

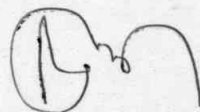
**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.266 OF 2016**

Shri Bharat Dattatray Thorat. )  
Working as Sub-Divisional Engineer (Civil) )  
Age : 57 years and residing at D-42, )  
Motiram Park, Opp. Kothrud Stand, )  
Kothrud, Pune 411 038. ) **...Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Chief Secretary, )  
Mantralaya, Mumbai - 400 032. )
2. Principal Secretary. )  
Water Resources Department, )  
Madam Kama Marg, Hutatma )  
Rajguru Chowk, Mantralaya, )  
Mumbai 400 032. )
3. Chief Engineer. )  
Water Resources Department, )  
Sinchan Bhavan, Bame Road, )  
Mangalwar Peth, Kasba Peth, )  
Pune 411 011. )
4. Shri Rajendra K. Kunjir. )  
Sub-Divisional Engineer, )  
Minor Irrigation Sub-Division No.2, )  
Sinchan Bhavan, Aurangabad Road, )  
Ahmednagar - 414 001. ) **...Respondents**



**Smt. Punam Mahajan, Advocate for Applicant.**

**Smt. K.S. Gaikwad, Presenting Officer for Resps. 1 to 3.**

**Shri D.B. Khaire, Advocate for Respondent No.4.**

**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 22.09.2016**

### **JUDGMENT**

1. The Applicant, a Sub-Divisional Engineer (SDE) vide the order dated 10.3.2016 herein impugned came to be transferred from the office of Chief Engineer, Water Resources Department, Pune-Mutha Canal Irrigation Sub-Division, Pune under Executive Director, M.K.V.D.C, Pune to the Office of Chief Engineer, Water Resources Department. The private party Respondent No.4 was to succeed him in Mutha Canal Irrigation Sub- Division, Pune. This order issued by the Second Respondent Government of Maharashtra in the department of Water Resources is the subject matter of this Original Application (O.A). The 1<sup>st</sup> Respondent is the Chief Secretary and the 3<sup>rd</sup> Respondent is the Chief Engineer, Water Resources Department.



2. I have perused the record and proceedings and heard Mrs. Punam Mahajan, the learned Advocate for the Applicant, Mrs. K.S. Gaikwad, the learned Presenting Officer for the Respondents Nos.1 to 3 and Mr. D.B. Khaire, the learned Advocate for the Private Party 4<sup>th</sup> Respondent.

3. The impugned order was dated 10.3.2016 (Annexure 'A-6', Page 33 of the Paper Book (P.B.). The 4<sup>th</sup> Respondent was to succeed the Applicant. Though it is mentioned in that order that it was request transfer, I think it is clearly established that in so far as the Applicant is concerned, it was not a case of request transfer. In that connection, useful reference could be made to the Affidavit-in-reply of Respondents Nos.1 and 2 (Para 17, Page 70 of P.B). This order came to be issued by the 2<sup>nd</sup> Respondent. However, by the order of 14.03.2016 (Annexure 'A-7', Page No.35-A of the P.B.), this order came to be stayed by the 2<sup>nd</sup> Respondent in so far as the Applicant and the 4<sup>th</sup> Respondent were concerned. On 14.03.2016 itself, this O.A. was lodged in this Tribunal. On 15.03.2016, the Hon'ble Chairman adjourned this O.A. to 21.06.2016 with liberty to circulate earlier, if occasion arose. In the meanwhile, by the order dated 16.05.2016 (Annexure 'A-9' page 35 -C), the 2<sup>nd</sup> Respondent vacated the stay granted on 14.03.2016. It was mentioned that the 4<sup>th</sup> Respondent





was transferred on his request. In so far as the Applicant (Shri Bharat Dattatraya Thorat) was concerned Para No.3 of that order read as follows:-

“श्री. भरत दत्तात्रय थोरात यांची मुख्य अभियंता, जलसंपदा विभाग, पुणे अंतर्गत मुठा कालवे पाटबंधारे उपविभाग, पुणे येथून मुख्य अभियंता, जलसंपदा विभाग, पुणे अंतर्गत रिक्त पदी कार्यरत पदावर कार्यकाळ पुर्ण झाला असल्याने प्रशासकीय कारणास्तव बदलीने पदस्थापना करण्यात यावी. असे या आदेशाद्वारे कळविण्यास येत आहे.”

4. It was mentioned that Applicant had completed his tenure (as on 16.05.2016) and, therefore, he was transferred on a vacant post. The Applicant having been promoted as SDE on 17.5.2012 was posted at his present place of posting on 31.01.2013 (Annexure ‘A-1’, Page 11 of the P.B). There was a change in place of Applicant’s posting as per his request. The 3<sup>rd</sup> Respondent issued Office Order No.115 of 2016 dated 25.5.2016 (Annexure ‘A-10’, Page 35-D) whereby the Applicant was directed to take charge from Shri Falke, S.D.E. after his retirement on 31.05.2016. Therefore, on that precise date, in fact, the vacancy had yet not occurred which was about six days away. Let me reproduce the Marathi version itself.

“अधीक्षक अभियंता, पुणे पाटबंधारे मंडळ, पुणे अंतर्गत कार्यकारी अभियंता, खडकवासला पाटबंधारे विभाग, पुणे अंतर्गत चासकमान प्रकल्प उप विभाग क्र.४, शिरूर (श्री. फलके, उप विभागीय अधिकारी यांच्या दिनांक ३१/०५/२०१६ रोजीच्या सेवानिवृत्तीमुळे होणा-या रिक्त पदी.”

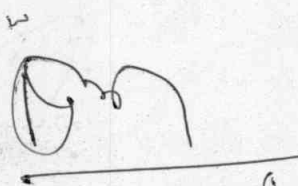


5. In the above background, I was moved in vacation for interim orders. The said six page interim order would give a clear idea of just how the things had moved. I think the reproduction of the entire order would place the whole thing in a proper focus and perspective. It will give a clear grasp to appreciate the facts and facts at issues. Therefore it will add to the substance of the matter and not to its weight. It read as follows:-

“1. Heard Smt. Punam Mahajan, the learned Advocate for the Applicant, Smt. K.S. Gaiwkad, the learned Presenting Officer for the Respondents 1 to 3 and Shri D.B. Khaire, the learned Advocate for the Respondent No.4.

2. The Applicant challenged initially an order of transfer dated 10<sup>th</sup> March, 2016 by way of this OA. On 15.3.2016, the matter came up for hearing before the Hon'ble Chairman who made the following order.

“1. Heard Smt. Punam Mahajan, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.



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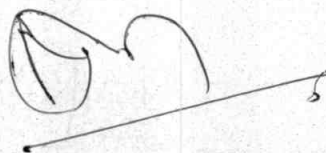
2. Learned P.O. Ms. N.G. Gohad for the Respondents states as follows :”

The impugned order is stayed by the Hon'ble Minister and communication to that effect is issued on 14.03.2016.

3. In view of this statement adjourned to 21.06.2016 with liberty to circulate before due date, if occasion arises.”

3. It is very clear that the Government itself had stayed the impugned order and upon that statement, having been made by the learned P.O, the OA came to be adjourned to 21<sup>st</sup> June, 2016 with liberty for earlier circulation, if occasion arose.

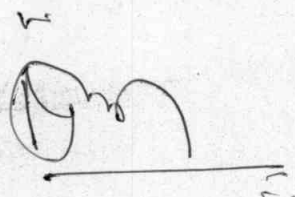
4. The Government of Maharashtra in Water Resources Department by an order of 16.5.2016 in effect vacated that stay which the Government itself had granted to the order of transfer. Thereafter, on 25<sup>th</sup> May, 2016, the Applicant was apparently transferred to a certain Project at Shirur which was to be rendered vacant on 31<sup>st</sup> May, 2016 upon the retirement of Shri Phadke. The Respondent No.4 was



transferred to the place in respect of which the Applicant brought this OA.

5. Shri Khaire, the learned Advocate for the Respondent No.4 strongly contends that with permission of Chief Engineer, who is an authority superior to the Applicant, the 4<sup>th</sup> Respondent has already taken charge today itself i.e. 30<sup>th</sup> May, 2016. Shri Khaire, therefore, submits that any order if now made would throw the entire administration out of gear and in any case, submits the learned Counsel that the Applicant has now completed the statutory period which would make him liable for transfer i.e. after three years. Shri Khaire further submits that the Applicant has been posted at a place the incumbent of which will retire tomorrow, and therefore, according to him, there will be no occasion for the provisions of Sections 4 & 5 of the Transfer Act getting attracted as of now.

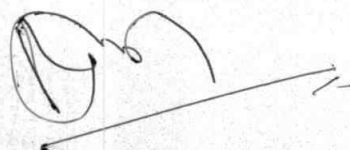
6. Mrs. Mahajan, the leaned Advocate strongly urges in effect that the approach and attitude of the Respondents in fact necessitates interim protection to the Applicant.





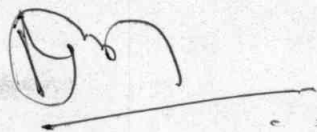
7. The learned P.O. submits that she has been served with the notice today morning only and she need some time to take instructions.

8. As far as the submissions summarized hereinabove are concerned, I am of the opinion that Mr. Khaire, the learned Advocate for Respondent No.4 is over concentrating on the events on May, 2016 and in his estimate, the events of March, 2016 have somehow, somewhat become pale and that in my opinion is a problem. The matter was already pending and the transfer order issued on 10<sup>th</sup> March, 2016 was the subject matter of the challenge before this Tribunal. At this stage, it is neither necessary nor in fact possible to guess as to what would have been the ultimate outcome. But the fact remains that the Tribunal had the seisin over this matter and for all practical purposes, the Hon'ble Chairman was pleased to only adjourn it. Because on the practical side of it, the Government having stayed it, there was no urgency as it were. But then, the move in the manner, the Respondents 1 to 3 on one side and the Respondent No.4 on the other have so conducted that it is very clear that the



issue is not so much inter-partes as it is as to whether the fact that the Tribunal was seized of the matter was present at all in their minds. It is no doubt true that the judicial forum has undisputed powers to make interim orders even of mandatory nature though they have to exercise those powers with great caution and circumspection. However, at the same time, in a deserving case, not to exercise it, would even tantamount to complete dilution the judicial authority.

9. The learned Advocate for the Respondent No.4 told me that after the date of the order i.e. 25<sup>th</sup> May, 2016, the Respondent No.4 requested the Applicant to vacate the post to enable him to join, but when he did not do it, he had per compulsion to join it in the manner he did. Now, the post is Class-I gazetted post and in normal circumstances, the actual transfer is evidenced by documents. Beyond that, I do not think, at present I should be saying anything more.

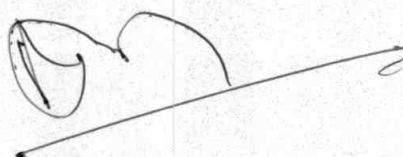
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10. It is, therefore, very clear that the fact that the matter was circulated today and the charge by same co-coincidence, if there was one, was also taken today could be pregnant with some possibility and I do not think, the whole thing can be viewed with the kind of good humour that the Respondents might expect. Making it clear that the order that is being made today, could be altered one way or the other or modified, I direct in the context of the facts that the Applicant continues to be holding the said post and if anything else has been done, that should be held to be non-existent, subject to the ultimate outcome hereof.

11. S.O. to 9<sup>th</sup> May, 2016. Hamdast.”

**Sd/-**  
**(R.B. Malik)**  
**Member-J**  
**30.05.2016”**

6. There was, therefore, a real tussle going on to assume and retain the place of present posting of the Applicant by the 4<sup>th</sup> Respondent and the Applicant. There is a reason to believe that the establishment had a clear slant in favour of the 4<sup>th</sup> Respondent.





7. Section 4 (1) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act) when applied to the present facts would lead to the conclusion that the normal tenure of the Applicant would be of three years. Section 4(4) and 4(5) of the Transfer Act read as follows:-

**“4(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:--

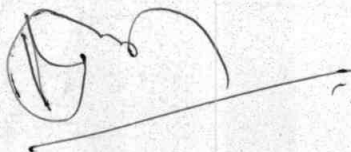
- (i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;
- (ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in



writing and with the prior approval of the next higher authority.

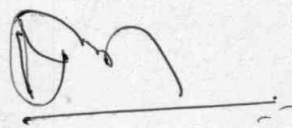
**4(5)** : Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior permission of the immediately preceding Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

8. Now, what is most significant to note in the above backdrop is that although it was always open to the Respondents to totally cancel the order dated 10.3.2016, they did not do so. They stayed it and on 16.05.2016 vacated the stay and that hurdle having been removed the order dated 10.3.2016 was effectuated. The Respondents' own document Annexure 'R-2' (Page 8 of the P.B) dated 13.5.2016 is a copy of Office Note which clearly states that the order dated 10.3.2016 needs to be effectuated and necessary directions be given to 3rd Respondent. Therefore the order relevant and in fact, decisive is that one dated 10.3.2016. The stay only postponed its effectuation without affecting its existence and



executability on a future date. The language of the orders dated 16.5.2016 and 25.5.2016 makes this position quite clear and beyond dispute that the order of transfer was dated 10.3.2016 and not anything else. Therefore, as on that date i.e. 10.3.2016, it was a mid-tenure transfer and was very much so even if it was sought to be executed in May 2016. That order dated 10.3.2016 must, therefore, come true to the test of law. Let me examine if it did.

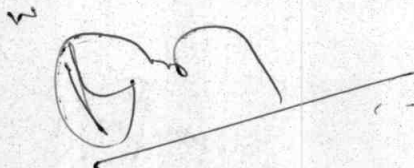
9. It is contended by the Applicant in Para 6.12.8 of the OA that the approval of Civil Services Board-I was imperative before effecting the transfers in accordance with the G.R. of 31.1.2014. A copy of that G.R. is at Annexure '3' (Page 19 of the P.B.) and Civil Services Board-I is the one that is relevant hereto. In Clause 3.6, it is provided that the transfers such as, one is, herein concerned with should be placed before the said Board for recommendation, although the final decision will be taken by the competent authority. According to the Applicant, this procedural aspect of the matter has not been duly complied with. In Para 27 of the Affidavit-in-reply of the 4th Respondent, it is asserted that the proposal in question was duly placed before the said Board. In Para 23 of the Affidavit-in-reply of the Respondents 1 to 4, it is pleaded that the Civil Services Board has been constituted



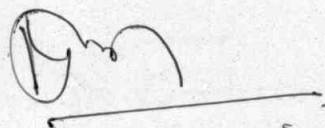


vide the order of 16.9.2015 and the proposal in question was placed before the said Board on 6.2.2016. It seems, therefore, that on this count alone, the Applicant might have been able to carry the day. However, there are other aspects of the matter which I shall presently discuss including what can be described as delegation of powers of the authority by the Hon'ble Chief Minister. I proceed further.

10. At Annexure 'A-4', the Applicant has annexed a copy of the G.R. of 11<sup>th</sup> February, 2015. There are detailed guidelines given therein as to how to implement the provisions of the Transfer Act, more particularly Section 4(4) and 4(5) of the Transfer Act. There is a reference to the Judgment of this Tribunal in OA 703/2014, dated 16.9.2014 and quotations are reproduced from it. The Tribunal thereby emphasized the need to have on record the special reason to effect the mid-tenure transfer which as already discussed above, I am herein concerned with. In the said G.R, then there is a reference to OA 839/2014, dated 13.10.2014 and the Judgment of the Hon'ble High Court in Writ Petition No.2665/2011, dated 25.7.2011. In that particular matter, the case was not even put up before the Hon'ble Minister and the Hon'ble Bombay High Court was, therefore, pleased to strike down that particular order

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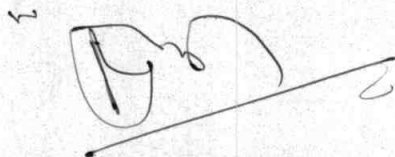
of transfer. In the backdrop of the above referred rulings, the Government in GAD gave detailed instructions in the matter of mid-tenure transfers. It has been *inter-alia* laid down that unless an employee completed a three year tenure, his transfer should not be proposed and the annual general transfers must be made only in April and May of each year. In case of mid-tenure transfers or transfers during the due tenure, it was imperative to give special reasons. In case, an employee sought a particular post and his case was supported by a public representative, then his transfer should not be made to that post and he should be transferred to some other post. Then, there is a reference to the need to initiate the disciplinary proceedings in case pressure was brought to bear upon the authorities in the matter of transfers. Even in case of those who had completed three years of tenure and were to be transferred in months other than April and May, still the said transfer should be effected after obtaining the sanction from the competent authority. Just because a period of three years has been completed that really did not mean that the transfer should be effected in months other than April and May. This is an important guideline as must have become clear by the above discussion. There is another Clause that deals with

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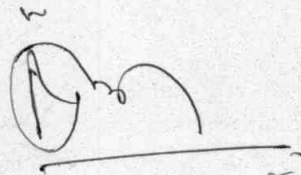
the state of affairs in the event of complaints which I am not herein concerned with.

11. I have already reproduced hereinabove Sections 4(4) and 4(5) of the Transfer Act. The same is self-speaking and it may not be necessary for me to elaborate or analyze it further. Those provisions would have to be read with G.R. just discussed. It must have become clear that the present one is the instance of mid-tenure transfer, and therefore, there have to be special reasons, if the said transfer was to be effected. That aspect of the matter has been discussed sufficiently hereinabove. Shorn of avoidable particulars, the fact remains that in this matter in the name of special reason, the only one that can be clearly deciphered is that the Respondent No.4 made a request for transfer. The issue, therefore, would be as to whether in order to accommodate an employee who is seeking transfer, it is a sufficient enough reason to disturb another employee like the present Applicant. In this behalf, an earlier Judgment of this Tribunal presided over by the Hon'ble Vice-Chairman in **OA 69/2015 (Shri Rajiv Singh Vs. State of Maharashtra and 2 others, dated 19.3.2015)** is apposite and it in effect holds that, that by itself cannot be a ground to effect mid-tenure transfer.





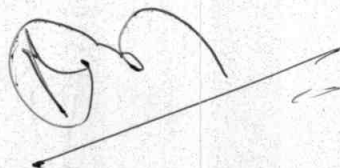
12. Similarly, the Hon'ble Chairman of this Tribunal in OA 949/2014 (Shri Vilas G. Rajput Vs. Principal Secretary, Water Resources Department and 3 others, dated 23rd December, 2014) also dealt with the proposition as to whether a transfer order issued for accommodating another Government servant was an appropriate exercise of power. I have in store discussion of some other case law. However, it would appear quite clearly from the principles enshrined under the relevant legal provisions and the case law discussed thus far, that in the first place, the concerned authority under the Transfer Act must apply its mind to the fact of the matter as to whether the sole criteria of accommodating some other employee has got so strong reasons as to all by itself be made a basis for transfer of someone like the present Applicant. Merely because another employee wants a particular place to be posted at, it may not be a special reason or exceptional circumstance. In the set of facts that I am herein concerned with, there is absolutely nothing on record to show as to how the request of the Respondent No.4 was by itself sufficient to displace the Applicant mid-tenure, and therefore, going by the above discussed case law and even otherwise, in my opinion, examining the facts such as they are, the mere request of the Respondent No.4 to get himself transferred to the place displacing the



Applicant therefrom was neither a special reason nor an exceptional circumstance.

13. Here, it may also be noted that in order to buttress her contention that it was an instance of mid-tenure transfer, Mrs. Mahajan, the learned Advocate for the Applicant invited reference to the revenue division allotment for appointment by nomination and promotion to the post of Group 'A' and Group 'B' (Gazetted and non-gazetted) of the Government of Maharashtra Rules, 2015 which are there at Annexure 'A-5' (Page 29 of the P.B.). She laid specific emphasis on Rule 9 thereof, which lays down inter-alia that in Group 'A' cadre, an Officer must complete minimum three years in the allotted revenue division while the said period would be six years in case of Group 'B' cadre.

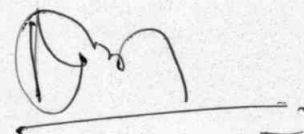
14. Now, to return to the issue of special reason or exceptional circumstance, it will be pertinent to note that the Division Bench of the Hon'ble Bombay High Court in **Writ Petition No.5465/2012 (Kishor S. Mhaske Vs. Maharashtra OBC Finance and Development Corporation and 2 others, dated 7th March, 2013)** had to deal with practically the same issue and Their Lordships were pleased to reproduce Section 4 in its entirety. Their





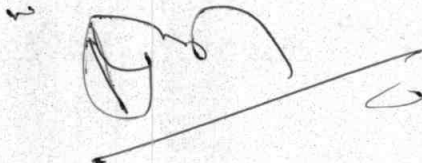
Lordships were pleased to refer to a Judgment in the matter of **S.B. Bhagwat Vs. State of Maharashtra, 2012 (3) Maharashtra Law Journal 197** in support of the proposition that when a statutory power is conferred upon an authority to do a particular thing in a particular manner, it has to be done exactly in the same manner. Para 9 from **Bhagwat** (supra) was then quoted by Their Lordships and in Para 7, it was observed thus :

“7. 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,

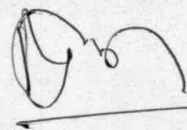
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hazy and meager expression such as "on administrative ground" cannot be a compliance to be considered apt and judicious enough in the face of mandatory statutory requirements. The impugned order of the transfer in the absence of mention of special 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 pre-maturely to Raigad. It is therefore unsustainable for want of evenhandedness or fairness to the Petitioner Government employee concerned and we therefore quash and set aside the impugned order of transfer. This order will not preclude the respondent no.1 passing a fresh reasoned order in writing, of course as prescribed under the Act after prior approval order is obtained from the competent transferring authority and by following the mandatory requirements as prescribed under the Act. The Petitioner is allowed in above terms."



15. In this connection, reference to the two Judgments of this Tribunal earlier cited and also the Judgment in the matter of **OA 703/2014 (Shri Raosaheb D. Mahale Vs. The Superintending Engineer, Bombay (Public Works) and 3 others, dated 16.9.2014**, it would become clear that the reasons which are canvassed as special reasons or exceptional circumstances are justiciable. The observations of Their Lordships in **Kishor Mhaske's** case (supra) are also to the same effect. Therefore, while it is no doubt true that this Tribunal exercising the jurisdiction of judicial review of administrative action will have a circumscribed scope and will not rush into merely substituting its own views on the same set of facts for the views of the authorities, but it is equally true that the transfer aspect of the service condition having been duly codified that law has to be enforced, and therefore, if the law and the case law interpreting that law lead to certain requirement, then that requirement must be found present and no artificial shackles shall be put on the powers of the forum that exercises jurisdiction of judicial review of administrative action. Generally so speaking, a particular aspect of the matter if codified in an enacted law, then the principles of general application will quite certainly not be able to

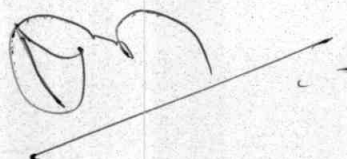
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override them and the express text of law will have to be enforced.

16. In this view of the matter, therefore, I am of the opinion that the mere request of the Respondent No.4 for being transferred to a particular place as hereinabove discussed, would not be sufficient to be held to be a special reason or exceptional circumstance. In this connection, when one deals with the case of the Applicant, it is most pertinent to note that in less than one year's time, he will be demitting Office on superannuation. At Exh. 'A-8' (Page 35-D of the P.B.), there is a document whereby recommendation was made to extend the tenure of the Applicant at the same place in deference to Section 5(1)(a) of the Transfer Act. There is absolutely nothing on record to show as to why this request on behalf of the Applicant could not have been accepted. Even if it was within the powers of the authorities not to accept it, which eventually they did not ought to be reasoned out which one does not find on the anvil of special reasons and exceptional circumstances.

17. Mr. Khaire, the learned Advocate for the Respondent No.4 relied upon a Judgment of the then Hon'ble Chairman in **OA 833/2009 (Shri Rajendra S.**

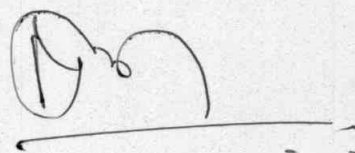




**Rahane Vs. State of Maharashtra and one another, dated 31.7.2009**). On facts, in that particular matter, the O.A. came to be dismissed and the order of transfer therein impugned was upheld. Now, facts are actually bound to differ from case to case, but I do not find anything in that particular matter wherein any principle has been enunciated which when applied hereto would lead me to any different conclusion than what is warranted by the present facts.

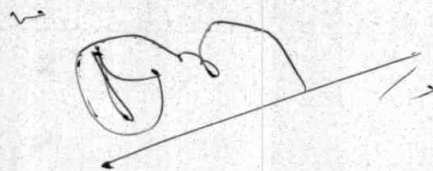
18. Mrs. Gaikwad, the learned P.O. relied upon a Judgment in the matter of **Writ Petition No.8898/2010 (Shri R.S. Kalal Vs. State of Maharashtra and Others (DB), dated 30<sup>th</sup> November, 2010**). In that particular matter, an order relating to the transfer of an Officer in the same Office at Nashik was under challenge and that matter was also governed by the provisions of the Transfer Act. The only issue which fell for consideration was as to whether the transfer within the same Office at Nashik could be called unfair, illegal, stigmatic or punitive. It was held on facts that such internal transfers could not be termed as transfer so as to be challenged before this Tribunal. Another Judgment of the Hon'ble High Court cited by the learned P.O. was in the matter of **Writ Petition No.5642/2011 (Shri Bhausahab R. Andalkar**

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**Vs. State of Maharashtra and others (DB), dated 17<sup>th</sup> October, 2011.** That was a matter where the transfer order of a Police Personnel was the subject matter of the challenge.

19. The learned P.O. also relied upon **Santosh N. Dalal Vs. State of Maharashtra, 2016 (1) MLJ 45.** As far as **Santosh Dalal** (supra) is concerned, it lays down that the Courts and Tribunals are not expected to act as appellate authorities over the decisions of the authorities competent to effect transfers. In fact, Mr. Khaire also relied upon this particular Judgment. Now, on those facts, Their Lordships were pleased to take note of the fact that there was nothing to infer favouratism or malafides and further the competence of a Minister to take corrective measures where the subordinate Officers may have erred could not have been lightly challenged. Pertinently, it was nowhere held that the provisions of the Transfer Act should not be given its natural and plain interpretation and facts at issue not to be determined upon application of law. I must repeat that facts are bound to differ, and therefore, the conclusions in one particular precedent though significant, but ultimately it is the principle laid down thereby that is crucial. Application of the principles

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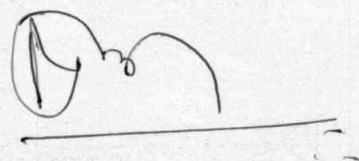


in **Santosh Dalal** here would lead to the conclusion that I am envisaging.

20. In so far as **Rajendra Kalal** and **Bhausheb Andalkar** are concerned, these two Judgments fell for consideration in a later Division Bench Judgment in **Writ Petition No.7554/2013 in the matter of Pradip B. Lonandkar Vs. State of Maharashtra and others and other Writ Petitions (DB), dated 22<sup>nd</sup> November, 2013.**

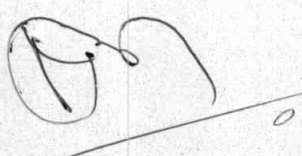
That was also a matter arising out of the transfer orders issued to Police Personnel. However, the relevant principles in the Transfer Act as well as the Maharashtra Police Act with particular reference to Section 22-N thereof are not quite different. It was observed by Their Lordships that ultimately whether a particular placement or displacement constitutes transfers in the sense it is understood in the realm of this branch of law, would depend upon the facts. For principles, Paras 18 and 22 thereof in fact need to be reproduced.

“18. To appreciate the contention that every single posting or asking a person for taking up a job or seat of duty or assignment attached a particular post, even within the Head Quarter would amount to transfer that we have carefully

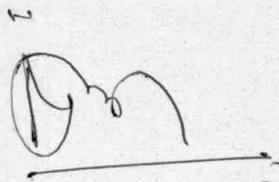




perused the Transfer Act, 2005. The Transfer Act, 2005 suggests that it is an Act to provide for regulation of transfers of Government servants and prevention of delay in discharge of official duties. The settled canon of interpretation of statutes and particularly the definitions of terms therein, would demonstrate that every single definition is required to be construed in the context. If the context requires otherwise, then, the construction of a definition would depend upon that context. So seen we do not find any confusion. The term "post" is defined so as to indicate the job or seat of duty to which the Government servant is assigned or posted. The term "transfer" definitely means "posting". Therefore, it is posting of the Government servant made, may be, from one post, office or department to another post, office or department. However, in individual cases and orders would have to be scrutinized and construed. The concept cannot be generalized as is sought by the learned counsel appearing for the Petitioners. One cannot say that every order entrusting duties other than one which are presently performed or other than a job presently held or

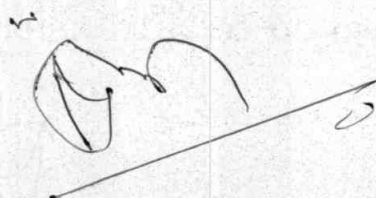
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seat to which the presently Government servant is assigned or posted, would amount to transfer necessarily. Everything would depend upon the facts and circumstances in each case. No general rule can be laid down. True it is that the Division Bench of this Court in one of the orders expressed an opinion that such definition of the word "Transfer" would present difficulty. In the ultimate analysis, it is for the Court to construe an order in individual case and if it amounts to transfer, then, to apply the provisions of the Transfer Act, 2005 so as to ensure that its object and purpose is fulfilled. That is plainly to protect the officers against frequent and in discriminate transfers. That is not creating a right to hold on to a particular post or job or seat. Therefore, even if the Division Bench has rightly expressed some reservations with regard to the definition of the term "transfer" as appearing in the Transfer Act, 2005 and held that it could be in a given case presenting some difficulty, we do not find that by expressing such opinion the Division Bench meant that in all cases if the words "entrustment", posting, assignment are used that would be a transfer. To repeat in each case, the

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peculiar facts and circumstances would have to be seen. It is not that every order using the term "entrustment" would necessarily mean a transfer. It is not necessary to clarify the legal concept in this case. In the present case, the order impugned before the MAT and before us cannot be terms as a Transfer at all. The fact that the post held by the petitioners has Executive (Police Station duty) and non-Executive duties attached to it is undisputed. That posting and assignment from one to other is common in the police force. That a police officer must be acquainted with administrative and managerial functions so also active policing is the intent in issuing routine posting orders. By such orders no prejudice is caused because there is no change of station and Headquarter. That remains within Mumbai. The Pay, status, emoluments and perquisites remain the same. The person concerned suffers no loss. All that happens is that he reports to different superiors at the offices within the city / suburban limits. If promoted the promotional duties at a different office within these limits have to be discharged. The Act never intended

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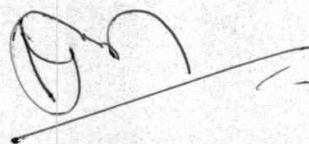
such routine administrative matters being termed as Transfers.”

**“22.** To our mind, therefore, the label attached or nomenclature cannot be decisive and conclusive. The Transfer Act, 2005 defines the term “transfer” in the manner referred to above essentially because an innocuous exercise in a given case and being termed as shirting an officers from one office to another, change in assignment or job to be performed, would well amount to a transfer and may require interference if same has been done arbitrarily, malafide and frequently. It is to meet such eventuality that the Transfer Act, 2005 defines the term “transfer” in a peculiar way. It is not as if every shifting or posting order would necessarily amount to transfer. For it to amount as such, it would have to be demonstrated that it would amount to transfer because that is not an exercise as innocuous as terms, but falling within the parameters of the enactment. Therefore, we have already clarified that the definition of the term must be seen in the backdrop of a contextual interpretation and



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provisions of the Transfer Act, 2005. The interpretation which subserves the object and purpose of the enactment and carries it further and avoids any absurdity or ambiguity must be placed on the enactment. Therefore, we do not find the judgment rendered in the case of Ramdas Pandurang Shivdas (supra) would mean that the Division Bench held that the meaning of the term "transfer" read with the definition of the term "post" is so wide that even change from one table to another would amount to transfer. That it may amount to transfer or somebody terms it as such is not what is decisive. It was merely an expression of opinion by the Division Bench and so as to invite attention of all concerned to the possible abuse or misuse of the protection given by the Transfer Act, 2005. Then, it is left to the Legislature of remedy the situation if so advised. The judgment of the Division Bench in the case of Shivdas (supra) read in its entirety does not indicate that the orders of the present nature and impugned in the present case would necessarily amount to transfer. That is not the ratio of these judgments. Once this conclusion is reached then

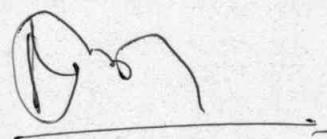
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the reliance on the judgments cannot assist the Petitioners.”

21. I have in fact discussed the just referred case law because the learned P.O. apparently in right earnest referred thereto and so also did Mr. Khaire, the learned Advocate for Respondent No.4. Here, in this matter, the earlier transfer order from Pune to Aurangabad was revised and the Applicant was given another posting at Pune only. However, the above discussion must have made it clear that the provisions of Transfer Act are offended at more places than one and that is not a trival or insignificant deviation. I have already mentioned above that a duly elected law has to be effectuated by application of principles of interpretation and if the mere accommodation of another employee as a rebound is going to affect another employee like the present Applicant and on facts, there is no special reason or exceptional circumstance, then such a transfer cannot be upheld.

22. The learned P.O. Smt. Gaikwad also referred me to **OA 90/2016 (Shri Sampat T. Gunjal Vs. State of Maharashtra and 3 ors, dated 7.6.2016)** where the Hon'ble Chairman was pleased to uphold the transfer therein questioned. It appears from the discussion in Paras 26 to 32 that there were allegations of malafides in

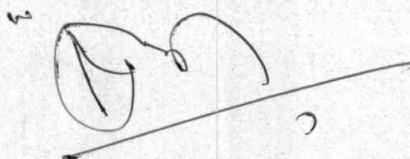




so far as that order was concerned and the Applicant could not make good the same.

23. The learned P.O. Smt. Gaikwad relied upon two Judgments of this Tribunal in **OA 1301/2010 (Shri Javed A. Shaikh Vs. State of Maharashtra and 2 others (SB), dated 6.5.2011 and OA 455/2013 (Shri Vijay T. Ovhal Vs. Deputy Director, Health Services and one another, dated 4<sup>th</sup> Mach, 2014)**. These Judgments were cited for the proposition that the powers to discharge the functions of the competent authority have been delegated by the Hon'ble Chief Minister, and therefore, no fault could be found in so far as this aspect of the matter is concerned.

24. In the first place, I find that having discussed the entire matter on merit, even otherwise I would not have decided the OA only on this aspect of the matter. I may only mention that by the 1<sup>st</sup> Notification of 14<sup>th</sup> January, 2016, the scale based groups were made and the competent authorities were named. By another Notification of 25<sup>th</sup> April, 2016, the above referred Notification was superseded and another set of tables were provided with regard to the competent authorities. In all probability, the learned P.O. and the learned Advocate Shri Khaire insisted on the fact that the Hon'ble Minister was the competent authority in this set of facts. Now, another



aspect of the matter which stares one in the judicial face is that the January Notification was in fact superseded and the 2<sup>nd</sup> Notification was of 25<sup>th</sup> April, 2016 while the transfer in question as already mentioned above was dated 10.3.2016. I do not think any further discussion in this behalf is really necessary.

25. The upshot is that the orders herein impugned cannot be sustained and they will have to be quashed and set aside and the Applicant will have to be restored to the post he was transferred from.

26. The orders herein impugned are quashed and set aside. The Applicant be reposted to the place he was transferred from within one week from today and the consequential orders, if necessary, may also be made. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**22.09.2016**

Mumbai  
Date : 22.09.2016  
Dictation taken by :  
S.K. Wamanse.