

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.419 OF 2017

DIST. :AURANGABAD

Bhaskar s/o Vasantrao Waghmare,
Age.51 years, Occ. :Service as Sectional
Engineer in the office of Executive Engineer,
Aurangabad Irrigation Division, Aurangabad
R/o House no. 825, MHADA Colony,
Murtijapur, Opp. Dhoot Hospital,
Aurangabad, Tq. And Dist. Aurangabad.

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APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Principal Secretary,
Water Resources Department,
Mantralaya, Mumbai 32.
2. The Executive Director,
Godawari Marathwada Irrigation
Development Corporation, Aurangabad.
3. The Chief Engineer and Chief Administrator,
CADA, Water Resources Department,
Aurangabad.
4. The Superintending Engineer / Administrator,
CADA, Aurangabad.
5. The Executive Engineer,
Aurangabad Irrigation Division,
Aurangabad, Dist. Aurangabad.--

RESPONDENTS

APPEARANCE :- Shri V.B. Wagh, learned Advocate for the
applicant.

: Smt. Priya R. Bharaswadkar, learned
Presenting Officer for the respondent no. 1.

: Shri S.B. Mene, learned Advocate for
respondent nos. 2 to 5.

CORAM : **Hon'bleShri B.P. Patil, Member (J)**
DATE : **21st December, 2017**

ORDER

1. The applicant has challenged the order dated 17.6.2017 issued by the res. no. 1 transferring him from the post of Sectional Engineer in the office of Aurangabad Irrigation Section no. 1, Aurangabad under Chief Engineer / Chief Administrator, CADA, Aurangabad to the office of Gadchiroli Irrigation Division, Gadchiroli under Chief Engineer, Water Resources Division, Nagpur, and prayed to quash and set aside the same, by filing the present Original Application.

2. The applicant was appointed as a Jr. Engineer by the Regional Selection Board, Aurangabad by the order dtd. 14.5.1990 and had recommended the name to the office of the res. no. 2. Accordingly, the applicant was posted on the post of Jr. Engineer at Kesapuri Camp, Majalgaon, Dist. Beed and he worked there till May, 2007. Thereafter he was transferred and posted in the Jalna District. On 3.9.2015 he was transferred from the office of the Executive Engineer, Jalna Irrigation Division to the office of the res. no. 5 i.e. in the office of the Executive Engineer, Aurangabad Irrigation Division, Aurangabad, Dist. Aurangabad. Accordingly,

the applicant had joined in the office of the Executive Engineer, Aurangabad Irrigation Division, Aurangabad on 21.9.2015. He has not completed his normal tenure of posting on the said post, but all of a sudden by the impugned order dated 17.6.2017 he has been transferred from the post of Sectional Engineer in the office of Aurangabad Irrigation Section no. 1, Aurangabad under Chief Engineer / Chief Administrator, CADA, Aurangabad to the office of Gadchiroli Irrigation Division, Gadchiroli under the Chief Engineer, Water Resources Division, Nagpur under.

3. It is the contention of the applicant that the impugned order is in violation of the various provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005). It is his further contention that neither the res. no. 4 nor the res. no. 5 sent any proposal for his transfer to the office of res. no. 3 regarding his transfer and therefore, the impugned transfer order dated 31.6.2017 issued by the res. no. 1 is illegal. It is his contention that, there is no single complaint against him in respect of his work, but he has been transferred abruptly before completion of his tenure in contravention of provisions of the Transfer Act, 2005. It is his contention that his daughter is studying in 4th standard and son is studying in

2nd standard at Aurangabad and his wife is undergoing treatment for heart ailment at Aurangabad, but the respondents has not considered the said facts while passing the impugned transfer order. Therefore, the applicant has challenged the impugned transfer order by filing the present O.A.

4. The res. nos. 1 to 5 have filed separate affidavits in replies and resisted the contentions of the applicant. It is their contention that the impugned transfer order has been issued in view of the provisions of the Transfer Act, 2005 and there is no violation of provisions of Transfer Act, 2005 and, therefore, they supported the impugned transfer order. It is their contention that there were complaints against the applicant regarding harassment to the female employees working in his office and those complaints have been enquired into by "Vishakha Committee". The "Vishakha Committee" submitted its report and recommended the transfer of the applicant. On considering the report of "Vishakha Committee" and seriousness of the complaints made against the applicant by the female employees working in his office, the respondents proposed the transfer of the applicant from Aurangabad Revenue Division and accordingly a proposal to that effect was placed before the Civil Services Board. The Civil Services Board accepted the said proposal and recommended the

transfer of the applicant in the office of Gadchiroli Irrigation Division, Gadchiroli under the Chief Engineer, Water Resources Division, Nagpur. In view of the said the res. no. 1 has issued the impugned transfer order dtd. 17.6.2017. It is their contention that news have been published in the newspaper regarding allegations made by the female employees working in the office of applicant and, therefore, the image of the Government has been damaged and, therefore, the applicant has been transferred accordingly. It is their contention that there was no violation of provisions of the Transfer Act, 2005 and therefore, they supported the impugned transfer order.

5. The applicant has filed rejoinder and contended that Vishakha Committee has no powers to recommend the transfer of the employees and it is constituted as per the directions of Hon'ble Supreme Court to see whether there is sexual harassment including such as unwelcome sexually determined behavior (without directly or by implications) as (a) physical contact and advances, (b) a demand or request for sexual favours, (c) sexually colored remarks, (d) showing pornography, (e) any other unwelcome physical verbal or non-verbal conduct of sexual nature, and on receiving such complaints the department has to refer the matter to the Vishakha Committee for enquiry in respect

of sexual harassment. It is his contention that on receiving the said complaints the Department has to refer the same to the Vishakha Committee. It is his contention that one Smt. Ashvini Vinayakrao Kanhadkar has filed complaint against the applicant on 10.8.2016 in respect of assignment of duties and service conditions. There was no allegation of sexual harassment. The res. no. 4 should not have referred the said complaint to Vishakha Committee, but he had wrongly referred the said complaint to the said Committee and the Committee has recommended his transfer, which is beyond the powers of the said Committee. It is the contention of the applicant that he has been transferred illegally. It is his contention that he is discharging work allotted to him and he never harassed the female employees working in his office. It is his further contention that the impugned transfer order has been issued illegally and, therefore, he prayed to allow the O.A. & quash the impugned order.

6. The respondents have filed sur-rejoinders and reiterated their contentions that the impugned transfer order has been issued on the recommendations of Vishakha Committee as there were complaints of serious nature against the applicant from the female employees. It is their contention that the impugned order has been issued after getting approval from the competent

transferring authority i.e. Hon'ble Minister of Water Resources Department and on the basis of recommendations of Civil Services Board dtd. 13.6.23017. Therefore, they supported the impugned transfer order.

7. I have heard Shri V.B. Wagh, learned Advocate for the applicant, Smt. Priya R. Bharaswadkar, learned Presenting Officer for the respondent no. 1 and Shri S.B. Mene, learned Advocate for respondent nos. 2 to 5 and perused the record.

8. Admittedly, the applicant was serving as a Sectional Engineer in the office of Executive Engineer, Aurangabad Irrigation Division, Aurangabad at the time of issuance of the impugned transfer order dated 17.6.2017. He was working there since 21.9.2015 and admittedly he was not due for transfer at the time of impugned transfer order dated 17.6.2017. Admittedly, it is a midterm and mid tenure transfer. There is no dispute about the fact that one female employee viz. Smt. Ashvini Vinayakrao Kanhadkar was working in the office of applicant and she has filed complaint against the applicant on 10.8.2016 in respect of assignment of duties and service conditions. The said complaint was referred to "Vishakha Committee" on 24.8.2016. "Vishakha Committee" enquired the matter and recommended the transfer of the applicant out of region. It is not much disputed that on

receiving the said report from Vishakha Committee the res. no. 1 called detailed information from res. nos. 2 & 3 and a proposal regarding transfer of the applicant out of region by letter dtd. 8.6.2017. The res. no. 4 has submitted the proposal to the res. no. 1 in that regard on 28.6.2017. It is not much disputed that prior to that the impugned transfer order dated 17.6.2017 has been issued by the res. no. 1. Admittedly, Hon'ble Minister for the Water Resources Department is the Competent Transferring Authority for midterm transfers of the Jr. Engineers and Sectional Engineers in view of provisions of sec. 6 of the Transfer Act.

9. Learned Advocate for the applicant has submitted that the impugned transfer order issued by the res. no. 1 is in violation of provisions of sec. 4 (4) proviso (ii) and 4 (5) of the Transfer Act, 2005. He has submitted that the applicant has not completed regular tenure at Aurangabad and he was working there since 20 months and all of a sudden he has been transferred out of region by the impugned transfer order without following the provisions of Transfer Act, 2005, by the res. no. 1. He has submitted that the Hon'ble Minister of Department is the Competent Transferring Authority to transfer the applicant before completion of his term with prior approval of next higher competent transferring authority. He has submitted that next higher competent

transferring authority is the Hon'ble Chief Minister in view of provisions of sec. 6 of the Transfer Act, but no approval of the Hon'ble Chief Minister has been obtained for the transfer of the applicant and, therefore, the impugned transfer of the applicant is in violation of sec. 4 (4) (ii) & 4 (5) of the Transfer Act.

10. Learned Advocate for the applicant has submitted that transfer of the applicant has been effected on the basis of recommendations of Vishakha Committee which enquired the complaints filed by the female employees against the applicant. He has submitted that the said Committee has no power to recommend the transfer of the applicant, but it has power to enquire the complaints regarding sexual harassment only. There was no complaint regarding sexual harassment against the applicant and therefore, the said Committee exceeded its power and therefore, the impugned order is not maintainable.

11. Learned Advocate for the applicant has further argued that the applicant has two school going kids and his daughter is studying in 4th standard and son is studying in 2nd standard at Aurangabad and his wife is undergoing medical treatment at Aurangabad for heart ailment, but these aspects have not been taken into consideration by the respondents while issuing the

impugned transfer order. Therefore, he prayed to quash the impugned transfer order.

12. Learned P.O. for res. no. 1as well as learned Advocate for res. nos. 2 to 5 have submitted that Smt. Ashvini Vinayakrao Kanhadkar and other female employees had filed complaints against the applicant regarding their harassment at the hands of the applicant in the office. Therefore, the Committee constituted as per the directions of Hon'ble Supreme Court viz. "Vishakha Committee" enquired into the said complaints of the female employees against the applicant and the said Committee found substance in the complaints filed by the female employees and, therefore, it recommended the transfer of the applicant out of region. On receiving the report dated 9.2.2017 from Vishakha Committee, it has been placed before the Civil Services Board by the res. no. 1. The proposal regarding transfer of the applicant out of region has been considered by the Civil Services Board in the meeting held on 13.7.2017 and the Civil Services Board recommended the transfer of the applicant from Aurangabad region to Nagpur region. The said recommendations of the Civil Services Board have been placed before the Hon'ble Minister of Water Resources Department. The competent authority accepted the recommendation of the Civil Services Board and approved the

transfer of the applicant from Aurangabad region to Nagpur region and accordingly the impugned transfer order dated 17.6.2017 has been issued by the res. no. 1. They have submitted that the provisions of sec. 4 (4) proviso (ii) & 4 (5) of the Transfer Act have been followed by the respondents while effecting the transfer of the applicant and there was no violation of any of the provision of the Transfer Act. There were serious allegations against the applicant in complaints filed by the female employees working in the office of the applicant about their harassment and, therefore, the applicant has been transferred from Aurangabad region to Nagpur region before completion of the tenure. There is no violation of provisions of Transfer Act and, therefore, they supported the impugned transfer order and prayed to dismiss the O.A.

13. On perusal of record, it reveals that the applicant is serving as a Sectional Engineer in the Irrigation Department at Aurangabad since 2015 & he is a Gazetted Officer in Group 'B'. He is not due for transfer when the impugned transfer order has been issued. In view of provisions of sec. 6 of the Transfer Act and more specifically in view of entry (b) in the Table, the Minister in-charge is the Competent Transferring Authority for the transfers of the Gazetted Group B Officer of State services. Admittedly the

impugned order is a midterm and mid tenure transfer order issued under the provisions of sec. 4 (4) proviso (ii) & 4 (5) of the Transfer Act. The said provisions are relevant and therefore the same are reproduced hereunder :-

“4. Tenure of transfer.

- (1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.
- (2) The competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year.
- (3) Transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalized by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be:

Provided that, any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.

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

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

- (i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;
- (ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority;
- (5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior +[approval of the immediately superior] Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post.”

14. On going through the said provisions, it is crystal clear that for making midterm and mid tenure transfers in view of provisions of sec. 4 (4) and 4 (5) of the Transfer Act, it is incumbent on the competent transferring authority to record the exceptional circumstances or special reasons in special cases in writing and with a prior approval of the immediately superior or next higher transferring authority given in the Table under Sec. 6 of the Transfer Act may transfer Govt. servant before completion of his tenure of his post. In view of table given under sec. 6 of the Transfer Act, the next higher / immediate superior Transferring

Authority is Hon'ble Chief Minister. Therefore the Competent Authority is Hon'ble Minister of the concerned Department may make the transfer of Gazetted Group 'B' officers like the applicant due to exceptional circumstances or special reasons after recording reasons in writing and with the prior approval of the next superior transferring authority i.e. Hon'ble Chief Minister as provided u/s 4 (4) proviso (ii) & sec. 4 (5) of the Transfer Act. It is material to note here that before making the transfers, the recommendations of the Civil Services Board is necessary and on the recommendations of the Civil Services Board, the Competent Transferring Authority has to make the transfer of the Gazetted Government Officers in Group 'B'.

15. In the light of above said provisions, I have to examine whether the provisions of the sec. 4 (4) & 4(5) had been followed by the respondents while issuing the impugned transfer order. The Government has constituted Civil Services Board for the transfers of the employees / Officers working under Water Resources Department. In that regard the Govt. has issued G.Rs. dtd. 29.8.2015 & 16.9.2015. On going through the said G.Rs., it reveals that, for transfers of the Govt. Officers out of Corporation, the Civil Services Board comprising of Chief Engineer & Joint Secretary, Water Resources Department, Joint Secretary / Deputy

Secretary, Water Resources Department and Joint / Deputy Secretary of G.A.D. has been constituted. The said G.Rs. are at page nos. 8 to 18 of the Annexure 'B' attached with sur-rejoinder filed at page 101 onwards.

16. The Govt. has delegated the powers of transfers of Gazetted Group B Officers in view of second proviso of sec. 6 of the Transfer Act to its subordinate authority and accordingly issued Circulars dated 25.4.2016 and 2.8.2016 which are at Annex. A along with the affidavit in reply of res. no. 1 filed by Shri Iqbal Singh s/o Man Singh Chahal, Secretary, Water Resources Department. On perusing the same, it reveals that, the Government has delegated the powers of the Minister In-charge of the Water Resources Department regarding transfers of Gazetted Officers in Group B to the Managing Director and Secretary of the Irrigation Department so far as general transfers are concerned, but the powers to make transfers of Gazetted Group B Officers in view of sec. 4 (4) and 4 (5) had been retained with the Minister in-charge of the concerned Department. Accordingly, the Minister in-charge of the Water Resources Department has powers to make transfers of the Gazetted Officers Group B in view of sec. 4 (4) & 4 (5) of the Transfer Act in consultation of the Secretary of the concerned Department. This fact has been admitted by the

respondents and this fact is evident from the recital in the proposal for transfer of the applicant dtd. 13.6.2017. Shri Iqbal Singh s/o Man Singh Chahal attached with the sur-rejoinder filed at page no. 101 onwards.

17. On going through the record produced by the respondents, it reveals that, on the basis of the complaints received from Smt. Ashvini Vinayakrao Kanhadkar dated 10.8.2016 and on the basis of the enquiry report of the Vishakha Committee, which enquired into the complaints of Smt. Ashvini N. Manhadkar and other female employees filed against the applicant, a proposal to transfer the applicant outside the Aurangabad region has been made and it was placed before the Civil Services Board consisting of 3 Members, on 13.6.2017. On perusal of affidavit in reply of res. no. 1 filed by Shri Iqbal Singh s/o Man Singh Chahal, Secretary, Water Resources Department, it reveals that, said proposal was placed before the members of the Civil Services Board by circulation. Shri Lokhande, Joint Secretary (Admn.), Water Resources Department, Smt. Kulkarni, Deputy Secretary (services) of G.A.D. put their signatures on it on 13.6.2017 and Shri Pokale, Chief Engineer and Joint Secretary, Water Resources Department had signed on the said proposal in the capacity of Chairman of the Board, but below his signature he

has put date 12.6.2017. This fact creates a doubt as to whether the said proposal has really been placed before the Civil Services Board on 13.6.2017 as stated by Shri Iqubal Singh Chahal in his reply. On the contrary, it shows that Shri Pokhale has signed the proposal in the capacity of Chairman of the Civil Services Board, on 12.6.2017, while other Members signed it on 13.6.2017. It creates a doubt about the decision of the Civil Services Board recommending the transfer of the applicant out of Aurangabad. The record shows that on 13.6.2017 the proposal for transfer has been placed before the Hon'ble Minister along with recommendation of the Civil Services Board and the concerned Minister has put his signature on the said proposal on 17.6.2017 and thereafter the impugned transfer order has been issued on 17.6.2017. This shows that after approval of the proposal by the concerned Minister of the Water Resources Department, the same has not been placed before the next higher / immediately superior transferring authority i.e. Hon'ble Chief Minister for his approval for the midterm and mid tenure transfer of the applicant as provided under the provisions of sec. 4 (4) & 4 (5) of the Transfer Act. No prior approval of the next higher / immediately superior transferring authority has been taken as required under sec. 4 (4) & 4 (5) of the Transfer Act. Therefore, the impugned order issued

without approval of the next higher / immediately superior transferring authority cannot be said to be legal.

18. It is material to note that the res. no. 1 has issued letter dtd. 8.6.2017 addressed to the res. nos. 2 & 3 and directed them to send a proposal for transfer of the applicant out of Aurangabad region. Accordingly the res. no. 4 the Superintending Engineer / Administrator, C.A.D.A., Aurangabad sent a proposal on 28.6.2017 for transfer of the applicant outside the Aurangabad region, but before reaching the said proposal, the res. no. 1 has issued the impugned order dd. 17.6.2017 in haste, without waiting for the proposal from the res. Nos. 2 & 3 for transfer of the applicant.

19. Admittedly, the "Vishakha Committee" has enquired into the complaints filed by the female employees against the applicant and submitted its report dtd. 9.2.2017 and in the said report "Vishakha Committee" has recommended transfer of the applicant outside Aurangabad region. In fact, it is none of the business of Vishakha Committee, which is constituted in view of G.R. dated 4.10.2017 to propose transfer of the applicant. As per said G.R., if any employee is found guilty in the enquiry in the complaints filed by the female employees, then the said Committee has to submit a report to the disciplinary authority and then the disciplinary

authority has to take disciplinary action against the concerned employee. In the instant case, the respondents had taken the recourse to transfer the applicant on the basis of the report of "Vishakha Committee". No doubt, the respondents have power to transfer the applicant before completion of his tenure on administrative ground, provided that they should record the reasons in writing to that effect and follow the provisions of sec. 4 (4) & 4 (5) of the Transfer Act. In the instant case, the respondents have not followed the provisions of sec. 4 (4) & 4 (5) of the Transfer Act, while making the impugned transfer of the applicant. The competent authority had not recorded the reasons and exceptional circumstances in writing for effecting transfer of the applicant. Not only this, but, approval of the next higher / immediately superior transferring authority has not been obtained for making the transfer of the applicant. Therefore, impugned transfer order of the applicant is not legal one.

20. Learned P.O. has submitted that, in view of notification dtd. 2.8.2016 the competent authority for transfer of the Gazetted Group B Officer has been notified and powers of transfers have been delegated to the authorities mentioned in the column no. 4 & 5 of the table 'b' mentioned therein. She has submitted that the next higher / immediately superior transferring authority to

approve the transfer the Govt. Officers in Group B has been mentioned under rule 6 in column no. 'b' of the Table and accordingly the Minister of Water Resources Department is the next higher / immediately superior transferring authority to approve the transfer recommended by the competent authority. She has submitted that, since Hon'ble Minister is the next higher / immediately superior transferring authority to approve the proposal for transfer under sec. 4 (4) & 4 (5) of the Transfer Act, the approval given by Hon'ble Minister in this case is legal one and, therefore, the impugned order is legal.

21. I have gone through the provisions of sec. 4 (4) & 4 (5) of the Transfer Act. The said provisions nowhere provide regarding delegation of powers of approval of next higher / immediately superior transferring authority as provided U/s 4 (4) & 4 (5) of the Transfer Act. On the contrary, the second proviso to sec. 6 empowers the competent authority to delegate its powers of transfer to any of his subordinate. On perusal of G.R. dated 2.8.2016, it reveals that, Hon'ble Minister of Water Resources Department is a Competent Transferring Authority for the transfer of Gazetted Officers in Group B and Officers of Group A having pay scale less than Rs. 10650-15850. It further reveals that the powers of Hon'ble Minister regarding general transfers of Group B

Gazetted Officers having pay scale of Rs. 9300-34800 and grade pay of Rs. 4400/- & above had been delegated to Managing Director and Secretary and the powers of transfers of those Officers in view of sec. 4 (4) & 4 (5) of the Transfer Act has been retained with the Hon'ble Minister. Therefore, it cannot be said that Hon'ble Minister is a next higher transferring authority as mentioned in sec. 4(4) & 4(5) of the Transfer Act for giving approval to the midterm and mid tenure transfers of Gazetted Group B Officers. Therefore, I do not find force in the submissions advanced by the learned P.O. in that regard.

22. No doubt, the concerned competent authority has power to make transfer of the Govt. Officers in special cases and due to exceptional circumstances after recording reasons in writing and with prior approval of immediately superior or next higher transferring authority as provided under sec. 4 (4) & 4(5) of the Transfer Act. No doubt, the respondents have powers to transfer the applicant, if complaints of serious nature has been filed against him, in the public interest and on account of administrative exigency, but before making such transfer order they have to follow the provisions of sec. 4 (4) & 4 (5) of the Transfer Act. In the instant case the respondents have not followed the provisions of sec. 4 (4) & 4 (5) of the Transfer Act.

They made the transfer of the applicant without following the due provisions of Law. They have not recorded the reasons in writing while effecting the impugned transfer of the applicant and they have not obtained prior approval of immediately superior transferring authority as mentioned in the table under sec. 6 of the Transfer Act, 2005. Therefore, in my view, the impugned transfer order is in contravention of the provisions of sec. 4 (4) & 4 (5) of the Transfer Act, 2005 and, therefore, it requires to be quashed and set aside by allowing the present O.A.

23. In view of discussion in foregoing paragraphs, the O.A. is allowed and the impugned order dated 17.6.2017 is quashed and set aside. The respondents are directed to repost the applicant on his original posting and issue necessary order in that regard. There shall be no order as to costs.

MEMBER (J)