

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.832 OF 2018

DISTRICT : PUNE

Shri Ravindra A. Kadampatil.)
Working as Deputy Commissioner (Estt.),)
Age : 45 Years, Residing at C-106, Ganraj Heights,)
K.P. Nagar, Dhankawadi, Pune 411 043.)...**Applicant**

Versus

1. The State of Maharashtra,)
Through the Principal Secretary,)
Social Welfare and Special Assistance)
Department, Madam Kama Marg,)
Hutatma Rajguru Chowk, Mantralaya)
(Annex) Building, Mumbai 400 032.)

2. Shri Umesh Ghule.)
Deputy Commissioner and Member of)
Caste Certificate Validity Committee,)
Samajik Nyay Bhavan, Shivaji High School)
Road, Ajabnagar, Aurangabad – 431 001.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondent No.1

Mr. K.R. Jagdale, Advocate for Respondent No.2

CORAM : SHRI B.P. PATIL, MEMBER (J)

Closed for

Order on : 15.10.2018

Pronounced on : 17.10.2018

JUDGMENT

1. Applicant has challenged the transfer orders dated 06.09.2018 issued by the Respondent No.1 by which he has been transferred from the post of Deputy

Commissioner (Establishment) from the Office of Social Welfare and Special Assistance Department, Pune and posted as Deputy Commissioner (Planning), Pune in the same Office and transferring and posting the Respondent No.2 in his place from Aurangabad by filing the present O.A.

2. Applicant has joined the Government service on 05.08.2010 as Assistant Commissioner / Research Officer. On 28.12.2016, he was promoted as Deputy Commissioner and transferred to Pune from Satara. By the same order, Respondent No.2 was also promoted and transferred to Aurangabad from Pune. Since the date of promotion, Applicant is working as Deputy Commissioner (Establishment) in the Office of Commissioner of Social Welfare, Pune and Respondent No.2 is serving as Member of Caste Certificate Validity Committee (Establishment), Aurangabad. It is contention of the Applicant that neither he himself nor Respondent No.2 has completed their normal tenure of posting. They were not due for transfer. Respondent No.2 made request for his transfer at Pune. Applicant has hardly completed one year and nine months on the present post but the Respondent No.1 to accommodate the Respondent No.2 issued the impugned order dated 6.9.2018 and thereby transferred the Applicant from the post of Deputy Commissioner (Estt.) and posted as Deputy Commissioner (Planning) in the Office of Commissioner, Social Welfare, Pune and transferred the Respondent No.2 at his place. It is contention of the Applicant that the impugned transfer orders are mid-term and mid-tenure. The Respondent No.1 has not followed the due procedure laid down under Section 4(4)(ii) and 4(5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred as 'Transfer Act'). Respondent No.1 has not made out the exceptional circumstances for transfer of the Applicant. No special reasons have been recorded while making the transfer of the Applicant. Respondent No.1 transferred the Applicant on the administrative ground. The Civil Services Board had not recommended the transfer of the Applicant, but without making compliance of the mandatory provisions under Section 4(4)(ii) and 4(5) of the Transfer Act, the impugned transfer order has been issued in order to accommodate Respondent No.2. It is his contention that the transfer of Respondent No.2 has been made in contravention of the provisions in the G.R. dated 28.04.2015. It is his contention that the impugned order is in violation of the Transfer

Act, and therefore, it is illegal and bad in law. Therefore, he prayed to quash the impugned transfer order dated 06.09.2018 by which he himself and Respondent No.2 has been transferred by allowing the O.A.

3. Respondent No.1 resisted the contention of the Applicant by filing his Affidavit-in-reply. It is his contention that the contentions raised by the Applicant are false, mischievous and baseless. It is his contention that several complaints were filed against the Applicant and the same were forwarded to the Commissioner, Social Welfare, Pune for investigation. The Committee comprising of three Members was constituted on 13.07.2018 for making enquiry in the allegations made against the Applicant. In the meanwhile, the Respondent No.2 made an application for transfer on request from Aurangabad to Pune. Since there were various complaints against the Applicant, the case of the Applicant was placed before the Civil Services Board by Respondent No.1 for transfer. The Civil Services Board considered the proposal of transfer of Officers on request and on administrative ground and recommended to transfer the Applicant from the post of Deputy Commissioner (Establishment), Pune to the post of Deputy Commissioner (Planning) in the Office of Commissioner, Social Welfare, Pune in the same premises. Respondent No.2 and one Mr. Wakode requested for inter-division transfer. Their request was considered by the Department and Civil Services Board on medical ground and not on their choice. In order to run the administration smoothly, the transfer of the Applicant has been proposed. The proposal along with the recommendation of the Civil Services Board was placed before the Hon'ble Minister concerned and after approval of Hon'ble Minister concerned, it was placed before the Hon'ble Chief Minister. The Chief Minister approved the proposal, and therefore, Respondent No.1 issued the transfer orders dated 06.09.2018 transferring the Applicant from the post of Deputy Commissioner (Establishment), Pune to the post of Deputy Commissioner (Planning), Pune and the Respondent No.2 was transferred from Aurangabad to Pune in place of Applicant. It is their contention that, while effecting the transfer orders of the Applicant and Respondent No.2, the due procedure as provided under Section 4(4)(ii) and 4(5) of the Transfer Act has been followed. There was no violation of provisions of the Transfer Act. It is their contention that the Applicant has been transferred in the same office, which is situated in the same building at Pune.

4. It is his contention that in view of the transfer order dated 06.09.2018, the Commissioner, Social Welfare, Pune issued the movement order dated 10.09.2018 of the Applicant, Respondent No.2 and one Mr. Wakode. Respondent No.2 accordingly submitted the joining report in the office of Commissioner on which the Commissioner has made an endorsement directing the Additional Commissioner to allow Respondent No.2 to join as per the transfer order dated 06.09.2018. Not only this, but the Commissioner, Social Welfare, Pune relieved the Applicant from the post of Deputy Commissioner (Establishment) on 10.09.2018. Respondent No.2 accordingly, joined his new posting in place of Applicant on 11.09.2018 and started functioning there. It is his contention that Mr. Wakode has also joined at his new place of posting. It is his contention that, in the meanwhile, Applicant approached this Tribunal and obtained order of 'status quo'. But prior to that, the Respondent No.2 has joined his new posting and started working there. It is contended by Respondent No.1 that there is no violation of provisions of any G.R. or provisions of Transfer Act while issuing the impugned transfer order. Therefore, he prayed to reject the O.A.

5. Respondent No.2 has resisted the contention of the Applicant by filing his Affidavit-in-reply. It is his contention that he himself and Mr. Wakode made request to the Respondent No.1 to make their transfers on their personal grounds and medical ground. Their request has been considered by the Department, and therefore, the proposal for transfer has been placed before the Civil Services Board. The Civil Services Board accepted the proposal and recommended their transfer. The concerned Minister approved the said proposal and thereafter the Hon'ble Chief Minister approved the same. Thereafter, the impugned transfer order transferring him from Aurangabad to Pune has been issued. It is his contention that his transfer has been made by following due procedure as prescribed under Section 4(4)(ii) and 4(5) of the Transfer Act.

6. It is his further contention that there were several complaints of serious nature against the Applicant, and therefore, the Department proposed his transfer from the post of Deputy Commissioner (Establishment) to Deputy Commissioner (Planning) in the same Office. It is his contention that the competent authority after considering the seriousness in the complaints, transferred the Applicant and there is no illegality in it. It

is his contention that the Government has appointed a Committee for making an enquiry in the allegations made against the Applicant and the report of the Committee is awaited.

7. It is his further contention that, in the general transfers of the year 2018, he had submitted his application for transfer on request in the prescribed form to the Commissioner, Social Welfare and requested to transfer him at Pune on the ground that his father aged 76 years is suffering from Spondylitis. It is his contention that Mr. Wakode, Deputy Commissioner (Planning) at Pune had also requested to transfer him at Aurangabad in his place on the ground that his wife is suffering from Cancer and he is due to retire in the month of January, 2019. It is his contention that their requests had been considered by the Department, Civil Services Board and competent Authority and after recording the reasons, the impugned transfer orders have been issued. It is his contention that the Applicant has been transferred from one post to another in the same office and in fact, it is not a transfer, and therefore, the Applicant cannot challenge it. It is his further contention that the impugned transfer orders have been issued in accordance with the provisions of Transfer Act and there is no illegality. Therefore, he prayed to reject the O.A.

8. I have heard Mrs. Punam Mahajan, learned Advocate for the Applicant, Mr. A.J. Chougule, learned Presenting Officer for Respondent No.1 and Mr. K.R. Jagdale, learned Advocate for Respondent No.2. I have perused the documents on record.

9. Admittedly, the Applicant has joined the Government service on 05.08.2010 as Assistant Commissioner / Research Officer. He was promoted as Deputy Commissioner by order dated 28.12.2016 and transferred to Pune from Satara and since then he is working as Deputy Commissioner (Establishment) in the Office of Commissioner, Social Welfare, Pune. Admittedly, Respondent No.2 was also promoted by the order dated 28.12.2016 and he was posted as Deputy Commissioner (Planning) and Member of Caste Certificate Validity Committee, Aurangabad. Admittedly, the Applicant as well as Respondent No.2 have not completed their normal tenure of posting at Pune and Aurangabad respectively. Admittedly, by the impugned order, the Applicant has been

transferred from the post of Deputy Commissioner (Establishment) on the post of Deputy Commissioner (Planning) in the office of Commissioner, Social Welfare, Pune on administrative ground and the Respondent No.2 has been transferred and posted in place of the Applicant on his request. Admittedly, the impugned transfers of Applicant and Respondent No.2 are mid-term and mid-tenure transfers.

10. Learned Advocate for the Applicant has submitted that the transfer of the Applicant has been made by Respondent No.1 in violation of provisions of Section 4(4)(ii) and 4(5) of the Transfer Act. She has submitted that the proposal regarding transfer of the Applicant has not been placed before the Civil Services Board and Civil Services Board had not recommended the transfer of the Applicant. She has submitted that, in order to accommodate the Respondent No.2, the transfer of the Applicant has been made by the Respondent No.1. She has submitted that no exceptional case has been made out while making mid-term, mid-tenure transfer of the Applicant. She has further submitted that no special reasons have been recorded while effecting the transfer of the Applicant. She has submitted that the transfer of the Applicant has been made on "administrative ground" only. Mere mentioning that it was made on administrative ground is not sufficient to make compliance of the mandatory provisions of Section 4(4)(ii) and 4(5) of the Transfer Act. She has submitted that, by the impugned order, the Applicant has been transferred from the post of Deputy Commissioner (Establishment) to the post of Deputy Commissioner (Planning). The said change in the posting of the Applicant amounts to 'transfer' in view of the provisions of Section 2(i) of Transfer Act. She has submitted that while making mid-term, mid-tenure transfer, the competent authority has to fulfill the mandatory requirement of Section 4(4)(ii) and 4(5) of the Transfer Act and they have to record reasons regarding special case and exceptional circumstances for such transfer, but the said mandatory requirement has not been complied by the Respondent No.1 while making the transfer of the Applicant.

11. In support of her submission, she has placed reliance on the Judgment of the Hon'ble High Court of Judicature at Bombay in ***Writ Petition No.5465/2012 in case of Kishor S. Mhaske Vs. Maharashtra OBC Finance & Development Corporation, Mumbai decided on 7th March, 2013***, wherein it is observed as follows :

“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 accordingly to law, by a reasoned order in writing and after the due and prior approval from the competent transferring authority concerned for effecting such special transfer under the Act. The exercise of exceptional statutory power has to be transparent, reasonable and rational to serve objectives of the Act, as far as possible, in public interest. Mandatory requirements of the provision under Section 4(5) of the Act cannot be ignored or bye-passed. The exceptional reasons for the special mid-term or pre-mature transfer ought to have been stated in writing. Vague, hazy and meager expression such as “on administrative ground” cannot be a compliance to be considered apt and judicious enough in the face of mandatory statutory requirements. The impugned order of the transfer in the absence of mention of special and exceptional reasons was passed obviously in breach of the statutory obligations and suffers from the vices as above. Impugned order dated 30.05.2012 would ex facie indicate that merely because of request made by the respondent no.3 Shri Murar, the Petitioner was sought to be transferred pre-maturely to Raigad. It is therefore unsustainable for want of evenhandedness of 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 Petition is allowed in above terms. Hence, order :-

Rule is made absolute accordingly. Cost of this Petition quantified at Rs.7500/- shall be paid by the respondent No.1, to the Petitioner.”

(Quoted from Page 22 of Paper-book)

12. Learned Advocate for the Applicant has further placed reliance on the Judgment of this Tribunal in ***O.A.No.770/2017 in case of Sunil M. Saundane Vs. The State of Maharashtra and Anr. decided on 09.11.2017***, wherein it is observed as follows :

“8. Thus, present case is a citation of patent / blatant disobedience and disregard of binding precedent laid down by Hon’ble Supreme Court in case of T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013 by a democratic Government under the Constitution. What has shocked further is that the officers of the rank of Secretary have failed in their constitutional obligation to bring to the illegality committed by the Government to the notice of the Government to show that the stance of the Government amounts to open disobedience of the judgment of Hon’ble Supreme Court in the case of T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013 apart from it being in grave departure of policy declared by the State Government.

(Quoted from Page 41 of Paper-book)

13. She has also placed reliance on the Judgment of this Tribunal in ***O.A.614/2017 in case of Pramod H. Sawakhande Vs. The State of Maharashtra & Anr. decided on 27.03.2018***, wherein it is observed as follows :

“28. Going by record, it reveals that the formality of recording of reasons “special reasons and exceptional circumstances”, is purportedly complied with. However, it has to be borne in mind that the object of ROT Act of 2005 law does not contemplate fulfillment of a formality, but contemplates fulfillment of conditions in spirit to conform to the aims and objects of law. The ‘specialness of reasons and the exceptional circumstances’ is the ingredient, and the facts have to confirm to requirement of the said phrase. It has also to be borne in mind that facts as would be relied by the State ought to be based on legal evidence which could entitle the competent authority to form an opinion. Imputations and evidence are two different things.

(Quoted from Page 56 of Paper-book)

It has further observed in the said decision as follows :

“37. In the result, this Tribunal has arrived at a conclusion that reasons and circumstances as grounds to Transfer the Applicant are recorded, though it is not possible to accept those to be based on any effort to verify the truth thereof as well sufficiency thereof in the eye of law, and hence those do not satisfy the test of those being “special reasons and exceptional circumstances”.

(Quoted from Page 58 of Paper-book)

14. Learned Advocate for the Applicant has also placed reliance on the Judgment of this Tribunal in ***O.A.668/2017 in case of Smt. Ujwala S. Ghavte Vs. The State of Maharashtra & Anr. decided on 17.01.2018***, wherein it is observed as follows :

“(f) The ratio of the dictum as laid down in the case of Pradip B. Lonandkar’s case (supra) as regards the definition of the term “Transfer” as defined in Section 2(i) of ROT Act, 2005, can be drawn as follows :-

Transfer as defined in Section 2(i) of ROT Act, 2005 would mean and include not only the transfer from one place or town to the other but also from one office to other and one assignment to the other. However, plain construction thereof ought be assigned and applicability of the act would depend on totality of the facts and consideration and on the basis of the texts as to whether the subject matter “Transfer” falls within mischief which is sought to be remediate by the ROT Act, 2005.”

(Quoted from Page 81 of Paper-book)

In the said decision, it has been further observed as follows :

“(C) Notwithstanding the fact as to the list of Caveats and “do not” as laid done in various precedents as summarized in the foregoing paragraph, undoubtedly what emerges between parties may be summarized as follows :-

- (i) While transfer is employer’s prerogative, mode and manner in which it should be ordered is not modulated by statue and does not remained to be matter

governed or to be governed sheerly by executive fiat controllable or guided sheerly as an executive prerogative. Rather now the executive prerogative is modulated and governed by law as interpreted by this Tribunal and by Hon'ble High Court.

- (ii) Provisions of ROT Act, 2005 continues to govern the field and Transfers by statutory provisions and every Transfer is amenable for a judicial review within the compass as available, and as defined by law and precedents.
- (iii) In view of the foregoing narration of various points, this Tribunal considers that whenever change of posting / local transfer is / ordered, it would be a matter of judicial discretion, to scrutinize and decide as to whether, "Local Transfer or change of positing within same office place or town" constitutes to be a "transfer" upon the decision of Tribunal / Court the decision to transfer would be open for judicial scrutiny and judicial review."

(Quoted from Pages 88 & 89 of Paper-book)

15. Learned Advocate for the Applicant has submitted that the record shows that, without proposal of the Department, the competent authority has made the transfer of the Applicant in violation of the statutory provisions, that too, without making any exceptional case and without recording the reasons. Therefore, the impugned order is bad in law. Hence, it requires to be quashed.

16. Learned Advocate for the Applicant has submitted that Respondent No.1 and its Officer acted highhandedly while making transfer of the Applicant with intend to favour Respondent No.2. She has submitted that the impugned transfer order of the Applicant had been issued to accommodate Respondent No.2 though the Applicant was not due for transfer. She has submitted that, after the issuance of the impugned order, Respondent No.2 took the charge of the post of the Applicant behind back of the Applicant without movement / relieving order. She has submitted that the Commissioner, Social Welfare Department, Pune issued the relieving order of the Officers under transfer on 10.09.2018 after 4.00 p.m. The said order has been sent to the Aurangabad thereafter. The Respondent No.2 had been relieved thereafter from Aurangabad but he moved the application to allow him to join his new posting i.e. Deputy Commissioner (Planning) at Pune on the very day i.e. on 10.09.2018 and the permission was granted by the Commissioner to join him on the new post on the same day. She has submitted that the distance between Aurangabad to Pune is about 250

kms. and it was highly impossible for the Respondent No.2 to travel from Aurangabad to Pune by road in a short time and to file an application for granting permission to join the post at Pune on the same day before closure of the Office. She has submitted that Respondent No.2 has prepared the documents showing that he joined the Office of Commissioner at Pune immediately after relieving him from Aurangabad in collusion with the other Officers. She has submitted that, all these facts show that Respondent No.1 has issued the order under challenge to favour Respondent No.2. She has submitted that impugned order is arbitrary and issued with malice, and therefore, it requires to be quashed by allowing the O.A.

17. Learned P.O. Shri A.J. Chougule has submitted that Applicant is serving as Deputy Commissioner (Establishment) in the Office of Commissioner, Social Welfare, Pune. He was not due for transfer, but there were several complaints against him and those complaints were filed by employees working in the Office. The complaints were forwarded to the Department by the Commissioner. Thereafter, the Committee has been appointed to make enquiry in the complaints and allegations made therein and the enquiry is still pending. He has submitted that, on the basis of complaints received against the Applicant, the Department proposed the transfer the Applicant from the post of Deputy Commissioner (Establishment) for smooth functioning in the Office. The said proposal was placed before Civil Services Board and the Civil Services Board recommended the transfer of the Applicant on administrative ground, considering the seriousness in the allegations made against the Applicant. On the basis of recommendation of the Civil Services Board, the concerned Minister decided to transfer the Applicant and thereafter, the Hon'ble Chief Minister approved the same and decided to transfer the Applicant from the post of Deputy Commissioner (Establishment), Pune to the post of Deputy Commissioner (Planning) in the same Office. He has submitted that Respondent No.2 and one Mr. Wakode made request to the Respondent No.1 to change the Division and transfer them on account of their personal problems. Their request was considered and accordingly, on the recommendation of the Civil Services Board, the competent authority decided to transfer the Respondent No.2 from Aurangabad to Pune and to transfer Mr. Wakode from Pune to Aurangabad. Accordingly, the transfers were made and the Respondent

No.2 was posted in place of Applicant. He has submitted that, before making the said transfers, the provision of Section 4(4)(ii) and 4(5) of the Transfer Act has been followed and after making necessary compliance of the mandatory provisions, the said transfers have been effected. He has submitted that the transfer of the Applicant was made on administrative ground and it is in accordance with the provisions of Transfer Act and there is no illegality in it.

18. Learned P.O. has submitted that the reasons recorded in the proposal as well as in the minutes of the meeting of the Civil Services Board show that there was sufficient compliance of mandatory provisions of Section 4(4)(ii) and 4(5) of the Transfer Act. He has submitted that there is no illegality in the impugned transfer order, and therefore, he supported the same and prayed to dismiss the O.A.

19. Learned Advocate for Respondent No.2 has submitted that the Applicant has been transferred because of the complaints of serious nature filed against him. He has submitted that the allegations in the complaints have been considered by the Civil Services Board and competent authority, and thereafter, the impugned order has been issued.

20. Learned Advocate for Respondent No.2 has further submitted that the father of Respondent No.2 was aged one and is suffering from Spondylitis, and therefore, Respondent No.2 made request to Respondent No.1 to transfer him from Aurangabad to Pune Division. Likewise, one Mr. Wakode made request to Respondent No.1 to transfer him from Aurangabad to Pune. Their cases have been scrutinized by the Department and the Civil Services Board, and thereafter, they recommended to transfer them and on the recommendation of Civil Services Board, the competent authority issued their transfer orders. He has submitted that the Applicant has been transferred from the post of Deputy Commissioner (Establishment) to the post of Deputy commissioner (Planning) in the same office, and therefore, it cannot be said that it is a transfer in view of the provisions of Transfer Act. He has submitted that, mere change in the posting does not amount 'transfer'. In support of his submission, he has placed

reliance on the Judgment of this Tribunal in ***O.A.1029/2017 in the case of Dilip K. Kulkarni Vs. The State of Maharashtra & Ors. decided on 4th April, 2018.***

21. Learned Advocate for Respondent No.2 has also placed reliance on the Judgment of Hon'ble High Court of Judicature at Bombay in ***Writ Petition No.8898 of 2010 in the matter of Rajendra S. Kalal Vs. The State of Maharashtra and Ors. decided on 30th November, 2010.***

22. Learned Advocate for Respondent No.2 has submitted that since the impugned transfer orders of the Applicant and Respondent No.2 had been passed by the competent authority on the recommendation of the Civil Services Board by following the due procedure, the orders cannot be termed as mala-fide one. Therefore, it cannot be said that the same are in violation of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act. He has submitted that while making transfer of the Applicant, it has been specifically mentioned by the competent authority that the said transfer has been made on account of administrative exigencies and the said reason is sufficient compliance of the mandatory provisions of the Transfer Act, and therefore, there is no illegality in the impugned transfer orders. In support of his contention, he has placed reliance on the Judgment of the Hon'ble High Court of Judicature at Bombay in ***Writ Petition Nos.3318, 3483 and 4492 of 2017 in the matter of Bharat Ramkisan Shingade & Ors. Vs. The State of Maharashtra & Ors. decided on 17.04.2017.*** He has submitted that, since there is no malice on the part of Respondent No.1 while issuing the impugned transfer order, the same cannot be termed as illegal. He has submitted that, as the transfer of the Applicant has been made on administrative ground after complying the mandatory requirement of the provisions of Transfer Act, the O.A. deserves to be dismissed.

23. On perusal of the record, it reveals that the concerned Department prepared a note / proposal for transfer of the officers in the cadre of Deputy Commissioners who have completed their tenure as well as the Deputy Commissioners who have not completed their tenure but made request to transfer and place it before the Civil Services Board in the meeting dated 28th May, 2018. On perusal of the said proposal, it reveals that the proposal was for the transfers of four Officers who have completed

their tenure and twelve Deputy Commissioners who had not completed the tenure but requested for transfer. On perusal of the same, it reveals that the name of the Applicant was not figured in the statement attached to the Office Note / Proposal prepared by the Department. In the meeting of the Civil Services Board, the issue of transfer of the Applicant was considered for the first time without proposal. The Civil Services Board recommended the transfer of the Applicant on administrative ground though proposal regarding his transfer was not submitted in the Office Note dated 28th May, 2018 by the Department. The minutes of the meeting of the Civil Services Board dated 28.02.2018 shows that the name of the Applicant included in the statement at Serial No.13. There is no mention regarding the alleged complaints against him while considering of his case for transfer. But it has mentioned in the minutes of meeting of Civil Services Board that his transfer has been made "on administrative ground". No other reason has been recorded by the Civil Services Board while recommending his transfer. Had it been a fact that Civil Services Board recommended the transfer of the Applicant on the ground of complaints against him, then definitely it would have discussed the said issue and mentioned the said reason while recommending the transfer of the Applicant, but the fact is different. There is no such remarks or mention in the minutes of the meeting of Civil Services Board. The recommendation of the Civil Services Board has been placed before the Hon'ble Minister concerned and after approval of the Hon'ble Minister, it was placed before the Hon'ble Chief Minister. The Hon'ble Chief Minister approved the same and on the basis of it, Respondent No.1 issued the transfer order of the Applicant. The record shows that the formality of recording reasons had been complied with by the Respondent No.1 by mentioning the reason in the relevant column of the recommendation of the Civil Services Board stating that the transfer of the Applicant was made "on administrative ground". But no exceptional case has been made out for making transfer of the Applicant. No special reasons have been recorded for the transfer of the Applicant. The Respondent No.1 ought to have recorded the reasons as well as the evidence for making mid-term and mid-tenure transfer of the Applicant. The Respondent No.1 has not taken into consideration the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act. Without making compliance of the said provision, the impugned transfer order of the Applicant had been issued. The reasons recorded by the Respondents while making transfer of

the Applicant do not satisfy the phraseology “special reasons and exceptional circumstances” as mentioned in the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act. The vague and meager expression such as “on administrative ground” cannot be said to be sufficient compliance of mandatory provisions of Transfer Act. The mandate of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act provide that the exceptional reasons for the said mid-term or mid-tenure transfer ought to have been stated in writing and the strict compliance of the provisions of the said Transfer Act is required before making such transfers. But in the instant case, no such compliance has been made by the Respondent No.1 while issuing the transfer order of the Applicant. Therefore, in my view, the impugned transfer order is in violation of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act, and therefore, it is bad in law.

24. I have gone through the various decisions referred by the learned Advocate for the Applicant as well as the learned Advocate for Respondent No.2. I have no dispute about the principles laid down therein. The principle laid down in the decisions relied by the learned Advocate for the Applicant in the Judgment of the Hon’ble High Court of Judicature at Bombay in ***Writ Petition No.5465/2012 in case of Kishor S. Mhaske Vs. Maharashtra OBC Finance & Development Corporation, Mumbai decided on 7th March, 2013*** as well as the decisions of this Tribunal in ***O.A.No.770/2017 in case of Sunil M. Saundane Vs. The State of Maharashtra and Anr. decided on 09.11.2017*** and in ***O.A.614/2017 in case of Pramod H. Sawakhande Vs. The State of Maharashtra & Anr. decided on 27.03.2018*** and in ***O.A.668/2017 in case of Smt. Ujwala S. Ghavte Vs. The State of Maharashtra & Anr. decided on 17.01.2018*** are appropriately applicable in this case. The decisions cited by the learned Advocate for Respondent No.2 are not useful to the Respondent No.2, as the facts in those cases are different than the facts in the present case.

25. In view of the settled principle laid down in the above cited decisions referred by the learned Advocate for the Applicant, in my view, the impugned order is in violation of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act, and therefore, it is not sustainable in the eyes of law.

26. It is also material to note here as regards highhandedness on the part of Officers of Respondent No.1 in showing favour to Respondent No.2. Impugned order has been issued on 06.09.2018 with a direction to the Commissioner to issue relieving / movement orders of the Officers under transfer. The record shows that, on the basis of said transfer order dated 06.09.2018, the Commissioner issued the relieving / movement order on 10.09.2018. Respondent No.1 has produced the documents wherein the details regarding the movement of the file regarding transfer in the Office of Commissioner at Pune have been mentioned. It shows that on 10.09.2018, the Commissioner issued movement order at 4.00 p.m. Thereafter, the copy of the same has been handed over to Respondent No.2 Mr. Ghule, who was present there in the Chamber of one Mr. Pardeshi, Assistant Commissioner (Establishment), and thereafter, it has been sent to Aurangabad i.e. the Office of Caste Certificate Validity Committee, Aurangabad by 4.39 p.m. by e-mail. On the very day i.e. on 10.09.2018, Shri Ghule filed an application with the Commissioner, Pune and prayed to grant permission to him to join on the post of Deputy Commissioner (Establishment). The Commissioner permitted him to join as per his request and made endorsement on the said application. Thereafter, Respondent No.2 – Mr. Ghule joined his new posting on 11.09.2018 at 10.35 p.m. Respondent No.1 produced a document to show that the Respondent No.2 – Mr. Ghule has been relieved from the Office of Caste Certificate Validity Committee at Aurangabad on 10.09.2018 in the afternoon. Had it been a fact that Respondent No.2 was relieved on 10.09.2018 after receiving the movement order after 4.39 p.m, by e-mail in the Office at Aurangabad, then his presence at Office at Aurangabad was necessary. But the detailed statement produced by the Respondent No.1 regarding the movement of the file shows that on 10.09.2018 before 4.39 p.m, Respondent No.2 – Mr. Ghule was present in the Chamber of Mr. Pardeshi, Assistant Commissioner (Establishment) and copy of the relieving / movement order was handed over to him. This fact shows that the document regarding relieving Mr. Ghule from the Office at Aurangabad on 10.09.2018 had been prepared to facilitate Respondent No.2 – Mr. Ghule. Not only this, but it also reveals that on 10.09.2018, Mr. Ghule filed an application with the Commissioner with a request to allow him to join to a new posting at Pune. It also shows that on that day, i.e. on 10.09.2018, Respondent No.2 was present in the Office of Commissioner, Pune and he was not present at Aurangabad.

27. It is also material to note here that the relieving order has been sent to the Office of Caste Certificate Validity Committee, Aurangabad by e-mail at 4.39 p.m. It might have been served on the Respondent No.2 thereafter. Even if it is presumed that Mr. Ghule was present at Aurangabad on 10.09.2017 and he has been relieved after receiving the e-mail sent by Commissioner, Pune after 4.39 p.m, then it was highly impossible for Respondent No.2 to visit the Office of Commissioner, Pune on the same day i.e. 10.09.2018 for filing an application seeking permission to join his new posting, as one cannot travel the distance of about 250 kms. within a short span of one and half hours i.e. before closure of the Office of Commissioner at Pune. Therefore, it creates suspicion regarding the document produced by the Respondent No.1 showing that the Respondent No.2 has been relieved on 10.09.2018 afternoon and visited the Office of Commissioner, Pune on the same day and moved an application praying to allow him to join his new posting on very day. In these circumstances, in my view, it seems that these documents might have been prepared to favour Respondent No.2 and to suit his purpose.

28. All these facts and circumstances are sufficient to show that the transfer of the Applicant has been made to accommodate Respondent No.2 in his place. The transfer of the Applicant has been made before completion of his normal tenure and without following the mandatory provisions of Section 4(4)(ii) and 4(5) of the Transfer Act. These facts and circumstances show that the Respondent No.1 has made transfer of the Applicant arbitrarily with malice. Therefore, the same requires to be quashed and set aside by allowing the O.A.

29. Before parting with the matter, it is material to note that the competent authority is empowered to make the transfers of the employee before completion of his tenure in the midst of the term by following the due procedure under Section 4(4)(ii) and 4(5) of the Transfer Act. Had it been a fact that the transfer of the Applicant was needed for smooth functioning and running smooth administration, then the Respondent No.1 would have effected his transfer after complying the mandatory requirements of the Transfer Act. Instead of making his transfer by following the due process of law, the respondent No.1 effected the transfer of the Applicant arbitrarily to

accommodate Respondent No.2, and therefore, it cannot be justified. Hence, it requires to be quashed by allowing the O.A.

30. In view of the discussion in foregoing Paragraphs, the O.A. is allowed and the impugned transfer orders transferring the Applicant from the post of Deputy Commissioner (Establishment), Pune and posting Respondent No.2 in his place are hereby quashed and set aside. Respondent No.1 is directed to repost the Applicant at his earlier posting i.e. Deputy Commissioner (Establishment) in the Office of Social Welfare, Pune immediately. No order as to costs.

Sd/-

(B.P. PATIL)
Member-J

Mumbai

Date : 17.10.2018

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2018\10 October, 2018\O.A.832.18.w.10.2018.Transfer.doc