

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.19 OF 2018**

**DISTRICT : MUMBAI**

Shri Pradeepkumar M. Bhosle. )  
Working as Assistant Commissioner of Sales Tax, )  
Legal Branch (Court Matters), Having office at D-2, )  
6<sup>th</sup> floor, Old Building, G.S.T. Bhawan, Mazgaon, )  
Mumbai - 10 and R/o. Flat No.8, Building No.B/192, )  
Government Colony, Bandra (E), Mumbai - 51. )... **Applicant**

**Versus**

1. The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Finance Department, Mantralaya, Mumbai - 32.)  
2. The Special State Tax Commissioner (M.S.), )  
Mumbai, having office at 3<sup>rd</sup> floor, )  
G.S.T. Bhawan, Mazgaon, Mumbai - 10. )...**Respondents**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 22.07.2019**

**JUDGMENT**

1. The Applicant has challenged the transfer order dated 25.10.2017 whereby he has been transferred from the post of Assistant Commissioner,

Sales Tax, Mazgaon, Mumbai to the post of Assistant Commissioner, Legal Branch, Sales Tax, Mazgaon, Mumbai invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant was appointed as Sales Tax Inspector in 1995. During the course of service, he was promoted to the post of Sales Tax Officer in 2004 and later promoted to the post of Assistant Commissioner of Sales Tax in 2012. He claims to have excellent service record. By order dated 30.05.2016, he was posted as Assistant Commissioner, Sales Tax in Investigation Department having regard to his good performance. However, by impugned order dated 25.10.2017, he was transferred from Investigation Department to Legal Department, Sales Tax Office, Mazgaon, Mumbai on administrative reason. The Applicant has challenged his transfer order on 25.10.2017 from Investigation Department to Legal Branch alleging that it is mid-term as well as mid-tenure transfer and no special case is made out for his transfer as contemplated under Section 4(4)(ii) read with 4(5) of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005'). He contends that the constitution of Civil Services Board (CSB) which has recommended his transfer is not legal and secondly, the approval of members of CSB was taken by circulation and there was no meeting of mind. He, therefore, contends that even if the recommendation has been accepted by the Hon'ble Minister and Hon'ble Chief Minister, the transfer order is vitiated. He further assailed the impugned transfer order on the ground that the same is punitive as he has been transferred for alleged irregularities in his functioning, and therefore, it suffers from malice and not sustainable in law.

3. The Respondents resisted the application *inter-alia* denying that the impugned transfer order suffers from any irregularity or illegality. It is not in dispute that by order dated 30.05.2016, the Applicant was transferred from Legal Department to Investigation Department and before completion of his normal tenure in Legal Department, he has been again transferred to Legal Department by order dated 25.10.2017. The Respondents contend that several irregularities were noticed in the functioning of the Applicant while he was serving as Assistant Commissioner in Investigation Department. He failed to take prompt action against defaulters for tax evasion, and therefore, the Joint Commissioner of State Tax Investigation Department had recommended Applicant's transfer from Investigation Branch to Legal Department. Accordingly, the matter was placed before CSB consists Additional Chief Secretary (Finance), Additional Chief Secretary (Expenditure) and Commissioner of State Tax, Maharashtra State. They approved the proposal. It was then placed before the Hon'ble Minister, Finance and the Hon'ble Chief Minister who approved the same. As such, the transfer was necessitated because of the irregularities noticed in the functioning of the Applicant and the same has been approved by the Competent Authority in compliance of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'. The Respondents thus denied that the impugned transfer order suffers from any malice or punitive. In this behalf, the Respondents further contend that, by the same impugned dated 25.10.2017, one more official viz. Shri Vilas Patil, Assistant Commissioner of Sales Tax was also transferred. He had challenged his transfer by filing O.A.894/2017 before M.A.T, Bench at Nagpur and the same was dismissed on 28.03.2018. Adverting to the Judgment passed in O.A.894/2017, the Respondents contend that the grounds now raised by the Applicant are already dealt with and the transfer of Shri Vilas Patil has been confirmed. With this pleading, the Respondents prayed to dismiss the O.A.

4. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant at length. He had placed reliance on various decisions rendered by Hon'ble Supreme Court, Hon'ble High Court and the Tribunal in attempt to challenge the impugned transfer order dated 25.10.2017.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer supported the impugned transfer order and also placed reliance on the decision rendered by Nagpur Bench in O.A.No.894/2017 filed by Shri Vilas Patil, who was transferred in the same process by common order dated 25.10.2017.

6. In so far as the reliance of learned P.O. on the decision of MAT, Nagpur Bench in O.A.No.894/2017 is concerned, no doubt that the transfer of Vilas Patil (Applicant in O.A.894/17) and the transfer of present Applicant was by way of common order dated 25.10.2017. The said O.A. was dismissed. In Para Nos. 7 & 8, the Tribunal held as follows :-

*"7. From Exh. 'X', it seems that the Joint Commissioner of Sales Tax, Amravati has recommended the transfer of the applicant on the ground that there was no progress in the work of Shri Patil i.e. the applicant and, therefore, the office was unable to achieve the target given. It was also observed that the applicant was having no interest in his work. The said recommendation of the Joint Commissioner of Sales Tax, Amravati was placed before the Civil Services Board and the Civil Services Board accepted the recommendation. Not only the said recommendation was further forwarded to the concerned Minister of State and the Minister of Finance and finally to the Hon'ble the Chief Minister has accepted the recommendation.8.The learned counsel for the applicant submits that the applicant has been transferred on complaint without giving any opportunity to the applicant and no enquiry was made. The said contention of the learned counsel for the applicant, however, cannot be accepted for the simple reason that the recommendation for transfer by the competent authority to the higher authority against the employee who was not working properly or upto the mark, cannot be said to be a complaint. The Joint Commissioner of Sales Tax, Amravati, in the interest of administration recommended the transfer of the applicant so as to achieve the target given by the Government and if the competent authority recommends for transfer of an employee, who is not doing satisfactory work, such a recommendation cannot be said to be a complaint, but it is nothing but an administrative report and the said report has been accepted by the competent authorities. The transfer of the*

*applicant, therefore, falls within the ambit of Section 4 (5) of the Transfer Act, 2005. In the minutes of the meeting, reasons have been recorded as to why the applicant's transfer is required to be done in the interest of administration and the same has been accepted. I, therefore, do not find any illegality in the order of transfer."*

7. Shri Bandiwadekar urged that only because O.A. filed by Vilas Patil is dismissed by Nagpur Bench, that would not *ipso-facto* stop the Applicant from challenging his impugned order and the present needs to be decided in the context of facts of the present O.A and the issues raised by the parties. Referring to the principles of law of precedent, he placed reliance on the observations made by Hon'ble Supreme Court in **(2017) 14 SCC 722 Roger Shashoua & Ors. and Ors. Vs. Mukesh Sharma and Ors.** In Para Nos. 58 and 59, the Hon'ble Supreme Court held as follows :-

**"58.** *In this context, we recapitulate what the Court had said in Ambica C Quarry Works v. State of Gujarat 2 : (SCC p. 221, para 18) :*

*"18. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time age that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord Halsbury in Quinn v. Leathem 3.)..."*

**59.** *From the aforesaid authorities, it is quite vivid that a ratio of a judgment has the precedential value and it is obligatory on the part of the court to cogitate on the judgment regard being had to the facts exposited therein and the context in which the questions had arisen and the law has been declared. It is also necessary to read the judgment in entirety and if any principle has been laid down, it has to be considered keeping in view the questions that arose for consideration in the case. One is not expected to pick up a work or a sentence from a judgment de hors from the context and understand the ratio decidendi which has the precedential value. That apart, the court before whom an authority is cited is required to consider what has been decided therein but not what can be deduced by following a syllogistic process."*

8. He further placed reliance on the Judgment of Hon'ble Supreme Court in **(2011) 7 SCC 639 (State of Madhya Pradesh Vs. Narmada Bachao Andolan and Anr.)** . In Para No.64, the Hon'ble Supreme Court held as follows :-

*“64. The court should not place reliance upon a judgment without discussing how the factual situation fits in with a fact situation of the decision on which reliance is placed, as it has to be ascertained by analyzing all the material facts and the issues involved in the case and argued on both sides. A judgment may not be following in a given case if it has some distinguishing features. A little difference in facts or additional facts may make a lot of difference to be precedential value of a decision. A judgment of the court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in setting of the facts of a particular case. One additional or different fact may make a world of difference between the conclusions in two cases. Disposal of cases by blindly placing reliance upon a decision is not proper.”*

9. There could no dispute about the principles of law of precedent. The ratio of any decision must be understood in the background of facts of that case and Court should not dispose of case by blindly placing reliance upon decision in another matter. The Judgment of MAT, Nagpur Bench in OA No.894/2017 also reveals that the issues now raised by the Applicant in the present O.A. were not matter in issue in the said O.A, and therefore, needless to mention that the present O.A. needs to be decided on the evaluation of facts and the issues raised by parties independently.

10. On hearing, the learned Advocate for the Applicant and learned P.O. extensively, what emerges that the challenge to the impugned order is mainly on following grounds.

- (i) The constitution of CSB being not in terms of G.R. dated 31.01.2014, the same is illegal and renders its decision non-est.

- (ii) CSB approved the proposal for transfer of the Applicant by circulation without holding meeting in congregation. As such, there is no meeting of mind which rendered the approval illegal.
- (iii) The Applicant had not completed normal tenure as Assistant Commissioner in Investigation Department, and therefore, the impugned transfer is mid-term and mid-tenure.
- (iv) No special case is made out as contemplated under Section 4(5) of 'Transfer Act 2005'.
- (v) The Applicant has been transferred on the ground of alleged irregularities in his functioning, and therefore, the same is punitive and unsustainable in law.

11. It would be appropriate to deal with each ground in view of submissions and Judgments referred by the learned Advocate for the Applicant.

12. Needless to mention that the transfer orders can be interfered only when it is found in contravention of mandatory provisions, arbitrary or *malafide*. In this behalf, it would be appropriate to refer the Judgment of Hon'ble High Court in **2008 (2) Mh.L.J. 640 (Shri V.V. Gadekar, Deputy Engineer Vs. MHADA)**, wherein it has been held as follows :

*“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power.”*

13. **As to ground No.(i) :**

Shri Bandiwadekar, learned Advocate for the Applicant invited Tribunal's attention to G.R. dated 31.01.2014 (Page No.25 of Paper Book), which provides for constitution of CSB. He has pointed out that the CSB has been constituted in view of directions issued by Hon'ble Supreme Court in ***Writ Petition (Civil) No.82/2011 (T.S.R. Subramanian & Ors. Vs. Union of India & Ors.) dated 31<sup>st</sup> October, 2013***, and therefore, the constitution ought to have been strictly as per G.R. dated 31.01.2014. In reference to G.R. dated 31.01.2014, he submits that in the present CSB, there was no member from Social Justice and Special Assistance Department or Tribal Development Department or Joint Secretary of General Administrative Department, and therefore, the constitution of CSB itself is illegal. Whereas the learned P.O. has pointed out that after issuance of G.R. dated 31.01.2014, the Government in Finance Department had issued another G.R. on 27.03.2014 for the transfers and postings of Officials controlled by Finance Department. As per this G.R. dated 27.03.2014, the CSB shall consists of Additional Chief Secretary (Finance) as Chairperson, Principal Secretary (Expenditure) Finance and Sales Tax Commissioner as a Member. He has also pointed out that the CSB which has recommended the transfer of the Applicant was consists of these three persons as mentioned in G.R. dated 27.03.2014. He has further pointed out that in fact in G.R. dated 31.01.2014 itself vide Clause No.3.3, the directions were given to administrative departments to form their own CSB and liberty was given to issue orders accordingly for constitution of CSB to deal with the posting and transfers of the Officials working under their control. Clause 3.3 reads as follows :-

**“3.3** प्रशासकीय विभागांना, त्यांच्या अधिपत्याखालील सर्व संवर्गांसाठी एक अथवा वेगवेगळ्या संवर्गांसाठी वेगळे नागरी सेवा मंडळ (१) याबाबत आदेश काढता येतील.”



14. Thus, it is explicit that in the present case, the SCB has been constituted in terms of G.R. dated 27.03.2014, and therefore, I see no irregularities much less illegality in the constitution of CSB or to render the decision taken by CSB is illegal. Needless to mention that the CSBs were established in pursuance of the direction given by Hon'ble Supreme Court in T.S.R. Subramanian's case, to regulate the transfers and other service related matters of the Government servants, so as to ensure minimum tenure and to ensure good governance, transparency and accountability in Government functions. Thus, it is recommendatory authority but the final decision rests with the executive. This being the position, the formation of CSB constituted in terms of G.R. dated 27.03.2014 cannot be termed illegal. Suffice to say, the submission advanced by the learned Advocate for the Applicant in this behalf is without any merit.

15. **As to ground No.(II) :**

Shri Bandiwadekar sought to contend that, admittedly, there was no meeting in congregation of the members of CSB but the approval for the transfer of the Applicant is taken by circulation, and therefore, there being no meeting of mind, the decision of such CSB is not legal. There is no denying that in the present case, the approval of the members of CSB was taken by circulation. Whether absence of meeting in congregation render its decision illegal is the question now posed for consideration.

16. In this behalf, Shri Bandiwadekar referred to certain decisions. He placed reliance on the Judgment of Hon'ble Supreme Court in **1989 Supp. (2) SCC 544 (State of Bihar Vs. Jainandan Prasad Singh)**. In that case, two Schools which were aided elementary Schools had been taken up by the Government of Bihar under Section 3 of Bihar Non-Government Elementary

School (taking over of control) Act, 1976. The contention was also raised by the State Government that there had not been any decision of the District Committee with regard to the feasibility of taking over the Schools in question as no resolution had been passed by the Committee in the meeting and there was no provision for making recommendation by the Committee in circulation. The Hon'ble Supreme Court held that "in administrative action, the decision must be taken by the Committee members at a meeting and decision taken by circulating file amongst the members in absence of any rule prescribed in such procedure held not a decision of a Committee. There being no meeting of mind of the members". The perusal of the said Judgment reveals that the Hon'ble Supreme Court observed, "even otherwise the reading of the said document does not suggest that all the members were of the view that the Schools should be taken over." As such, in fact situation, it was doubtful as to whether all the members were of the view that the School should be taken over. It is in that context, the decision of the Committee taken by circulation was held unsustainable and matter was remanded back for consideration afresh. Whereas in the present case, all the members of CSB concurrently approved proposal of State Tax Commissioner.

17. Shri Bandiwadekar in this behalf also referred to the decision of Central Administrative Tribunal (CAT), New Delhi in the matter of **G. Jayalal G. Pillai Vs. Union of India : 2011 SCC Online CAT 4061**. The said matter pertains to the decision taken by Selection Committee for appointment as Director General, All India Radio. The Petitioner therein claims to have been recommended by Selection Committee constituted by Prasar Bharati Board for his appointment as Director General, All India Radio but the recommendation of Selection Committee were allegedly overturned on the dictates of the Government. Thus, it was a case alleging that, in the dictates of the Government, the Selection Committee had changed its

recommendation by giving preference to another person in place of Petitioner. It is in that context, the CAT observed as follows :-

*“Present is a case of interviewing the candidates mentioned above by the Board in its meeting dated 15.03.2011, wherein the chairperson and eight members were present. Admittedly, the short-listing as done on 15.03.2011 would have been arrived at after interview with deliberations and consultations that ought to have ensued by the chairperson and other members of the Board. It was indeed not a case where individuals might have indicated their preferences of respective candidates, and by virtue of which, a short-listing might have come into being. It is on the asking of the Government to send a list of the candidates by showing their preferences or order of merit, it appears to us, that such preferences or precedence of candidates in order of merit ought to have been arrived at by arranging a meeting, and by deliberations and consultations between the chairperson and members of the Board. It is common knowledge that after the candidates may have been interviewed, the chairperson and members may have evaluated respective candidates and determined their merit as per their choice, and if the same may not be unanimous, it is bound to result into their determinations and consultations, each one giving his views as regards merits of a particular candidate to be shown higher in the merit. A combined effort made in the manner aforesaid may show a different result than the one that may have been arrived at by getting the opinion of each of the members individually by circulation. In the deliberations that may take place, it is possible that a particular member, in whose estimation a particular person may be the best, whether the said person is not so in the view of others, may be able to convince others, and in that process, the said person may be shown as number 1, whereas, as mentioned above, such decision would not be possible if choices of individual members are to be made separately by circulation.*

18. As such, it was a matter of selection and appointment by the Committee on proper evaluation of the candidates. Each member of the Committee was required to evaluate the performance of the candidate independently and the same was to be followed by final decision which was necessarily to be taken in consultation with each other. Thus, it is in that context, the approval to the appointment by circulation held not permissible. In this case, the CAT referred the decision in **Jainandan Prasad Singh's** case (cited supra). Whereas, in the present case, there is no question of

evaluation or assessment of the performance of candidate, and therefore, this decision is of no assistance to the learned Advocate for the Applicant.

19. Shri Bandiwadekar further referred to the decision of Hon'ble Bombay High Court in **2017 (3) Mh.L.J. 865 (Sunil K. Rawat & Ors. Vs. State of Maharashtra & Ors.)**. In that matter, the issue was pertaining to bifurcation of Market Committee. The Hon'ble Bombay High Court observed that "It is well settled that the bifurcation of Market Committee could be ordered only after consultation with Market Committee and the State Marketing Board. The consultation with Market Committee and State Marketing Board is mandatory and not directory." It is in that context, the Hon'ble Bombay High Court held that in consultation with meeting of minds between the parties is necessary, as each member of the State Marketing Board ought to have been made aware about the view of member on the subject. In that case, in fact situation, the Hon'ble High Court observed that the consultation with State Marketing Board was mere farce and there was no effective and meaningful consultation. As such, in fact situation, the order passed by the District Deputy Registrar and Notification issued by State Government about the bifurcation of Marketing Committee was quashed and set aside. Whereas, in the present case, the decision taken by CSB through circulation cannot be termed as farce, so as to attract the decision of Hon'ble Bombay High Court in **Sunil Ravat's** case (cited supra).

20. True, in the present case, the learned P.O. did not point out any rule permitting the approval of the members of CSB by circulation. However, what is required is the approval of the members of CSB for the transfer proposed by the State Commissioner. In administration, for some reasons, sometime it may not be possible to convey meeting in congregation, and therefore, the approval is being taken by circulation. If the situation warrants immediate

action and for paucity of time or otherwise, it was not possible to convene a meeting in person, then the approval taken by circulation only for absence of meeting in congregation cannot be *ipso facto* stamped as illegal.

21. **As to ground Nos.(iii)(iv) and (v) :**

As these three grounds are interconnected, it would be appropriate to discuss them together. Admittedly, the Applicant has not completed normal tenure on the post of Assistant Commissioner in Investigation Department and before completion of normal tenure, he has been transferred in the same Office by order dated 25.10.2017. Shri Bandiwadekar vehemently urged that though there is approval of Hon'ble Chief Minister as a Competent Authority for mid-term and mid-tenure transfer, as contemplated under Section 4(5) of 'Transfer Act 2005', no special case or grounds are made out for the transfer. He further strongly urged that the Applicant was transferred on alleged irregularities in his functioning in Investigation Department, and therefore, such order without initiating departmental proceeding is punitive and it is a case of malice in law. He has further invited my attention to the subsequent development taken place after filing of O.A.

22. The perusal of record reveals that before transfer of the Applicant, the charge-sheet under Rule 10 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Discipline and Appeal Rules 1979' for brevity) was issued against the Applicant for the alleged misconduct. The Applicant had submitted his explanation. However, the disciplinary authority gave warning for irregularities in his functioning by order dated 28.06.2018 [It is issued during pendency of this O.A.], and accordingly, the letter of caution was issued to him on 14.08.2018. Here, it would be useful to reproduce the note prepared in this behalf by the Office which is as follows :-

“ फेरसादर -

श्री. प्रदिपकुमार भोसले, स.रा.आ. यांच्या अनियमिततेबात त्यांना देण्यात आलेले ज्ञापन व त्यावर श्री. भोसले यांचा खुलाचा व त्यावरील अंमलबजावणी शाखेचे अभिप्राय या सर्वांचा विचार करून खालील प्रमाणे सादर करण्यात येत आहे.

- अ) श्री. प्रदिपकुमार भोसले, स.रा.आ. यांच्यावर ठेरण्यत आलेल्या दोषारोपामध्ये कोणत्याही प्रकारची महसुलहानी झालेली नाही.
- ब) श्री. प्रदिपकुमार भोसले, स.रा.आ. यांचे या प्रकरण्याच्या अनुषंगाने अंमलबजावणी शाखेतून मुदतपूर्व विधी शाखेत अकार्यकारी पदावर स्थानांतरण करण्यात आलेली आहे, त्यामुळे एक प्रकारे त्यांना हि मोठी शिक्षा आहे.
- क) अंमलबजावणी शाखेत येण्यापूर्वी श्री. प्रदिपकुमार भोसले, स.रा.आ. यांनी विधी शाखेत महसुल हिताच्या दृष्टिने चांगले काम केलेले दिसून येते.

सबब, वरील (अ), (ब) व (क) चा विचार करता श्री. प्रदिपकुमार भोसले, स.रा.आ. यांना “ताकीद देणे” हि शिक्षा प्रस्तावित करावी असे मत आहे.

मान्यतेस्तव सादर व पुढील आदेशार्थ सादर.”

23. In view of above note, the State Tax Commissioner approved the proposal of warning and the caution letter was accordingly issued on 14.08.2018.

24. Shri Bandiwadekar was harping upon contents of Clause (b) of the noting reproduced above. Adverting to the contents in Clause (b), Shri Bandiwadekar vehemently urged that the Department itself accept that the transfer of the Applicant was punishment. He, therefore, urged that in view of this alleged admission in the note that the transfer itself was punishment, the same is liable to be quashed.

25. At this juncture, it would be apposite to refer the decisions relied by the learned Advocate for the Applicant in this behalf.

26. Reliance was placed on the Judgment of Hon'ble Supreme Court in **(2009) 2 SCC 592 (Somesh Tiwari Vs. Union of India)**. In that case, there was

anonymous complaint against the Appellant which was investigated by Department authorities, but nothing adverse was found against Appellant, yet he was transferred from Bhopal to Shilong. The Appellant has challenged his transfer order on the ground that the transfer was made on non-existent ground as nothing adverse was found against him in the investigation. It is in that context, the Hon'ble Supreme Court held "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 the order of transfer is passed in lieu of punishment, the same is liable to be set aside being fully illegal. The transfer order was passed on material which is non-existent. The order suffers not only from non-application of mind but also suffers from malice in law." As such, in that matter, the Appellant was transferred on anonymous complaint and on that basis, the Appellant transferred before conclusion of investigation. Later, on completion of investigation, nothing adverse was found against the Appellant. It is in that context, the transfer without waiting for result of investigation was held based on non-existent material and punitive. In so far as the present case is concerned, significant to note that the D.E. was initiated against the Applicant under Rule 10 of ' Discipline & Appeal Rules 1979' and on conclusion of the same (during the pendency of O.A.) warning was issued to the Applicant for irregularities in the functioning and performance of duties while serving in Investigation Department.

27. Reliance is also placed on the Judgment of Hon'ble Bombay High Court in **2015(2) Mh.L.J. 679 (State of Maharashtra Vs. Dr. Padmashree S. Bainade)**. It was a case of mid-term transfer of Deputy Collector on the ground of negligence in performance of duties for failure to remove encroachment. It was assailed as punitive. He was transferred without enquiry. It is in that context, the Hon'ble High Court held that the

Government has failed to make out a case to justify the transfer within sphere of existence of special reasons or extra-ordinary circumstances, public interest or larger good. It was also observed by the Hon'ble High Court that at the time of passing of transfer order, the Government had not assigned any reason even briefly. The Hon'ble High Court further observed that in case of negligence or misconduct by the Government servant, the transfer without enquiry into misconduct is in breach of principles of statutory provisions and it amounts to punishment upon unproved alleged misconduct. Whereas, in the present case, the D.E. was initiated against the Applicant under Rule 10 of 'Discipline and Appeal Rules 1979' which was concluded during the pendency of O.A. and the warning was given to the Applicant for irregularities while functioning in Investigation Department. Thus, what emerges that while transferring the Applicant, the D.E. was initiated though for minor punishment and later it was concluded by issuing warning. If this be so, it cannot be said that the transfer was *malafide* or punitive, as ultimately on completion of enquiry, the Applicant was given warning not to repeat such irregularities while discharging the duties.

28. At this juncture, it would be apposite to refer the Judgment of Hon'ble Supreme Court in ***Civil Appeal No.1010-1011 of 2004 (Union of India Vs. Sri Janardhan Debanath & Anr.) decided on 13.02.2004*** wherein in Para No.12 the Hon'ble Supreme Court held as follows :-

*“12. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest*



*or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The Writ Petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.”*

Thus, the principles of law enunciated in this Judgment are squarely attracted.

29. Here, it would be appropriate to see the nature of irregularities for which the Applicant was ultimately warned on conclusion of enquiry initiated under Rule 10 of ‘Discipline and Appeal Rules 1979’. The irregularities are as follows :

“1. The Applicant did not take over the charge properly from his predecessor after his transfer to the Investigation Branch in May 2016. He did not take the files pertaining to 234 cases in his custody. He did not take the files pertaining to 234 cases in his custody. He did not report to superior authorities about non receipt of the files. The superior authorities came to know about non receipt of files in February 2017.

2. The Applicant has not submitted correct information about pending recovery in the monthly reports. The actual pending recovery in his charge was Rs.177.94 crores but the recovery reported in the monthly report was Rs.138.32 crores.

3. There was discrepancy in the list of cases reported as due date for recovery was not over.

4. The Applicant did not take entries about demand raised by passing assessment orders in the prescribed registers and also did not prepare summary after each calendar month, which is must to keep control on the pending dues and to take recovery actions to recover the dues.

5. The Applicant did not report about non receipt of files while submitting information about pending dues to superior authorities and Sales Tax Revenue Audit Authorities.”

30. No doubt, the Applicant sought to contend that he was not at fault in not getting the custody of the record from his predecessor in office viz. Shri Kishor Zhalke and it was brought to the notice of Deputy Commissioner in the meeting. The Applicant further sought to contend that he has raised the issue of non-getting the custody of the files from Shri Kishor Zhalke, but Deputy Commissioner got annoyed and it was the reason for his transfer. However, this aspect is now over as the D.E. initiated under Rule 10 of Discipline and Appeal Rules 1979' concluded and culminated in giving warning to the Applicant. Thus, this is not a case that the Applicant was exonerated in the enquiry. As such, the satisfaction of the Competent Authority that the transfer of the Applicant was necessitated stands fortified. As held by Hon'ble Supreme Court in ***Janardhan Debanath's*** case (cited supra) where the Competent Authority is satisfied that the transfer is imperative on account of some misconduct, in that event, holding of elaborate enquiry before transfer need not be insisted upon otherwise the very purpose of transferring an employee in public interest or exigencies of administration would get frustrated. In the present matter, the Applicant was assigned the responsibility to check evasion of taxes and to recover the same from tax evaders. In the functioning of the Applicant, certain irregularities were noticed for which he is warned. This being the position, the impugned transfer order cannot be termed as punitive transfer.

31. Shri Bandiwadekar further referred to various decisions, which are in fact, are of no assistance to him in the present situation. He referred the following decisions :-

- (a) ***O.A.No.900/2018 (Prashant S. Pisal Vs. Principal Secretary, Revenue & Forest Department) decided by this Tribunal on 20.12.2018.*** In that matter, the transfer of the Applicant was found

without recording reasons and the violation of 4(4) and 4(5) of 'Transfer Act 2005' and quashed. This Tribunal held that none of the documents even barely contains reasons even in one word, so as to express alleged administrative reason much less special reasons or exceptional circumstance on record. It is in that context, in fact situation, the O.A. was allowed.

(b) The Judgment of Hon'ble Bombay High Court in ***Writ Petition No.91/2019 (Sunil A. Koli Vs. State of Maharashtra) decided on 04.01.2019***. In that case, the Hon'ble High Court held that the recording of reasons is not an empty formality but a safeguard is provided so that normal rule is not deviated for an asking. The recording of reasons is also necessary so that the Tribunals and Courts can exercise their powers of judicial review in effective manner so as to assess as to whether the reasons on which mid-term transfer is effected are proper or not. There was no reason even for name sake as to why mid-term transfer was effected. In fact situation, the decision of Tribunal to quash transfer was maintained.

(c) ***O.A.No.527/2018 (Dr. Ravindra B. Chavan Vs. State of Maharashtra) decided by the Tribunal on 19<sup>th</sup> November, 2018***. In that case, the transfer was quashed having found that the Applicant was transferred on complaint without giving an opportunity though eventually the complaint was found without substance later on.

(d) ***O.A.No.845/2018 (Maharu B. Patil Vs. State of Maharashtra) decided on 11.02.2019***. In that case, no reasons were recorded by the Competent Transferring Authority and the order was silent to establish that the transfer was necessitated in public interest or

administrative exigencies. The transfer was held not in accordance to Section 22-N(2) of Maharashtra Police Act and set aside.

- (e) **O.A.419/2017 (Bhaskar Waghmare Vs. State of Maharashtra) decided on 21<sup>st</sup> December, 2017.** It was again transfer without recording reasons in writing and without obtaining prior approval of next immediate Competent Authority, as required under Section 6 of 'Transfer Act 2005'. Accordingly, the transfer order was quashed and O.A. was allowed.
- (f) **O.A.01/2017 (Dattatraya Pande Vs. State of Maharashtra) decided on 8<sup>th</sup> March, 2017.** It was a case of mid-term transfer on the verge of retirement without recording reasons and was held in violation of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'.
- (g) The decision of Hon'ble Bombay High Court in **Writ Petition No.9844/2018 (Santosh M. Thite Vs. State of Maharashtra)**. In that case, the Government servant was transferred under the caption 'administrative reason'. However, there was no further reason to indicate why transfer of particular employee is a special case. Noting was mentioned as to how the requirement of expediting the work of Samruddhi Highway is connected with the transfer of second Respondent. There was nothing to show that the second Respondent has an expertise or experience in the matter of construction of Highway or in the matter of acquisition of land relating to construction of Highway. The transfer order was therefore quashed.
- (h) The decision of Hon'ble High Court in **Writ Petition No.1940/2011 (S.B Bhagwat Vs. State of Maharashtra & Ors.) decided on**

**24.11.2012.** In that case, the transfer was found effected to accommodate the request of another employee and on that ground, the Petitioner was sought to be displaced. It is in that context, the Hon'ble High Court held that there is no compliance of mandatory requirement of Section 4(5) of 'Transfer Act 2005' and accordingly, the transfer order was quashed.

32. Needless to mention that each case depends on its own facts and close similarity between one case and another is not enough because even single significant difference may alter the entire aspect. Suffice to say, it is not permissible to place reliance on decisions without saying as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. The decisions referred to above are rendered in the particular facts in the fact circumstances of the case.

33. Now turning to the facts of present case, though it is a case of mid-term and mid-tenure transfer, the same was found necessitated in view of some irregularities in the functioning of the Applicant while he was functioning as Assistant Commissioner in Investigation Department for which he was eventually warned. His transfer seems found imperative for collection of revenue / taxes from the tax evaders and the proposal forwarded by State Tax Commissioner has been approved by CSB as well as by highest Competent Authority i.e. Hon'ble Chief Minister. If the work of employee particularly relating to recovery of taxes from evaders and his performance found not satisfactory or some discrepancies are noticed in his functioning, in such situation, the recommendation made by the State Tax Commissioner to transfer such person from Investigation Department to another Department with object to enhance collection of revenue and check tax evaders, cannot be faulted with. The transfer has been issued in the interest of administrative

exigencies to keep vigil on tax evaders. As such, such transfer cannot be termed as punitive, particularly when on completion of enquiry at the end, he was warned for the same.

34. The totality of aforesaid discussion leads me to sum-up that the challenge to the transfer order is devoid of merit and the O.A. deserves to be dismissed. Hence, the following order.

**ORDER**

The Original Application stands dismissed with no order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 22.07.2019

Dictation taken by :

S.K. Wamanse.

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