an equally important point to be considered, but then if it is canvassed to read in **Santosh Dalal** (supra) a mandate that even if the Ministerial functioning has resulted in the violation of the express provisions of enacted law, it should still pass muster with the judicial scrutiny that is not quite so and in that sense, in fact, the application of principles laid down in **Santosh Dalal's** case to the present facts would lead to the conclusion that I seek to draw because to repeat, it is the principles that are required to be applied while facts are bound to differ.

24. It needs to be recalled on facts that earlier not only did the Collector submit his report to say that both the Applicant as well as the 4th Respondent should not be transferred, but going by the plea in the OA post amendment, in Para 6.8.3 (II), it would become clear that

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even the Hon'ble Minister of State for Revenue had also opined against transferring the 4th Respondent and it was thereafter that the Hon'ble Minister gave oral directions for issuing transfer orders. From the file notings, copies of which are to be found on record, the reason why the Respondent No.4 should be transferred vice the Applicant have not been mentioned, and therefore, transfer only at the pleasure of any authority is unknown in the current civilized system of public administration. Once the law which has been enacted to take care of the service conditions of transfer holds the field, then the provisions of the Constitution which guard against oppression and discrimination come into play and no authority Executive or Judicial has a power to make light of such constitutional guarantees. When there are no reasons assigned and the only reason is the request for transfer, then it is not necessary for me to enter into the field of conjecture and imagination on what reasons could have been there to justify a transfer in such circumstances. But the fact remains that the act of transfer herein is quite unsupportable.

25. Another aspect of the matter is that according to the Respondents, the Head Quarter of the Applicant has not been changed as a result of the impugned transfers,




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and therefore, legally, it does not constitute transfer so as to successfully dispute the same. As already indicated above, this argument apparently is based on the fact that Chakan as well as Kanhersar are both within Khed Taluka of Pune District and that according to the Respondents is the reason why a movement from one place under the same Taluka and District to another would not constitute transfer.

26. Mrs. Mahajan, the learned Advocate for the Applicant on the other hand contended that the incumbent holding the post of Circle Officer has necessarily to remain at the place of his posting and there are villages under each Office exclusively within its jurisdiction. The incumbent has to take permission were he to leave the said place. Therefore, according to the learned Advocate, it is not as if the Head Quarter aspect of the matter would take the present facts out of the purview of the Transfer Act.

27. Now, the dictionary Clause Section 2 (i) of the Transfer Act defines the term, "transfer" to mean posting of a Government servant from one post, office or department to another post, office or department. A plain reading of the said provision would make it clear that the word "post" would exemplify the territorial position. It can never be

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studied divorced from the nature of duties that the incumbent performs. A Circle Officer is an Officer for the circle and the circle comprises a few villages. A few circles would then converge to bring into existence a larger entity under the higher authorities and so on and so forth, till such time and stage that all these posts taper in the Head of the District Executive viz. the Collector. However, if a Circle Officer has been transferred from one post to another, his jurisdiction is limited to the post of his transfer and it can never be said that he has not been transferred as per the Transfer Act. This is not an instance of shifting of an incumbent from one table to the another in the same Office or may be the same City although there are instances where even the transfer intracity were held to be transfers.

28. Writ Petition No.3301/2010 (Ramesh P. Shivdas Vs. State of Maharashtra and others, dated 11th October, 2010 (Shivdas's case) and Writ Petition No.8898/2010 (Rajendra S. Kalal Vs. State of Maharashtra and others, dated 30th November, 2010

were the authorities that dealt with the issue of transfer say for example from one table to another or one place to another intracity. Now, these Judgments were considered by a Division Bench of the Hon'ble High Court in the later



Judgment in **Pradip Lonandkar** (supra). Para 18 thereof is illustrative and educative and the whole of it in fact needs to be reproduced.

“18. To appreciate the contention that every single posting or asking a person for taking up a job or seat of duty or assignment attached a particular post, even within the Head Quarter would amount to transfer that we have carefully perused the Transfer Act, 2005. The Transfer Act, 2005 suggests that it is an Act to provide for regulation of transfers of Government servants and prevention of delay in discharge of official duties. The settled canon of interpretation of statutes and particularly the definitions of terms therein, would demonstrate that every single definition is required to be construed in the context. If the context requires otherwise, then, the construction of a definition would depend upon that context. So seen we do not find any confusion. The term “post” is defined so as to indicate the job or seat of duty to which the Government servant is assigned or posted. The term “transfer” definitely means “posting”. Therefore, it is posting of the Government servant



made, may be, from one post, office or department to another post, office or department. However, in individual cases and orders would have to be scrutinized and construed. The concept cannot be generalized as is sought by the learned counsel appearing for the Petitioners. One cannot say that every order entrusting duties other than one which are presently performed or other than a job presently held or seat to which the presently Government servant is assigned or posted, would amount to transfer necessarily. Everything would depend upon the facts and circumstances in each case. No general rule can be laid down. True it is that the Division Bench of this Court in one of the orders expressed an opinion that such definition of the word "Transfer" would present difficulty. In the ultimate analysis, it is for the Court to construe an order in individual case and if it amounts to transfer, then, to apply the provisions of the Transfer Act, 2005 so as to ensure that its object and purpose is fulfilled. That is plainly to protect the officers against frequent and in discriminate transfers. That is not creating a right to hold on to a particular post or job or seat. Therefore,

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even if the Division Bench has rightly expressed some reservations with regard to the definition of the term "transfer" as appearing in the Transfer Act, 2005 and held that it could be in a given case presenting some difficulty, we do not find that by expressing such opinion the Division Bench meant that in all cases if the words "entrustment", posting, assignment are used that would be a transfer. To repeat in each case, the peculiar facts and circumstances would have to be seen. It is not that every order using the term "entrustment" would necessarily mean a transfer. It is not necessary to clarify the legal concept in this case. In the present case, the order impugned before the MAT and before us cannot be terms as a Transfer at all. The fact that the post held by the petitioners has Executive (Police Station duty) and non-Executive duties attached to it is undisputed. That posting and assignment from one to other is common in the police force. That a police officer must be acquainted with administrative and managerial functions so also active policing is the intent in issuing routine posting orders. By such orders no prejudice is caused because there is no change of station and



Headquarter. That remains within Mumbai. The Pay, status, emoluments and perquisites remain the same. The person concerned suffers no loss. All that happens is that he reports to different superiors at the offices within the city / suburban limits. If promoted the promotional duties at a different office within these limits have to be discharged. The Act never intended such routine administrative matters being termed as Transfers.”

29. The above passage is self-explanatory and I do not have to say anything more about it. It is after-all a question of fact as held by Their Lordships, and therefore, in my view, application of that principle to the present facts studied in the context of the nature of the duties and the ambit of the territorial confines, the transfer of a Circle Officer from one place in the Taluka to another would come within the sweep of the Transfer Act. Para 22 of **Lonandkar's** case also needs to be reproduced.

“22. To our mind, therefore, the label attached or nomenclature cannot be decisive and conclusive. The Transfer Act, 2005 defines the term “transfer” in the manner referred to above

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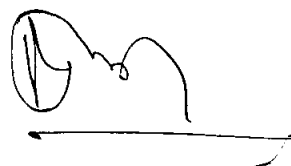


essentially because an innocuous exercise in a given case and being termed as shirting an officers from one office to another, change in assignment or job to be performed, would well amount to a transfer and may require interference if same has been done arbitrarily, malafide and frequently. It is to meet such eventuality that the Transfer Act, 2005 defines the term "transfer" in a peculiar way. It is not as if every shifting or posting order would necessarily amount to transfer. For it to amount as such, it would have to be demonstrated that it would amount to transfer because that is not an exercise as innocuous as terms, but falling within the parameters of the enactment. Therefore, we have already clarified that the definition of the term must be seen in the backdrop of a contextual interpretation and provisions of the Transfer Act, 2005. The interpretation which subserves the object and purpose of the enactment and carries it further and avoids any absurdity or ambiguity must be placed on the enactment. Therefore, we do not find the judgment rendered in the case of Ramdas Pandurang Shivdas (supra) would mean



that the Division Bench held that the meaning of the term “transfer” read with the definition of the term “post” is so wide that even change from one table to another would amount to transfer. That it may amount to transfer or somebody terms it as such is not what is decisive. It was merely an expression of opinion by the Division Bench and so as to invite attention of all concerned to the possible abuse or misuse of the protection given by the Transfer Act, 2005. Then, it is left to the Legislature of remedy the situation if so advised. The judgment of the Division Bench in the case of Shivdas (supra) read in its entirety does not indicate that the orders of the present nature and impugned in the present case would necessarily amount to transfer. That is not the ratio of these judgments. Once this conclusion is reached then the reliance on the judgments cannot assist the Petitioners.”

30. In fact, the fact that placement from one place to another may also amount to transfer was held by this Tribunal in **OA 780/2014 (Dr. Dilip Deshmukh Vs. State of Maharashtra, dated 10th October, 2014** (Paras 12, 43 and 44).


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31. The upshot is that the most important aspect of the matter as to special reason for transferring the Applicant is something on which the case of the Respondents is found severely wanting. One is not here concerned with the abstract principles of burden of proof or displacement of onus. Once it is established that it was a case of mid-term or mid-tenure transfer, then it is for the establishment to bring sufficient material on record to show that the facts in keeping with the letter and spirit of the law enshrined in the Transfer Act, except for the fact that the Respondent No.4 made a request to the Hon'ble Minister capable of being judicially accepted were there in existence. There is no other reason why the Applicant should have been as fallout made to suffer. If the Respondent No.1 wanted to transfer the 4th Respondent and the Applicant did not want to be transferred and in that event, it was necessary that there were facts and circumstances to justify the transfer of the Respondent No.4 to Chakan despite the reluctance of the Applicant. This is not to suggest that the Applicant's disposition towards transfer was the last word. In fact, it was not. But the point remains that in accordance with the mandate of the law enshrined in the Transfer Act, the authorities including the Hon'ble Minister should have adduced reasons and that too, special reasons and

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exceptional circumstances to justify the transfer. If that aspect of the matter is missing, then in my opinion, there is no way the Tribunal can avoid interference. Then, there is no question of experiencing any judicial or jurisdictional hitch. That aspect of the matter has been sufficiently discussed with the guidance and the binding Judgments of the Hon'ble Bombay High Court as well as this Tribunal. I would, therefore, conclude by holding that a case for quashing the impugned transfer orders is constituted.

32. The orders of transfer of the Respondent No.4 and the Applicant dated 7.1.2016 and 14.1.2016 stand hereby quashed and set aside. The Respondent No.4 and the Applicant shall continue to function as at present at Kanhersar and Chakan respectively till such time as they become legally due for transfer. The interim order of this Tribunal of 19.1.2016 gets merged herewith. The Original Application is allowed in these terms with no order as to costs.

Sd/- 
(R.B. Malik)
Member-J 20.9.16
20.09.2016

Mumbai
 Date : 20.09.2016
 Dictation taken by :
 S.K. Wamanse.