

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.874 OF 2021**

**DISTRICT : MUMBAI**

Shri Abdul Javed Abdul Wahed Kazi. )  
Age : 49 Yrs, Working as Assistant Chief )  
Engineer [Mechanical], Chief Engineer )  
Public Works Regional Division, Konkan )  
Having office at Bandkam Bhavan, )  
Marzban Road, Fort, Near C.S.T, )  
Mumbai – 400 001 and residing at )  
Dhiraj Vishwas, Flat No.A-002, )  
Natwar Nagar, Road No.1, Jogeshwari (E), )  
Mumbai. ) **...Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Water Resources Department, )  
Having Office at M.K. Marg, )  
Hutatma Rajguru Chowk, )  
Mantralaya, Mumbai – 400 032. )
2. The State of Maharashtra. )  
Through Principal Secretary, )  
Public Works Department, )  
Having Office at 4<sup>th</sup> Floor, )  
M.K. Marg, Hutatma Rajguru )  
Chowk, Mantralaya, Mumbai – 32. ) **...Respondents**

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

**Mrs. K.S. Gaikwad, Presenting Officer for Respondent No.1.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondent No.2.**

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

**DATE : 17.02.2022**

**JUDGMENT**

1. The challenge is to the transfer order dated 30.08.2021 passed by Respondent No.1 – Water Resources Department thereby transferring the Applicant from the post of Assistant Chief Engineer (Mechanical), Public Works Department, Aurangabad to Executive Engineer (Mechanical), Alore, District Ratnagiri on vacant post invoking Section 19 of Administrative Tribunals Act, 1985.

2. The Applicant is serving in the cadre of Executive Engineer on the establishment of parent Department i.e. Respondent No.1 – Water Resources Department (WRD). The Respondent No.2 is Public Works Department (PWD) and the present litigation is outcome of different orders passed by Respondents in the matter of transfer and posting of Applicant.

3. Following are the admitted facts :-

(i) The Respondent No.1 – Water Resources Department which is parent department of the Applicant has transferred the Applicant by order dated 31.05.2018 as Assistant Chief Engineer (Mechanical) in PWD, Aurangabad. Before transfer, he was serving in WRD as Executive Engineer (Mechanical), Nanded. Accordingly, Applicant joined at Aurangabad.

(ii) In general transfers of May, 2021, the Applicant was due for transfer.

(iii) The Applicant made application dated 10.02.2021 (Page No.21 of Paper Book) to Additional Chief Secretary, PWD

(Respondent No.2) for transfer at Mumbai on the ground that his father is taking treatment at Mumbai.

(iv) The Respondent No.2 – PWD by order dated 06.08.2021 transferred the Applicant at Mumbai as Assistant Chief Engineer (Mechanical), PWD, Konkan without concurrence or consultation with WRD, which is the parent Department of the Applicant.

(v) Accordingly, Applicant was relieved on 06.08.2021 from Aurangabad and he joined at Mumbai on 11.08.2021.

(vi) Later, Respondent No.1 – WRD found that the Applicant is transferred by PWD illegally. Therefore, Respondent No.1 – WRD transferred the Applicant as Executive Engineer (Mechanical), Alore, Ratnagiri by order dated 30.08.2021 with the recommendation of CSB and approval of Minister of the Department.

4. It is on the above background, the Applicant has challenged the transfer order dated 30.08.2021 *inter-alia* contending that it is mid-term and mid-tenure transfer without proper compliance of Section 4(5) of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity) in view of his earlier transfer order issued by PWD giving posting him at Mumbai.

5. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail transfer order dated 30.08.2021 on following grounds :-

(a) Once Respondent No.2 – PWD by order dated 06.08.2021 transferred the Applicant from Aurangabad to Mumbai and consequent to it, the Applicant joined at Mumbai, there was no reason much less legal one to cancel this transfer order dated

06.08.2021 giving posting of Mumbai and transfer him to Alore, District Ratnagiri.

(b) The impugned transfer order dated 30.08.2021 assumes the character of mid-term and mid-tenure transfer and in absence of special case as contemplated under Section 4(5) of 'Transfer Act 2005', the order is bad in law.

(c) The impugned transfer order dated 30.08.2021 is approved at the level of Minister only and being not approved by next preceding competent transferring authority (Hon'ble Chief Minister), it is bad in law.

(d) The Notification dated 25.04.2016 issued by Water Resources Department empowering Minister of Water Resources Department as competent transferring authority for mid-term and mid-tenure under Section 4(4) and 4(5) of 'Transfer Act 2005' is unsustainable, since it amounts to overriding the provisions of Section 6 of 'Transfer Act 2005'.

6. Whereas, Smt. K.S. Gaikwad, learned Presenting Officer for Respondent No.1 - WRD submits that parent Department of the Applicant being admittedly Water Resources Department, the Respondent No.2 - PWD was not competent to transfer the Applicant to Mumbai, and therefore, transfer order dated 06.08.2021 passed by PWD has been rectified by Respondent No.1 - WRD by issuance of order dated 30.08.2021 thereby posting Applicant as Executive Engineer (Mechanical) Alure, District Ratnagiri on vacant post. She further pointed out that the proposal of transfer was vetted by CSB and thereafter, with the approval of Minister Incharge of WRD being empowered by Notification dated 25.04.2016 transferred the Applicant and it cannot be treated as mid-term or mid-tenure transfer.

7. Whereas, Smt. A.B. Kololgi, learned Presenting Officer for Respondent No.2 – Public Works Department in reference to Affidavit-in-reply filed by the Department submits that Respondent No.2 admits the mistake committed by the Department by transferring the Applicant to Mumbai by order dated 06.08.2021 since parent Department of Applicant is Respondent No.1 – Water Resources Department. But mistakenly his request to transfer him to Mumbai was accepted. On this line of submission, she stated that Applicant is not entitled to any protection for continuation of post at Mumbai.

8. In view of submissions advanced at the Bar, two-fold issues posed for consideration. Firstly – whether transfer order dated 06.08.2021 issued by Respondent No.2 – PWD confer any legally vested right upon the Applicant to claim tenure of 3 years at Mumbai and secondly – as to whether transfer order dated 30.08.2021 issued by Respondent No.1 – WRD can be termed mid-term or mid-tenure transfer requiring compliance of Section 4(5) of ‘Transfer Act 2005’.

9. Following are the principles culled out from various decisions of Hon’ble Supreme Court in the matter of transfer of a Government servant to be borne in mind :-

*“(i) The courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the grounds of mala fides. (Mrs. Shilpi Bose & ors. Vs. State of Bihar & ors.) 10, 1990 DGLS (soft) 696 : 1991 (Supp.2) SCC 659 : A.I.R. 1991 SC 532.*

*(ii) A Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer order issued by a Competent Authority does not violate any of his legal rights. (Shilpi Boses's case (supra).*

*(iii) Who should be transferred where, is a matter for the appropriate authority to decide. Unless the transfer order is vitiated by mala fides and is made in violation of any statutory provisions, the court cannot interfere with it. (Union of India & Ors. Vs. S.L. Abbas) 11, 1993 DGLS (soft) 409: 1993 (4) SCC 357 : A.I.R. 1993 SC 2444.*

(iv) *Transfer of an employee is not only an incidence inherent in the terms of the appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. (State of Uttar Pradesh & Ors. Vs. Gobardhan Lal) 12, 2004 DGLS (soft) 190: 2004 (11) SCC 402 : AIR 2004 SC 2165.*

(v) *Transfer made even in transgression of administrative guidelines cannot also be interfered with, as it does not confer any legally enforceable rights unless it is shown to be vitiated by mala fides or made in 16 wp3318-2017+group violation of any statutory provision and so long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments (Gobardhan Lal's case (supra)).*

(vi) *The courts should not deal with transfer orders as if they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. They cannot substitute their own decision in the matter of transfer for that of competent authorities of the State. Even allegations of mala fides when made must be such as to inspire confidence in the court or based on concrete materials. (Gobardhan Lal's case (supra)).*

(vii) *Allegation of mala fides should not be entertained on the mere making of it or on consideration borne out of conjectures or surmises. (Gobardhan Lal's case (supra)).*

(viii) *Except for strong & convincing reasons no interference could ordinarily be made with an order of transfer. (Gobardhan Lal's case (supra))."*

10. Indisputably, Applicant's parent department is Respondent No.1 – WRD. Initially, by transfer order dated 31.05.2018 issued by his parent department, he was transferred from Nanded to Aurangabad as Assistant Chief Engineer, PWD. As such, the Applicant works under the control of WRD but by order dated 31.05.2018, he was transferred in PWD on the post of Assistant Chief Engineer, Aurangabad. He had completed normal tenure of 3 years in general transfers of 2021. When he was due for transfer, he made representation dated 10.02.2021 (Page No.21 of P.B.) addressed to Respondent No.2 – Additional Chief Secretary, PWD requesting for transfer to Mumbai on the ground of medical treatment of his father. Indeed, the Applicant being under the control of Respondent No.1 – WRD, his representation ought to have been forwarded to Respondent No.1 – WRD for necessary orders. Here, Respondent No.2 –

PWD committed error by accepting his representation and giving him posting at Mumbai. Undoubtedly, the said transfer order was preceded by minutes of CSB and File Noting under the signature of Additional Chief Secretary, PWD and the same was approved by Minister of the Department. Indeed, the Respondent No.1 that time ought to have realized that parent department of the Applicant being Respondent No.1 – WRD, it had no competency or jurisdiction to transfer the Applicant. Be that as it may, the fact remains that Respondent No.2 – PWD was not at all competent to transfer the Applicant to Mumbai. This being the position, the transfer order dated 06.08.2021 passed by Respondent No.2 – PWD has to be treated as *non-est* in the eye of law.

11. The submission advanced by learned Advocate for the Applicant that in view of communication of transfer order dated 06.08.2021 to Respondent No.1 – WRD, it had knowledge and acquiesced to transfer order issued by Respondent No.2 – PWD on 06.08.2021 is totally unpalatable. Mere forwarding of transfer order dated 06.08.2021 to Respondent No.1 – WRD cannot be construed that transfer order dated 06.08.2021 was in consultation or concurrence with Respondent No.1 – WRD. True, the perusal of transfer order dated 06.08.2021 reveals that the copy of transfer order issued by Respondent No.2 – PWD was forwarded to Respondent No.1 – WRD and noticing the same, the Respondent No.1 – WRD ought to have rectified the mistake immediately. However, Respondent No.1 – WRD took remedial measure after about three weeks by issuance of order dated 30.08.2021. Suffice to say, there was no such consultation of concurrence with WRD before transferring the Applicant by Respondent No.2 – PWD. In other words, the Respondent No.2 – PWD had exceeded its authority and usurped the jurisdiction of Respondent No.1 – WRD by issuance of transfer order dated 06.08.2021 which will have to be termed as *non-est* in the eye of law.

12. Once transfer order dated 06.08.2021 issued by Respondent NO.2 – PWD found *non-est* in law, consequent to it, such order cannot confer any right upon the Applicant to claim 3 years' tenure in Mumbai on the basis of said order. This being the position, the transfer order dated 30.08.2021 issued by Respondent No.1 – WRD as a remedial measure and which is in the nature of rectification of mistake done by PWD, the transfer order dated 30.08.2021 cannot be termed mid-term or mid-tenure transfer. Resultantly, the question of making out a special case and compliance of Section 4(5) of 'Transfer Act 2005' which *inter-alia* provides for approval of next preceding competent authority (Hon'ble Chief Minister) does not survive. As such, the submission advanced by the learned Advocate for the Applicant that transfer order dated 30.08.2021 is mid-term and mid-tenure transfer and bad in law for want of approval of Hon'ble Chief Minister is totally misconceived.

13. Apart, even assuming for a moment that it is mid-term and mid-tenure transfer, in that event also, the said order being issued to rectify grave error committed by Respondent No.2 – PWD in issuing transfer order dated 06.08.2021, such action of remedial measure will have to be construed as a special case in service jurisprudence. What can be construed as a special case as contemplated under Section 4(5) of 'Transfer Act 2005' would depend upon facts of each case and it is not possible to reduce it into straight-jacket formula. There could be diverse consideration on the basis of which, it could be termed as a special case. Therefore, in my considered opinion, even the test of special case will have to be said satisfied. In this behalf, material to note that there is specific file noting which preceded approval of transfer order dated 30.08.2021 that Respondent No.2 – PWD had transferred the Applicant by order dated 06.08.2021 though Applicant belongs to Respondent No.1 – WRD.

14. Insofar as approval to transfer order dated 30.08.2021 is concerned, it is admittedly approved by Minister Incharge of WRD having



empowered in view of Notification dated 25.04.2016. By this Notification, the powers of special transfer under Section 4(5) are delegated to Minister, WRD. Indeed, in the present case, as stated above, the transfer order dated 30.08.2021 cannot be construed mid-term or mid-tenure transfer, since it was by way of rectification of mistake committed by Respondent NO.2- PWD. In terms of G.R. dated 29.07.2021, the deadline for issuance of general transfers was extended upto 09.08.2021 on account of Covid-19 pandemic situation, since general transfers could not be effected in May, 2021 as required to be effected under the provisions of 'Transfer Act 2005'. By the said G.R, the deadline for issuance of general transfers were extended upto 09.08.2021 and for special transfers, time limit was fixed up to 30.08.2021. It is in this context, the transfer order dated 30.08.2021 has been issued by WRD with the approval of Minister, WRD on the basis of delegation of powers as permitted under Section 6 of 'Transfer Act 2005'.

15. The learned Advocate for the Applicant tried to contend that there could be no delegation of power for special transfers to any other authority and the powers of general transfers only can be delegated. However, in the present case, the perusal of record, particularly File Noting reveals that Hon'ble Chief Minister himself has delegated his power to Minister, WRD. It is in pursuance of it, Notification dated 25.04.2016 has been issued thereby confirming powers of general transfers upon Principal Secretary and powers of special transfers are delegated to Minister, WRD.

16. Shri Bandiwadekar, learned Advocate for the Applicant sought to place reliance on the decision rendered by this Tribunal in **O.A.No.528/2021 [Dattatray B. Mundhe Vs. State of Maharashtra] decided on 27.08.2021** and **O.A.No.539/2019 [Ajay M. More Vs. Superintending Engineer & Ors.] decided on 17.10.2019** to bolster up his contention that delegation of power for mid-term transfer is illegal.

17. The issue of legality of Notification dated 25.04.2016 is indeed not open to challenge in view of decision of Hon'ble High Court in ***Writ Petition No.3318/2017 [Bharat Shingade Vs. State of Maharashtra & Ors.] decided on 17.04.2017***. In that case, one Shri D.B. Pande filed O.A. before MAT, Aurangabad Bench *inter-alia* contending that he was transferred mid-term and mid-tenure. The Department opposed O.A. on the ground that transfer was necessitated and it was approved by Minister in pursuance of Notification dated 25.04.2016. The Tribunal quashed the transfer order with the finding that it is against the provisions of 'Transfer Act 2005' and *malafide*. When matter was taken up before Hon'ble High Court, the order passed by MAT was quashed and transfer was upheld. In this Judgment, the legality of Notification dated 25.04.2016 was also challenged before Hon'ble High Court which were turned down. The Hon'ble High Court held that since Hon'ble Minister has delegated his powers to Minister as per Notification dated 25.04.2016, the transfer order held legal. This is the same Notification dated 25.04.2016 on the basis of which Respondent No.1 – WRD issued transfer order dated 30.08.2021. Therefore, the decisions rendered in O.A.No.528/2001 and 539/2019 are of no help to the Applicant.

18. Insofar as issue of deputation is concerned, indeed, by order dated 31.05.2018, the Respondent No.1 –WRD had transferred the Applicant as Assistant Chief Engineer, PWD, Aurangabad and it was not deputation. Even assuming for a moment that the said posting was on deputation in PWD, in that event also, in view of G.R. dated 16.02.2018, the deputation should be initially for 3 years. There are no orders of parent department viz. WRD for his extension at Aurangabad. As such, at any rate, the Applicant do not get any right much less legally vested right to continue in PWD, and therefore, he is rightly transferred by Respondent No.1 – WRD by order dated 30.08.2021 by rectifying transfer order dated 06.08.2021 issued by Respondent No.2 – PWD.

19. The totality of aforesaid discussion leads me to conclude that the challenge to the transfer order dated 30.08.2021 is devoid of merit and O.A. deserves to be dismissed. Shri Bandiwadekar, learned Advocate for the Applicant at this juncture stated that Applicant's daughter by name Ms. Zoya is appearing in 10<sup>th</sup> Standard Examination in Mumbai, and therefore, in view of S.S.C. Examination scheduled in March, 2022, he be allowed to continue her at Mumbai till general transfers. It is opposed by learned P.O. stating that the Applicant is already enjoying interim relief, and therefore, no further concession shall be given. In my considered opinion, having regard to difficulties likely to be faced by the Applicant in the education of his daughter, it would be appropriate to allow him to continue on the same post at Mumbai till the end of March, 2022 so that by that time, S.S.C. Examinations are over. Hence, the order.

**ORDER**

- (A) The Original Application stands dismissed.
- (B) However, Respondents are directed to continue the Applicant on the present post as Assistant Chief Engineer (Mechanical), P.W.D, Mumbai till the end of March, 2022 and he be relieved on 31<sup>st</sup> March, 2022.
- (C) Liberty is granted to the Applicant to make representation in general transfers, which may be considered in accordance to Rules.
- (D) No order as to costs.

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

Mumbai  
Date : 17.02.2022  
Dictation taken by :  
S.K. Wamanse.

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