

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.220 OF 2016

DISTRICT: NASHIK

Shri Ramdas Sonyabapu Kamble,)
Occ : Govt. Service - Executive Engineer, Nashik,)
(Electrical), Division Nashik.)
(and now transferred therefrom),)
R/o. 205, Chintamini Park,)
Bhavik Nagar, Gangapur Road, Nashik) Applicant

Versus

1. The State of Maharashtra,)
Through Additional Chief Secretary,)
Public Works Department,)
Having office at Mantralaya,)
Mumbai 400 032.)
2. Shri Ravikiran Jivan Pardeshi,)
Working as Executive Engineer,)
Central Mumbai (Electrical),)
Division, Worli, Mumbai)Respondents

Shri A.V. Bandiwadekar, the learned Advocate for the Applicant.

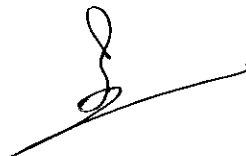
Shri K.B. Bhise, the learned Presenting Officer for the Respondent No.1.

Shri M.D. Lonkar, the learned Advocate for Respondent No.2.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

RESERVED ON : 30.03.2016.

PRONOUNCED ON : 20.04.2016.



J U D G M E N T

1. This Original Application is taken up for final disposal after notice and after pleadings are completed.
2. Original record along with one copy was produced. Original record is returned.
3. The orders under challenge are as follows :-
 - (a) Order dated 25.02.2016, Exhibit-A, at page 14, thereby transferring the Respondent No.2 from his posting as Executive Engineer (Electrical) Division, Worli, Mumbai to the post of Executive Engineer, Nashik Electrical Division in the vacancy which would arise due to transfer of Shri R.S. Kamble (Applicant) and for the posting of the Applicant separate order for posting would be issued.
 - (b) Order dated 25.02.2016, at page 16, by which the Applicant's posting at Nashik Electrical Division, Nashik as Executive Engineer is cancelled and in exercise of powers under Section 4 of R.O.T. Act, Applicant is transferred / posted on administrative ground at his original posting i.e. at Executive Engineer, Electrical Division, at Pune.
4. Background is as follows :-
 - Applicant was transferred and posted as Executive Engineer (Electrical) on deputation in the establishment of Pimpri Chinchwad Development Authority.
 - Applicant had failed to join and requested to cancel that posting and requested for posting at Nashik being his last posting because he was due to retire in 2016. Applicant's request was pursued by the Hon'ble Minister Shri Professor Ram Shinde, by writing a letter.
 - Applicant was transferred at his present post which had fallen vacant due to retirement of Shri S.P. Jamkhedkar, by order dated 14.12.2015.
5. Impugned orders of transfer are challenged on grounds as averred in paragraph nos.6.6, 6.8, 6.12 and 6.13 of the Original Application apart from other averments.
6. O.A. is opposed by filing affidavit-in-reply.



7. Perusal of O.A. reveals that the challenges raised in the grounds referred to in foregoing paragraph no.5 are crucial. For ready reference, the grounds of challenge and their reply by the State are quoted below:-

Sr. no.	Ground number and text of ground as averred in the O.A.	Paragraph number of reply and text of reply from the affidavit-in-reply filed by the Respondent No.1.
1	6.6 <i>That from the facts stated above chronologically, it is clear that the Petitioner was not due for transfer, having completed hardly 2 months in the present place of posting at Nasik. That in view of this, the Respondent No.1 was obliged to comply with the mandatory requirement of the provisions of sections 4(4)(ii) and 4(5) of the R.O.T. Act, 2005 by making Special Case etc. to justify the issuance of the impugned order of transfer of the Petitioner. That the same is also the requirement which the Respondent No.1 was obliged to fulfill in request of the separate order of transfer of the Respondent No.2. This is conspicuously absent in the present case.</i>	10. <i>With reference to para no.6.6, I say and submit that it is clear from the facts stated above that the applicant was transferred on administrative grounds by order dated 30/07/2015 but he did not join there.</i>
2	6.8 <i>That as far as the Respondent No.2 is concerned, he was due for transfer from the place at Mumbai where he was working having completed 3 years and therefore, on his request he was granted extension of one year to continue in the same post in the Mumbai since he is due to retire within a period of less than three years. Thus the Respondent No.1 has not invoked the powers under section 5(3) of the said Act. That accordingly the Respondent No.2 continued to work at Mumbai.</i>	12. <i>With reference to para no.6.8, I say and submit that the Shri R.J. Pardeshi, the Respondent No.2 was transferred as Executive Engineer (Electrical) Nashik with prior approval of the competent authority.</i>
3	6.12 <i>That according to the reliable information of the Petitioner from the office of the Respondent No.1, that the proposal regarding transfer of the Respondent No.2 and that of the Petitioner was never placed before the Civil Services Board as per the provisions and the Circular issued by the Respondent No.1 on the basis of the similar Circular dated 31.1.2014 issued by the State Government through General Administration Department, which in turn is based on the Judgement of the Hon'ble Apex Court in the matter of T. Subramaniam. This requirement is thus a mandatory one, the breach</i>	16. <i>With reference to para no.6.12, I say and submit that a Civil Services Board is established in the Public Works Department vide G.R. dated 29/04/2015. Copy of which is annexed herewith and marked as Exhibit R-3. I chairman of the Civil Services Board i.e. the then Additional Chief Secretary, P.W.D. had taken a special concession to the cases of promotion and transfer in P.W.D. for Divisional Cadre Rules and to submit the proposals without the</i>



	<i>whereof must correspondingly result into declaring the impugned order to be non-est, invalid and void ab-initio.</i>	<i>recommendations of the Civil Services Board. Therefore the proposal for transfer and promotions could not be placed before the Civil Services Board as per G.R. dated 29/04/2015. However the procedure to obtain the recommendations for transfer / promotion pending cases before Civil Service Board is now started by the Department.</i>
4	<i>6.13 That according to the reliable information of the Petitioner from the office of Respondent No.1, that there was no proposal about the transfer of the Petitioner for any good and valid reason from the office of the concerned Superintending Engineer and the Chief Engineer, to the office of the Respondent No.1 or from the said office to the Hon'ble Minister for Public Works Department and therefore, there was no reason for the Hon'ble Minister for Public Works Department to agree for such transfer of the Petitioner, so also that of the Respondent No.2 in place of the Petitioner. Thus such transfer order cannot be said to be in the public interest or on strong transparent and valid ground."</i>	<i>17. With reference to para no.6.13, I say and submit that the said transfer order was issued after following the procedure as mentioned under section 4(4)(ii) and 4(5) of the R.O.T. Act and clause no.13 in the G.R., G.A.D., dated 11/02/2015.</i>

8. Reply of Respondent No.2 contains bare denial. All that Respondent No.2 urges is that he had genuine difficulty for which he had made the request and it was acceded by the Government and the Government has power to consider the request. Moreover, Applicant himself had come to Nashik on request and therefore, he cannot find fault in the process of consideration of Respondent No.2's request as special case.

9. Learned Advocate Shri A.V. Bandiwadkar for the Applicant has relied on certain judgments for his prepositions as follows :-

Sr. No.	Judgments
1	In the case of S.B. Bhagwat Versus State of Maharashtra & Ors., W.P. (L) No.1940 of 2011 decided on 24.1.2012 reported in 2012(3) Mh.L.J. Relevant portion of the order / judgment is quoted below :



	<p>8.</p> <p><i>Ordinarily, a government servants cannot be transferred unless he has completed the tenure of posting. An employee who has not completed his normal tenure of three years may yet be subjected to transfer, as provided in sub-section (5) of section 4. Sub-section (5) of section 4 begins with an overriding non-obstante provision, but requires that reasons have to be recorded in writing in a special case for transferring an employee even prior to the completion of tenure. <u>Merely calling a case a special case does not constitute a sufficient reason. The rationale why the legislature has required that reasons be recorded in writing for transferring an employee even before completing his tenure is to bring objectivity and transparency to the process of transfers. Indeed, the matter of transfers has been brought within a regulatory framework laid down in the statute enacted by the State legislature Section 4(5) permits as an exceptional situation, a transfer to be carried out, notwithstanding anything contained in section 3 of in section 4. The exceptional power must be exercised strictly in accordance with sub-section (5) of section 4. It is a settled position in 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 prescribed by the statute.</u></i></p> <p style="text-align: right;"><i>(Quoted paragraph 8, page 200 of the above case)</i></p>
2	<p>In the case of Ramakant B. Kendre Versus State of Maharashtra and Another, W.P.No.8177 of 2011 decided on 18.10.2011 reported in 2012(1) Mh.L.J.</p> <p>Relevant portion of the order / judgment is quoted below :</p> <p>15.</p> <p><i>No doubt, that clause (ii) of proviso to sub-section (4) would permit transfer to be made at any time of the year and not necessarily in April or May, where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons. However, when this is being done, the reasons and the circumstances will have to be recorded in writing and the same cannot be done without prior approval of the next higher authority. Undisputedly, sub-section (5) of section 4 carves out an exception to the general protection granted in sub-section (1) of section 4. <u>No doubt, by taking recourse to sub-section (5), a Government servant can be transferred even prior to completion of his tenure and even at any time of the year and not necessarily in the month of April or May, in special cases. However, while doing so, the competent authority will be required to record the reasons in writing and would also be required to obtain prior approval of the immediately superior Transferring Authority as mentioned in the table of section 6.</u></i></p> <p style="text-align: right;"><i>(Quoted paragraph 15, page 957 of the above case)</i></p>
3	<p>This Tribunal Judgment passed in Original Application No.766 of 2014, dated 10th April, 2015.</p> <p>In this judgment this Tribunal has same ratio as referred to in earlier two</p>



reported judgments.

10. As noted earlier photocopy of office file consisting note and other documents was produced. It consists of 25 pages as pagination is reflected in the set of papers which is produced.

Perusal of record reveals following facts :-

Sr. No.	Date	Particulars
1.	23.11.2015	A letter is received from the Minister of State, Professor Shri Ram Shinde to the Minister of Public Works Department on 23.11.2015. The Hon'ble Minister has endorsed it to the Additional Chief Secretary, Public Works Department to examine and take action. On the same date the Additional Chief Secretary, Public Works Department (P.W.D.) marked it to Services Department of P.W.D. <i>(Pages at 2, 3 and 4 of the file produced.)</i>
2.	30.11.2015	The office note is put up proposing posting of Shri R.S. Kamble (Applicant) as per the recommendations of Hon'ble Minister, Professor Shri Ram Shinde. <i>(Pages at 2,3 and 4 of the file produced.)</i>
3.	14.12.2015	The proposal for transfer was approved by A.C.S., Hon'ble Minister and Chief Minister. He thereafter ordered posting the applicant at Nashik. <i>(Pages at 18 exhibit B of O.A.)</i>
4.	14.12.2014	The Applicant joined.
5.	15.12.2015	Hon'ble M.L.A. Shri Anil Gote, wrote a reminder on to Hon'ble Chief Minister and another to Hon'ble Minister (P.W.D.) requesting to transfer the Respondent to Nashik, and requested to stay transfer of applicant. Hon'ble Chief Minister ordered Chief Secretary to take actions quickly "तात्काल कार्यवाही करावी". <i>(Pages at 8 & 9 of the file produced.)</i>
6.	16.12.2015	Additional Chief Secretary, P.W.D. wrote a note presenting the facts that based on a note which was already approved, Shri R.S. Kamble (Applicant) is already posted at Nashik and submitted it to Hon'ble Minister and to Chief Minister.



		<i>(Page 5 of the file.)</i>
7.	18.12.2016	Hon'ble Minister (P.W.D.) approved/ signed the note and it was sent to Hon'ble Chief Minister <i>(Page 5 of the file.)</i>
8.	21.12.2015 Or about that date.	Hon'ble Chief Minister has endorsed that "act according to the endorsement on the letter." <i>(Page 5 of the file.)</i>
9.	31.01.2016	As Additional Chief Secretary, P.W.D. forwarded the note to the department for action. <i>(Page 5 of the file.)</i>
10.	13.01.2016	Office note was put up proposing the transfer and posting of Respondent No.2 and the Applicant. <i>(Page 6 of the file.)</i>
11.	22.01.2016	Additional Chief Secretary has ordered to post applicant on deputation at Pimpri-Chinchwad Municipal Corporation, where he was earlier posted, but he had failed to join. <i>(Page 6 of the file.)</i>
12.	20.02.2016	Draft order was put up. <i>(Page 7 of the file.)</i>
13.	25.02.2016	Impugned orders are passed / issued. <i>(Page 7 of the file.)</i>

11. The case proceeds in the background as follows :-

- (a) The applicant was posted / deputed as Executive Engineer (Electrical) Pimpri-Chinchwad Municipal Corporation but he did not joined.
- (b) Applicant requested for posting at Nashik on the ground as he is due to retire on 30.11.2015 and Hon'ble Minister Professor Shri Ram Shinde recommended his case.
- (c) Applicant's request was considered and he was posted in the clear vacancy that has arisen due to retirement of Shri S.P. Jamdhade on 30.11.2015.
- (d) After posting at Nashik, the Applicant joined on 14.12.2015.



- (e) On 15.12.2015, transfer of Respondent No.2 was proposed by M.L.A. Shri Anil Gote and Hon'ble Chief Minister endorsed in his favour.
- (f) Office note was put up bringing to the notice of the superior the fact of recent posting of the applicant etc.
- (g) The record does not show that special reasons or exceptional circumstances have been put up by the office nor are recorded.
- (h) The endorsement recording satisfaction of existence of exceptional circumstances or special reasons etc. is not borne on record.

12. In foregoing premises, the questions which arises for determination are :-

- (a) Whether special reasons or exceptional circumstances are recorded ?
- (b) Whether the endorsement of Hon'ble Chief Minister on a letter of recommendation submitted by Hon'ble M.L.A. Shri Anil Gote has the strength of dispensing with necessity of recording of special reasons and exceptional circumstances for proposing mid-term transfer ?
- (c) Whether the complaint, if any, refer to in the letter of recommendation submitted by Hon'ble M.L.A. was taken into account by the Hon'ble Chief Minister and as to whether such complaint *ipso facto* constitutes as good and sufficient ground to answer the requirement of special reasons or exceptional circumstances ?

13. Learned Advocate Shri A.V. Bandiwadekar for the Applicant has placed reliance on reported judgment of Hon'ble High Court and this Tribunal and made a submission that in absence of recording special reasons and exceptional circumstances, the mid-term and mid-tenure transfer cannot be ordered. In defence both the Respondents have relied on the fact that Applicant did not report for duty at Pimpri-Chindiwad Municipal Corporation, Pune for five to six months.

14. Both the Respondents did not come with a plea that there exists any substantiated complaint against the Applicant, which be germane to the order of transfer. Record which is produce does not show that allegation contained in the letter of Hon'ble M.L.A. Shri Anil Gote is that the applicant is "an indisciplined and corrupt officer" were inquired into and as to whether any report was sought in that regard.

15. It is very well borne on record that, what has livered transfer is not the complaint or any special reasons or exceptional circumstances placed/ borne on record.



16. What has livered the transfer is letter of Hon'ble M.L.A. Shri Anil Gote and unilateral and quick acceptance of the said request by Hon'ble Chief Minister.

This aspect is evident in the background that endorsement was made by the Hon'ble Chief Minister, may be on the spur of movement, and without calling record and without dealing with the aspect of words of compliant against applicant, contained in MLA Shri Anil Gote's letter, in manner whatsoever.

This fact is evident from the office note which was put up by the Additional Chief Secretary (A.C.S.) on 16.12.2015 pointing out as follows :-

"You kindly see Hon'ble MLA Shri Anil Gote's letter on which Hon'ble CM has endorsed, ""तात्काल कार्यवाही करावी". (१-३ पवि)

In this regard, may kindly see ५.७ पवि on which Shri Kamble's appointment has been approved (& subsequently issued) at Nashik.

Anand B. Kulkarni
16.11.15

मा. मंगी (सावां)

C.B. Patn
18/12/2015

मा. मुख्यमंत्री

पत्रावटील
शे-याप्रमाणे
दार्यवादी वटवि

सेवा-१"

अ.मु./स (सा.बां)

(Above quoted text in italics is extracted from page 5 of file produced before Tribunal.)

17. The above quotation of text from office file, reveals that the applicant's transfer which is impugned was aimed at achieving of creating vacancy for accommodating Respondent No.2 and not on account of any administrative reasons or public good or any reasons which fit into the term of special reasons or exceptional circumstances.

18. The aspect of special reasons or exceptional circumstances is guided by the content which are potent in these words namely those are to be guided objectivity and not subjectivity. The "special reasons or exceptional circumstances" have to be

inevitably brought on record, and those have to be ascertainable from record facts and words explicit and un-ambiguous. Whatever is sheerly in the mind of the decision making authorities render reasons guided by subjectivity. In the present case, the reasons, if any, which may be in the mind of executive have to come on record of the Government, to enable those to constitute special reasons or exceptional circumstances. All that is borne or brought on record is the letter of Hon'ble M.L.A. Shri Anil Gote and acceptance of the request contained therein by Hon'ble Chief Minister.

19. This set of facts which are borne on record and discussed in the foregoing para renders action of the Government based on subjectivity than objectivity, apart from it being in utter violation of Section 4(4)(ii) and Section 4(5) of the R.O.T. Act as is interpreted by this Tribunal in number of judgments and as confirmed / rules by Hon'ble High Court in the Judgments cited at bar which are quoted in foregoing paragraph no.9.

20. In the result the questions which are formulated in foregoing para no.11 are answered as follows:

- (a) The applicant has successfully demonstrated that the impugned transfer is ordered without compliance with the statutory requirement of it being based on the decision in compliance with Section 4(4)(ii) and 4(5) of ROT Act. Respondent have failed even to defend the case on legal cannons much less succeeded in their defence.
- (b) Endorsement by Hon'ble Chief Minister on Hon'ble MLA's letter and reiteration thereof on the note put up by the ACS, PWD does not have strength of dispensing or satisfying recording of special reasons or exceptional circumstances. From whichever source, the decision to make/order a mid-term and mid-tenure transfer may emanate, recording of reasons as confirming to Section 4 of ROT Act is a sine qua non. Special or exceptional power is not carved out and vested with Hon'ble Minister or Hon'ble Chief Minister for that matter.



- (c) The Government has failed to plead and prove that the transfer of applicant was ordered on the basis of an enquired complaint.

21. The manner in which power to transfer is exercised, demonstrates that provisions of Section 4(4) and Section 4(5), catena of judgments and earlier circulars issued by the Chief Secretary, Annexure 'C' Page 19 of this OA which is dated 11.2.2015 were not brought to the notice of the Hon'ble Chief Minister. Record shows that facts were brought to the notice of the Hon'ble Chief Minister, not the provisions of law and judgments of this Tribunal and those of Hon'ble High Court.

22. In the result the O.A. is allowed, impugned orders are quashed and set aside.

23. In the background that stay impugned order was not granted, and now the O.A. is allowed, the result which have to be followed is that Applicant be restored the position as existed prior to issuance of impugned order within 30 days from the date of receipt of this order, and Respondent No.2 be dealt with as Respondent No.1 would deem it fit in accordance with law.

24. Steno copy be furnished to Applicant as well as the learned P.O..

25. In the circumstances applicant is entitled for payment of costs which is quantified in the sum of Rs.5,000/- which are made over to the applicant by the State directly.

Sd/-

(A.H. Jōshi, J.)
Chairman

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