

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 597/2020****WITH CIVIL APPLICATION No.234/2020 (S.B.)**

Applicant: - Arvind Laxman Hinge,
Aged about 39 years,
Occupation Service,
R/o Kamptee, District Nagpur.

-Versus-

- Respondents:**-1. State of Maharashtra,
through its Additional Chief Secretary, Revenue &
Forest Department, Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Nagpur Division, Old Secretariat
Building,
Civil Lines, Nagpur.
3. The Collector,
Civil Lines, Nagpur.
4. Shri Ganesh Jairam Jagdale,
Tahsildar, Tahsil Office,
Sindewashi, District Chandrapur.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.

Shri A.M. Ghogre, P.O. for respondent nos.1 to 3.

Shri F.I. Khan, Advocate for respondent no.4.

WITH

ORIGINAL APPLICATION No. 598/2020
WITH CIVIL APPLICATION NO.235/2020 (S.B.)

Applicant: - Miss Swapnali Dilip Doiphode,
Aged about 30 years,
Occupation Service,
R/o Saiprasad Apartment,
Behind Janta College,
Malkapur, District Buldana.

-Versus-

Respondents:-1 State of Maharashtra,
through its Additional Chief Secretary, Revenue &
Forest Department, Mantralaya, Mumbai-32.

2. The Divisional Commissioner,
Amravati Division, Amravati.

3. The Collector,
Buldana, District Buldana.

4. Shri R.U.Suradkar,
Tahsil Office, Telhara,
District Akola.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.

Shri A.M. Ghogre, P.O. for respondent nos.1 to 3.

Shri S.N. Gaikwad, Advocate for respondent no.4.

WITH

ORIGINAL APPLICATION No. 599/2020
WITH CIVIL APPLICATION NO.236/2020 (S.B.)

Applicant: - Dr.Sheetal Ramakant Rasal,
Aged about 37 years,
Occupation Service,
R/o Tahsildar Quarter,
Nandura Road,
Khamgaon, District Buldana.

-Versus-

Respondents:-1.State of Maharashtra,
through its Additional Chief Secretary, Revenue &
Forest Department, Mantralaya, Mumbai-32.

2. The Divisional Commissioner,
Amravati Division, Amravati.

3. The Collector,
Buldana, District Buldana.

4. Shri Atul Patole, Tahsildar Dharni,
Tahsil Dharni, District Amravati.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.

Shri A.M. Ghogre, P.O. for respondent nos.1 to 3.

Shri S.N. Gaikwad, Advocate for respondent no.4.

WITH

ORIGINAL APPLICATION No. 600/2020
WITH CIVIL APPLICATION NO.237/2020 (S.B.)

Applicant: - Udaysingh Umraosingh Rajput,
aged about 56 years,
Occupation Service,
R/o "SIPNA No.1," Government Quarters,
In front of Dayasagar Hospital, Camp, Amravati.
Tahsil and District Amravati.

-Versus-

- Respondents:**-1. State of Maharashtra,
through its Additional Chief Secretary,
Revenue & Forest Department, Mantralaya,
Mumbai-32.
2. The Divisional Commissioner,
Amravati Division,Amravati.
3. The Collector, Amravati.
4. Shri Ranjit B. Bhosle, R/o "SIPNA No.2,"
Government Quarters, Government Girls High
School Chowk, Camp, Amravati.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.

Shri A.M. Ghogre, P.O. for respondent nos.1 to 3.

Shri S.N. Gaikwad, Advocate for respondent no.4.

WITH

ORIGINAL APPLICATION No. 601/2020
WITH CIVIL APPLICATION NO.252/2020 (S.B.)

Applicant: - Priti w/o Mangesh Dudulkar,
Aged about 44 years,
Occupation Service,
R/o Plot No.96, Shesh Nagar,
Kharbi Road, Nagpur.

-Versus-

- Respondents:**-1. State of Maharashtra,
through its Additional Chief Secretary, Revenue &
Forest Department, Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Nagpur Division, Old Secretariat Building,
Civil Lines, Nagpur.
3. The Collector,
Civil Lines, Wardha.
4. Shri Sanjay Shivaji Nagtilak,
Tahsildar Chimur, District Chandrapur.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.

Shri A.M. Ghogre, P.O. for respondent nos.1 to 3.

Shri G.N. Khanzode, Advocate for respondent no.4.

WITH

ORIGINAL APPLICATION No. 602/2020
WITH CIVIL APPLICATION NO.238/2020 (S.B.)

Applicant: - Shri Kunal Subhash Zalte,
Aged about 34 years, Occ: Service,
R/o Tahsildar Niwas, Chappanwadi , Yavatmal, District
Yavatmal.

-Versus-

Respondents:-1. State of Maharashtra,
through its Additional Chief Secretary, Revenue &
Forest Department, Mantralaya, Mumbai-32.

2. The Divisional Commissioner,
Amravati Division, Amravati.

3. The Collector,
Buldana, District Buldana.

4. Rahul Madhukar Tayade,
R/o Tahsildar Quarters,
Nandura , District Buldana.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.

Shri A.M. Ghogre, P.O. for respondent nos.1 to 3.

None for respondent no.4.

WITH

ORIGINAL APPLICATION No. 603/2020
WITH CIVIL APPLICATION NO.239/2020 (S.B.)

Applicant: - Kranti d/o Kashinath Dombe,
Aged about 31 years,
Occupation Service,
R/o Government Quarters,
Civil Lines, Bramhapuri,
District Chandrapur.

-Versus-

- Respondents:**-1. State of Maharashtra,
through its Additional Chief Secretary, Revenue &
Forest Department, Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Nagpur Division, Old Secretariat Building,
Civil Lines, Nagpur.
3. The Collector,
Chandrapur.
4. Shri Sandip Sadashiv Bhaske,
Deputy Collector, Land Acquisition(VIDC)-1, Collector
Office , Bhandara.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.

Shri A.M. Ghogre, P.O. for respondent nos.1 to 3.

Shri G.N. Khanzode, Advocate for respondent no.4.

WITH

ORIGINAL APPLICATION No. 604/2020
WITH CIVIL APPLICATION NO.240/2020 (S.B.)

Applicant: - Dipak Shivaji Karande,
aged about 42 years,
Occupation Service,
R/o Government Quarters, Saoner,
Tahsil Saoner, District Nagpur.

-Versus-

Respondents:-1. State of Maharashtra,
through its Additional Chief Secretary, Revenue &
Forest Department, Mantralaya, Mumbai-32.

2. The Divisional Commissioner,
Nagpur Division, Old Secretariat Building,
Civil Lines, Nagpur.

3. The Collector,
Civil Lines, Nagpur.

4. Shri Pratap Waghmare, Tahsildar,
Office of the Divisional Commissioner,
Old Secretariat Building,
Civil Lines, Nagpur.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.

Shri A.M. Ghogre, P.O. for respondent nos.1 to 3.

Shri G.N. Khanzode, Advocate for respondent no.4.

WITH

ORIGINAL APPLICATION No. 605/2020
WITH CIVIL APPLICATION NO.241/2020 (S.B.)

Applicant: - Chandrabhan Mahadeo Khandait,
Aged about 51 years,
Occupation Service,
R/o Civil Lines, Hinganghat,
District Wardha.

-Versus-

- Respondents:**-1. State of Maharashtra,
through its Additional Chief Secretary, Revenue &
Forest Department, Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Nagpur Division, Old Secretariat Building,
Civil Lines, Nagpur.
3. The Collector, Wardha.
4. Shri Manoj Kishor Khairnar,
Deputy Collector,
Land Acquisition (General),
Collector Office, Wardha.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.

Shri A.M. Ghogre, P.O. for respondent nos.1 to 3.

None for respondent no.4.

WITH

ORIGINAL APPLICATION No. 606/2020
WITH CIVIL APPLICATION NO.242/2020 (S.B.)

Applicant: - Santosh Vijayrao Khandre,
Aged about 42 years,
Occupation Service,
R/o Shrinagar, Narendra Nagar
Square, Nagpur.

-Versus-

- Respondents:**-1. State of Maharashtra,
through its Additional Chief Secretary, Revenue &
Forest Department, Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Nagpur Division, Old Secretariat Building,
Civil Lines, Nagpur.
3. The Collector,
Civil Lines, Nagpur.
4. Shri Akshay Poyam, Tahsildar,
Tahsil Office , Bhandara.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.

Shri A.M. Ghogre, P.O. for respondent nos.1 to 3.

Shri G.N. Khanzode, Advocate for respondent no.4.

WITH

ORIGINAL APPLICATION No. 607/2020
WITH CIVIL APPLICATION NO.243/2020 (S.B.)

Applicant: - Rahul Madhukar Tayade,
Aged about 42 years,
Occupation Service,
R/o Tahsildar Quarters,
Nandura , District Buldana.

-Versus-

Respondents:-1. State of Maharashtra,
through its Additional Chief Secretary, Revenue &
Forest Department, Mantralaya, Mumbai-32.

2. The Divisional Commissioner,
Amravati Division, Amravati.

3. The Collector,
Buldana, District Buldana.

4. Shri Kunal Subhash Zalte,
Tahsildar Niwas, Chappanwadi , Yavatmal, District
Yavatmal.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.
Shri A.M. Ghogre, P.O. for respondent nos.1 to 3.
None for respondent no.4.

WITH

ORIGINAL APPLICATION No. 617/2020 (S.B.)

Applicant: - Rohini Pravin Pathrabe,
Aged about 41 years,
Occupation Service,
R/o Flat No.206, Vedant Dimond
New Shena Nagar, Chhatrapati, Sq. Nagpur.

-Versus-

- Respondents:**-1. State of Maharashtra,
through its Additional Chief Secretary, Revenue &
Forest Department, Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Nagpur Division, Old Secretariat Bldg.
Civil Lines, Nagpur.
3. The Collector,
Civil Lines, Nagpur.
4. Shri Sanjay B. Gangathade,
Tahsildar Chamorshi, Dist. Gadchiroli.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.

Shri A.M. Ghogre, P.O. for respondent nos.1 to 3.

None for respondent no.4.

WITH

ORIGINAL APPLICATION No. 595/2020 (S.B.)**WITH CIVIL APPLICATION No.250/2020**

Applicant: - Shyam Rajanna Madnurkar,
Aged about 45 years, Occupation Service,
R/o Utkarsha Nagar, National Thermal Power
Company, Mauda, Dist. Nagpur.

-Versus-

Respondents:-1. State of Maharashtra,
through its Additional Chief Secretary, Revenue &
Forest Department, Mantralaya, Mumbai-32.

2. Commissioner,
Nagpur Division, Nagpur.

3. The Collector,
Nagpur having its office at Civil Lines, Nagpur.

4. Collector, Gondia
District Gondia.

5. Smt. Vandana Sawrangpate,
Aged 45 years, Occ. Service,
Sub Divisional Officer, Gondia.

Shri S.P. Palshikar, Advocate for the applicant.
Shri A.M. Ghogre, P.O. for respondent nos.1 to 4.
S/Shri M.M. Sudame, A.M. Sudame, Advocates for resp.no.5.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment :-

19th October, 2020 (O.As.597 to 607 & 617 of 2020)

21st October, 2020 (O.A.No. 595 of 2020).

Date of Pronouncement of Judgment : 22nd October, 2020.

COMMON JUDGMENT

(Delivered on this 22nd day of October, 2020)

Heard Shri D.M. Kakani, Id. counsel for the applicants (in O.A.Nos.597 to 607 & 617 of 2020), Shri A.M. Ghogre, Id. P.O. for R-1 to 3 (in O.A.Nos.597 to 607 & 617 of 2020), Shri Khubalkar, Id. counsel holding for Shri F.I. Khan, Id. counsel for R-4 (in O.A. 597 of 2020), Shri S.N. Gaikwad, Id. counsel for R-4 (in O.As. 598,599 & 600 of 2020), Shri G.N. Khanzode, Id. counsel for R-4 (In O.As.601/20, 603/20,604/20 & 606/20) and none for R-4 (in O.A.Nos.597 & 607 & 617 of 2020).

2. Heard Shri S.P. Palshikar, Id. counsel for the applicant, Shri A.M. Ghogre, Id. P.O. for respondent nos. 1 to 4 and Shri A.M. Sudame, Id. counsel for respondent no.5 in O.A.No. 595/2020.

3. All the applicants are challenging the transfer orders dated 01/10/2020 and all these transfer orders are mainly challenged on the ground that that the applicants were not due for transfer as normal tenure was not completed and their transfers were not recommended by the Department or by the Civil Services Board. As all the O.As. involved common questions of law, therefore, they are decided together by this common order –

4. In O.A.No. 597/2020 the applicant was serving as Tahsildar, Kamptee since February, 2019, by the impugned order he was transferred to Lakhani, District Bhandara and the respondent no.4 was posted in place of the applicant.

5. In O.A.No. 598/2020 the applicant was posted as Tahsildar, Malkapur on 5/6/2018. The respondent no.4 was transferred as Tahsildar, Malkapur by the impugned order, but it was mentioned in the order that separate posting order of the applicant would be issued lateron.

6. In O.A. No.599/2020 the applicant was serving as Tahsildar, Khamgaon since 8/6/2018. The respondent no.4 was posted as Tahsildar, Khamgaon. In the impugned transfer order, it is mentioned that separate posting order of the applicant would be issued.

7. In O.A.No. 600/2020 the applicant was posted as SDO, Amravati from 20/2/2019. The respondent no.4 was posted in place of the applicant and in the impugned transfer order it is mentioned that separate transfer order would be issued.

8. In O.A.No. 601/2020 the applicant was posted as Tahsildar, Wardha since 7/3/2019, he was transferred by the impugned order. The respondent no.4 was posted and in the transfer

order it is mentioned that separate posting order of the applicant would be issued.

9. In O.A.No. 602/2020 the applicant was posted as Tahsildar, Yavatmal since 13/9/2019. The applicant was transferred to Nandura and the respondent no.4 was posted in place of the applicant vide impugned transfer order.

10. In O.A.No. 603/2020 the applicant was posted as SDO, Bramhapuri since 28/9/2018. The respondent no.4 is posted as SDO, Bramhapuri and in the impugned transfer order it is mentioned that separate posting order of the applicant would be issued.

11. In O.A.No. 604/2020 the applicant was posted as Tahsildar, Saoner since February,2019. The respondent no.4 was appointed as Tahsildar, Saoner and in the impugned transfer order it is mentioned that separate posting order of the applicant would be issued.

12. In O.A. No. 605/2020 the applicant was SDO, Hinganghat since 1/9/2018. The respondent no.4 was appointed as SDO, Hinganghat and the applicant was transferred as Deputy Collector, Land Acquisition, Wardha.

13. In O.A. No.606/2020 the applicant was Tahsildar, Hingna since 21/2/2019. The respondent no.4 was appointed as Tahsildar,

Hingna and in the transfer order it is mentioned that separate posting would be given to the applicant.

14. In O.A. No. 607/2020 the applicant was Tahsildar, Nandura since 20/2/2019 and on place of the applicant, the respondent no.4 was transferred and no posting order issued to the applicant and it is mentioned in the transfer order that separate transfer order would be issued.

15. In O.A.No. 617/2020 the applicant was serving as Assistant Food Grains Distribution Officer, Nagpur since 1/2/2019. Vide impugned order, the respondent no.4 was appointed on her post and in the transfer order it is mentioned that separate transfer order would be issued.

16. In O.A. No. 595/2020 the applicant was SDO, Mauda, District Nagpur since 11/9/2019. The respondent no.5 came to be posted as SDO, Mauda and in the impugned order it is mentioned that separate posting order of the applicant would be issued.

17. In all these matters the learned counsel for the applicants submitted that the applicants were not due for transfer. The Civil Services Board and the Department did not recommend their transfers and in spite of it, the respondent no.1 transferred them without assigning any reason and without giving posting to some of them. It is submitted that the request made by some of the applicants for transfer

were rejected by the Civil Services Board and the request made by the private respondents were also rejected by the Civil Services Board as they were not due for transfers, but without considering these facts and without assigning sound reasons, the Competent Authority issued the transfer orders, it is in violation of the law.

18. It is submission of the applicants that all the transfer orders are issued in violation of the statutory provisions under Section 4 (4) & (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfers Act,2005"). The Section 4 (4) & (5) of the Transfers Act,2005 are as under –

"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 subsection (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalised 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.”

19. After reading the Section 4(4) (ii), it seems that in exceptional circumstances or for special reasons, the Competent Authority may transfer a Government servant before completion of the normal tenure. Similarly, in Sub Section 5, it is mentioned that in special cases, the Competent Authority may transfer the Government servant. After reading Section 4(4) (ii) and Sub Section 5, it is clear that whenever the Government servant is not due for transfer, the Transferring Authority is bound to record special reasons or exceptional circumstances, for the transfer and put the matter before its next higher authority for consideration. The learned counsels appearing on behalf the applicants have contended that there is no compliance of the above statutory provisions, no special reasons are

recorded to show what was the administrative exigency or what were the special exceptional circumstances for transferring all the applicants before expiry of the normal tenure. The learned P.O. has filed the Minutes of the Meeting and the Note sheets of the Civil Services Board and the decision of the Competent Authority. On page no.249 of the record in Clause B, it is mentioned that the Competent Authority is authorized to transfer a Government servant under Section 4(5) (3) or Sub Section 4 after recording special reasons before the completion of the normal tenure and therefore the Competent Authority decided to approve the transfers. It is pertinent to note that the Note sheet is approved by the Hon'ble Minister, Revenue and Hon'ble Chief Minister. After reading this Note sheet, it seems that what were the special reasons or exceptional circumstances for transferring all the applicants before completion of their normal tenure are not recorded. Even in reply submitted by the respondent No.1 it is nowhere cleared which were the exceptional circumstances or the special reasons for premature transfers of the applicants. The learned P.O. plainly submitted that no special reasons or exceptional circumstances are recorded in the order.

20. The legal position is very much settled that power is conferred by the statute on the Government / Transferring Authority to transfer a Government servant before completion of the normal

tenure, but the Government/Transferring Authority is bound to record which were the exceptional circumstances or special reasons for premature transfers. In the present case after perusing the material which is produced by the learned P.O., I am compelled to say that no special reasons or exceptional circumstances were shown to be in existence for the premature transfer orders.

21. In case of **Pradeep Kumar Kothiram Deshbhratar Vs. State of Maharashtra & Ors.,2011 (5) Mh.L.J.,158**, the Hon'ble Division has laid down that in case of the premature transfer, the Transferring Authority is legally bound to record the special reasons or the exceptional circumstances for the premature transfer. Mere reproduction of the words that there were exceptional circumstances or the special reasons is not sufficient.

22. The learned counsel for the applicants invited my attention to the Judgment in Writ Petition No.5465/2012 in case of **Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance & Development Corporation & Ors.**, decided on 7/3/2013. On page no.7 of the Judgment the Hon'ble Division Bench has observed that the learned counsel for the Petitioner placed reliance upon the ruling in *S.B. Bhagwat Vs. State of Maharashtra (2012) 3 Mh.L.J.,197* in that case it was held that "it is settled proposition of law that when a statutory power is conferred upon an authority to do a particular thing,

that exercise has to be carried out in the manner as prescribed by the statute.” In para-7 of the Judgment, the Hon’ble High Court also observed that

“We are satisfied in the case in hand that there was *non-observance of the statutory requirements of the Act. The mid-term or pre-mature 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 prematurely to Raigad”.

23. The learned counsel for respondent no.4 in O.A. No. 597/2020 has also placed reliance on the Judgments in case of **Gujrat Electricity Board & Ano. Vs. Atmaram S. Poshani**. It is contention of the learned counsel for respondent no.4 that the Government servant has no right to remain on a particular post and it is prerogative of the Government to see which Officer is suitable in which place and therefore the impugned transfer orders are legal. Here, I would like to point out that the learned counsel for respondent no.4 has placed reliance on the Judgment in case of **Gujrat Electricity Board & Ano. Vs. Atmaram S. Poshani 1989 (2) SCC, 602**, that case was decided by the Hon’ble Apex Court considering the law applicable to the employees of the Gujrat Electricity Board. The O.As. before me are to be decided as per the provisions under Maharashtra Transfers Act, 2005 and therefore said judgment is not applicable. The reliance is placed by the respondent no.4 on the Judgment in case of **Shankarrao N. Jadhao Vs. State of Maharashtra, 2011 (1) ALL MR, 628**. After reading this Judgment, it seems that the Government has authority to transfer a Government servant as provided in the Transfers Act,2005, but it is nowhere mentioned that the Government has power to disregard the 2005 Act. It is settled legal position that

the Government is not bound by the advice/recommendations given by the Civil Services Board and whenever exceptional circumstances or special reasons exist the Government has power to transfer any Government servant before completion of the normal tenure, provided special reasons or exceptional circumstances must be recorded in writing. It seems that in all present applications not a single reason is given why it was necessary to transfer the applicants before completion of their normal tenure, therefore, I do not see any merit in the contention of the respondents that the transfer orders are legal.

24. The learned counsel for the respondent no.4 in O.A.No. 597/2020 submitted that the applicant is guilty of the suppression of the material fact. It is submitted that in paras-4.14 and 4.16 (iv) false statement is made by the applicant that he did not make request for his transfer and his matter was never placed before the Civil Services Board and for this reason the O.A. is liable to be dismissed. The learned counsel for the respondent no.4 has placed reliance on the Judgment in case of **K.D. Sharma Vs. SAIL, 2008 (12) SCC,481**. My attention is invited to para-39. It is settled legal position if the plaintiff or the applicant is guilty of suppression or concealment of material fact, then he is to be thrown out of the Court. In case before Hon'ble Apex Court, the facts were that the applicant did not disclose all the material facts clearly and truly, but floated the facts in distorted

manner and mislead the Court and therefore such strong view was taken. In the present case, it is contention of the respondent no.4 that the applicant himself made a request to the Department for the premature transfer and therefore suppression of this fact is material.

25. In this case it is important to note that the applicant never requested the Department to transfer him to Lakhani, District Bhandara, the request was made by the applicant to transfer him on non-executive post at Nagpur and this request was rejected by the Civil Services Board. In my opinion before taking a drastic action the approach of the Court must be liberal. The Court should not act in mechanical manner. When it was not request of the applicant for transfer to Lakhani, District Bhandara, it is not possible to say that it is a case of request transfer and therefore the applicant is not entitled to challenge the same. It must be noted that the applicant requested the Department to give him posting at Nagpur on a non-executive post, his request was turned down and he was transferred to Lakhani though he was not due for transfer and for doing so no special reasons are recorded, therefore, in my opinion the transfer of the applicant in O.A. No. 597/2020 is contrary to law. It is pertinent to note that the respondent no.4 was Naib Tahsildar, Kamptee, he was promoted as Tahsildar and within a very short period though he was not due for transfer and his request was turned down by the

Department and the Civil Services Board, he was again posted at Kamptee without recording special reasons, certainly on the basis of these facts, it can be said that this was not fair exercise of the jurisdiction by the Competent Authority and the jurisdiction was exercised disregarding the material provisions in Section 4 (4) & (5) of the Transfers Act, 2005.

26. The learned counsel Shri S.N. Gaikwad in O.A. Nos. 598,599 & 600 of 2020 have supported the transfer orders. It is contention of the respondent no.4 that the Hon'ble Minister Advocate Yashomati Thakur appointed the respondent no.4 as an Officer on Special duty and thereafter GAD issued order dated 22/6/2020 and deputed the respondent no.4. Thereafter on 7/8/2020 the respondent no.4 was repatriated to his original department and he was relieved by the GAD on 22/7/2020. It is grievance of the respondent no.4 that no posting was given to him and therefore his posting in place of the applicant is legal.

27. No doubt, the Government did not give posting to the respondent no.4, but can it be a ground to dislodge the applicant when he was not due for transfer. In my opinion for doing justice to one person a Government is not empowered to do injustice to the other person. In the present case exactly this has happened. All the private respondents who were not due for transfer, were given postings in

place of the applicants who were not due for transfer and no special reasons or exceptional circumstances were disclosed by the Transferring Authority for doing so.

28. In O.A.No.595/2020 the respondent no.5 replaced the applicant from the post though the applicant was not due for transfer. It is contention of the respondent no.5 that applicant had made request for transferring him to Dharmabad Dist. Nanded, therefore he has no right to challenge the transfer. In reply it is submitted by applicant that such request was made by him, but it was rejected, this submission of the applicant is supported by the Id. P.O., therefore I do not see any merit in the contention raised by the respondent no.5.

29. Shri Khanzode Adv. for respondents no.4 in O.A. no.601, 603' 604 and 606 submitted that the applicants are relieved from the posts and these respondents have joined the posts, therefore, the O.As. are not maintainable. I do not see any merit in this submission for the reason that if the transfer orders are illegal then such transfer orders are not est, no one should be permitted to derive the benefits out of such orders. The legal position is well explained by the Hon'ble Apex Court that it is duty of the Government servant to obey the transfer order and join the post, even after doing so he may challenge it, therefore, merely because some of the applicants are relieved and

their successors have taken charge of the post will not justify illegal transfer orders.

30 Under this situation, all the private respondents were bound to show that the transfers of the applicants were legal exercise of the power by the Competent Authority. In the present case when it is conceded by the learned P.O. that no special reasons are recorded or no exceptional circumstances were shown to have been in existence for transferring all the applicants at a premature stage, then it is not possible to accept that all these transfer orders are legal. On the other hand, the material before the Bench is sufficient to exhibit that only for giving convenient postings to the private respondents disregarding the opinion of the Department and the Civil Services Board, decision was taken to appoint the private respondents in place of all the applicants and it is done without recording exceptional circumstances or special reasons, therefore, all the transfer orders which are under challenge are not legally sound.

31. In view of this discussion, I am of the view that all the impugned transfer orders are illegal and therefore they are to be quashed. Hence, the following order –

ORDER

- (i) All the Original Applications stand allowed. The impugned transfer orders are hereby quashed and set aside. The respondent no.1 is directed to give posting to all the applicants on the post held by them before issuing transfer orders dated 01/10/2020 (impugned transfer orders). This order be complied within three weeks.
- (ii) All the C.As. are also stand disposed of accordingly.
- (iii) No order as to costs.

Dated :- 22/10/2020.

(Anand Karanjkar)
Member (J).

*dnk..

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 22/10/2020.
and pronounced on

Uploaded on : 22/10/2020..

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