

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**  
**NAGPUR BENCH, NAGPUR.**

**ORIGINAL APPLICATION NO.125/2016.**

Sonali d/o Ramesh Chavan (Mawale),  
Aged about 33 years,  
R/o Behind Empress Mill No.1,  
Bajeria, Nagpur.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Principal Secretary,  
Public Works Department,  
Mantralaya, Mumbai-32.
2. The Chief Engineer,  
Public Works Department,  
Bandhkam Sankul, Civil Lines, Nagpur.
3. Ghanshyam Ganpatrao Nandanwar,  
Executive Engineer,  
Public Works Division, Gondia.

**Respondents.**

Shri D.M. Kakani, Ld. Advocate for the applicant.  
Smt. M.A. Barabde, Ld. P.O. for the respondents 1 and 2.  
None for respondent No.3.

**Coram:- B. Majumdar, Vice-Chairman**

**Dated:- 8<sup>th</sup> June, 2016.**

**Order**

The applicant is a Executive Engineer a Public Works Division. He is aggrieved with an order of his replacement by respondent No.3 without issue of a corresponding order of his placement.

2. On 15.1.2015, the Government in PWD issued a notification declaring that the competent authority for transferring an Executive Engineer at the State level will be the Additional Chief Secretary (Public Works Department / Secretary, (Roads) / Secretary (Buildings) and as per advice of the Hon'ble Minister for Public Works Department. On 29.4.2015, the Government issued a G.R. establishing the reconstituted Civil Services Board (1) for dealing with postings and transfers of officers and employees in Group-A, B & C.

The applicant was posted at Gondia from 19.5.2015. On 14.1.2016, the Government issued an order vide which Shri Ghanshyam Ganpatrao Nandanwar (R.3), on his promotion as Executive Engineer is posted at Gondia. The remark in the order states, "it is against the post to be vacant on transfer of the applicant". The applicant has challenged this order in this O.A. On 30.1.2016, the Chief Engineer, Public Works Department,, Nagpur (R.2) directed respondent No.3 to take over as per his transfer on promotion as above. On 2.3.2016, the Establishment Board (1) in its meeting decided to post the applicant as per the outcome of the present O.A. or during the transfer session, whichever is earlier.

The applicant's submission is that respondent No.3 has been posted in her place without there being a separate and complementary order of her placement. The impugned order amounts

to an order of her transfer. She had not completed her normal tenure of three years at Gadchiroli. Hence it is obligatory to follow the provisions of Section 4 and 6 of the Transfer Act for effecting mid-term and mid-session transfer by recording special reasons / circumstances and taking approval of the Hon'ble Chief Minister, since she is a Group-A officer.

3. The Additional Chief Secretary, Public Works Department (R.1) in his affidavit in reply submits as follows:

“(a) Shri A.D. Pohekar is working in P.W.D. No.3, Nagpur since 24.7.2013 and now he is due for transfer. Smt. N.D. Thakre is posted on Integrated Division, Nagpur by order dated 19.1.2016. Hence these posts are not vacant at present.

(b) Respondent No.3 is posted in place of the applicant after following the provisions of Section 4 (4) & (ii) of the Transfer Act with prior approval of the competent authority.

(c) The proposal with regard to applicant's transfer as she is without any posting at present, was submitted to the Civil Services Board. However, the Board in its meeting dated 2.3.2016 has decided to post the applicant as per the outcome of the present O.A. or consider her posting in general transfer session, whichever is earlier.

(d) The then Additional Chief Secretary, Public Works Department had taken the case of promotion on transfer in P.W.D. for Divisional Cadre Rules and had directed to submit the proposals without recommendation of the Civil Services Board. Therefore, the proposal for transfer on promotion could not be placed before the Civil Services Board.

(e) The applicant has made a request for transfer. Her order of posting will be issued after following due process. After joining of the applicant at the new post the compulsory waiting period will be regularized as per due procedure and after approval of the competent authority.

4. No reply has been filed on behalf of respondent No.3. None appeared on his behalf.

5. Shri D.M. Kakani, learned counsel for the applicant submits that she could not have been replaced unilaterally without issue of a corresponding order of her transfer. For this, it was also obligatory for the respondents to follow the provisions of Section 4 of the Transfer Act as the applicant had not completed her normal tenure and she has also been forced to be posted out mid-session.

6. Smt. M.A. Barabde, learned P.O. for respondent Nos. 1 and 2 generally reiterated the submission made by respondent No.1. She also produced for my perusal the photo copy of the relevant

extract from the file in P.W.D., Mantralaya, in which the impugned order of transfer was dealt with.

7. I find that the respondents had issued the impugned order transferring respondent No.3 in place of the applicant on the former's promotion as Executive Engineer. Before doing this, and specially as the impugned order states that respondent No.3 is being posted due to a vacancy created on transfer of the applicant, it was obligatory for the respondents to issue an order of the applicant's transfer by duly following the provisions of Section 4 r/w Section 6 of the Transfer Act. To examine if this was done, I have gone through the relevant record of Mantralaya which was produced before me by the learned P.O. I find that the following sequence of activities had taken place leading to issue of the impugned order:

(a) A detailed proposal for transfers in P.W.D. including that of respondent No.3 (on his promotion from the cadre of Assistant Engineer) was prepared and placed before the Hon'ble Minister for P.W.D. and the Hon'ble Chief Minister. The remarks against respondent No.3 are that "it is against the vacancy created due to the transfers of the applicant."

(b) Shri Anand Kulkarni, Additional Chief Secretary, Public Works Department has recorded in the file on 13.1.2016 that the Hon'ble Chief Minister on 30.5.2016 had issued an

order exempting these transfers and postings from the purview of the Establishment Board.

(c) The proposal was thereafter approved by Hon'ble Minister for PWD and Hon'ble Chief Minister in January 2016.

(d) On 14.1.2016, the impugned order of transfer of respondent No.3 was issued.

(e) On 2.3.2016, the meeting of Civil Services Board-1 chaired by Shri Sumit Mullick, Additional Chief Secretary, Public Works Department took place. Among other cases, it discussed that of the applicant, with reference to her application dated 17.2.2016 for posting in the Integrated Unit, Nagpur. The Board, after reviewing the availability of vacancy at Nagpur decided as follows:

“वरील वस्तुस्थिती पाहता श्रीमती सोनाली चव्हाण या पदस्थापनेविना आहेत. श्रीमती सोनाली चव्हाण यांनी पदस्थापना मिळणेबाबत महाराष्ट्र प्रशासकीय न्यायाधीकरण नागपूर येथे मुळ अर्ज क्र. १२६ २०१६ दाखल केलेला आहे. सदर बाब समीतीच्या निदर्शनास आणण्यात आली. वरील वस्तुस्थिती विचारात घेऊन श्रीमती सोनाली चव्हाण यांनी महाराष्ट्र प्रशासकीय न्यायाधीकरण मध्ये मुळ अर्ज केला असल्याने व प्रकरण न्यायप्रविष्ट असल्याने सद्यस्थितीत निर्णय प्रलंबीत ठेवावा. “

8. On perusal of the above record, it is clear to me that posting of respondent No.3 to Gondia in place of the applicant was done on the basis of an assumption that the post will be available on transfer of the applicant. I find it rather strange and unacceptable that

respondent No.1, while moving a proposal of posting of respondent No.3 totally ignored the question as to whether the applicant will be required to be transferred. He also did not subsequently move the proposal for the applicant's mid-term and mid-session transfer from Gondia. He also did not bother to bring to the attention of the Hon'ble Minister and Hon'ble Chief Minister the above crucial facts while seeking their approval to the posting of respondent No.3. Civil Services Board (1), rather belatedly, considered the applicant's case after she was dislodged from her present post at Gondia as per the impugned order. It summarily decided her case by observing that no decision is required to be taken as she had filed the present O.A. and she could be considered for transfer during the forthcoming session.

9. In view of the above, I am of the view that the impugned order suffers from serious illegality as it is issued merely on the basis of an assumption that there will be vacancy by transferring the applicant, whereas, in fact, such a transfer simply did not take place. In a number of earlier cases, the Tribunal had deprecated the practice of issuing transfer orders replacing an employee without providing him with a placement to complement the transfer. I therefore find merit in the present O.A. and the same allowed in terms of the following directions:

(i) The impugned order dated 14.1.2016 is quashed and set aside.

(ii) It is held that the applicant will be continued to be posted at Gondia.

(iii) The applicant will be entitled to treat the period during which she stood relieved by virtue of the impugned order as on duty for all purposes.

(iv) The respondents will grant an alternative posting to respondent No.3 as Executive Engineer.

(v) The respondents will take action as above **within eight weeks** from the date of receipt of this order.

(vi) No order as to costs.

sd/-

(B.Majumdar)  
Vice-Chairman

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