

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATIONS 889 & 890 OF 2015**

**1) ORIGINAL APPLICATION NO 889 OF 2015**

**DISTRICT : PUNE**

Shri Ramchandra Appa Morwadkar, )  
Sectional Engineer, R/o: M/6, )  
Maurya Vihar Society, )  
Behind Gandhi Bhavan, Kothrud, )  
Pune 411 038. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through the Secretary, )  
Water Resources Department, )  
Mantralaya, Mumbai. )  
2. The Chief Engineer, )  
Water Resources Department, )  
[Specified Project], Sinchan Bhavan, )  
Mangalwar Peth, Barne Road, )  
Pune - 11. )...**Respondents**

24

**2) ORIGINAL APPLICATION NO 890 OF 2015**

**DISTRICT : PUNE**

Shri Lahanu Bhaurao Balsane, )  
 Sectional Engineer, )  
 Residing at R.K Spectra, )  
 Near Suryadatta College, Flat No. 905, )  
 D/5, Bardhan Bank, )  
 Pune 411 021. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
 Through the Secretary, )  
 Water Resources Department, )  
 Mantralaya, Mumbai. )  
 2. The Chief Engineer, )  
 Water Resources Department, )  
 [Specified Project], Sinchan Bhavan, )  
 Mangalwar Peth, Barne Road, )  
 Pune - 11. )...**Respondents**

Shri S.S Dere, learned advocate for the Applicants.

Shri N.K Rajpurohit, learned Chief Presenting Officer for  
 the Respondents.

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**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**DATE : 16.06.2016**

**ORDER**

1. Heard Shri S.S Dere, learned advocate for the Applicants and Shri N.K Rajpurohit, learned Chief Presenting Officer for the Respondents.
2. These Original Applications were heard together and are being disposed of by a common order as the facts of the case and issues to be decided are similar.
3. Learned Counsel for the Applicants argued that in O.A no 889/2015, the Applicant was working as Sectional Engineer in the office of the Executive Engineer, Project Design Canal Division no. 2, Pune since 16.7.2012. By order dated 15.12.2014, the Applicant was deputed in the office of the Executive Engineer, Kukadi Distribution Construction Division, Kalwadi, Tal-Karjat District, Ahmednagar, before the Applicant had completed his tenure of 3 years. The Applicant challenged order dated 15.12.2014 by filing O.A no 1095/2014 before this Tribunal. By order dated 15.3.2015, this Tribunal quashed the aforesaid order dated 15.12.2014. Learned Counsel for the Applicant argued that once order dated 15.12.2014 was passed by

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this Tribunal, the Applicant ought to have been posted back in Project Design Canal Division no. 2, Pune. However, the Respondents issued fresh order dated 30.5.2015 transferring the Applicant to the same post where he was posted by order dated 15.12.2014. The Respondent filed Misc Application for extension of time to implement the order, which was granted by this Tribunal by order dated 29.4.2015. The Respondents were granted time to implement order dated 13.3.2015 up to 31.5.2015. Learned Counsel for the Applicant argued that the Respondents have taken this Tribunal for a ride and on 30.5.2015 passed fresh orders which are identical with the orders dated 15.12.2014. The Applicant had filed Contempt Application no. 64/2015. However, it was withdrawn with liberty to file a fresh Original Application, hence this application.

4. In O.A no 890/2015, the Applicant was working as Sectional Engineer since 9.10.2012 in the office of the Executive Engineer, Project Design Canal Division no. 2, Pune. By order dated 15.12.2014, he was posted to Karjat, Dist-Ahmednagar. He filed O.A no 1091/2014 before this Tribunal which was heard along with O.A no 1095/2014 filed by the Applicant in O.A no 889/2015 and were disposed of by a common order dated 13.3.2015, was held to be unsustainable and the Applicant was ordered to be reposted to his erstwhile posting. The Respondents sought extension of time to

implement the order dated 13.3.2015, which was granted. The Respondents have now passed impugned order dated 30.5.2015, which is the same as the order dated 15.12.2014, thus abusing the powers.

5. Learned Counsel for the Applicants argued that the Respondents have shown scant respect for the orders of this Tribunal. Apart from that, order dated 30.5.2015 is not sustainable as it does not meet the requirement of section 4(5) of the Transfer Act. The Applicants had not completed their three years tenure on 30.5.2015, when the impugned order was passed. They were posted to Project Design Canal Division no. 2, Pune on 16.7.2012 and 9.10.2012 respectively. Learned Counsel for the Applicants stated that the Applicants have been effectively transferred to Karjat, District-Ahmednagar by order dated 15.12.2014. The transfers of the Applicants are both mid-term and mid-tenure. The Respondents are relying on the G.R dated 14.11.2014 and Circular dated 5.12.2014, delegating powers of transfer of Junior Engineers to the Executive Engineers to the Chief Engineers. Learned Counsel for the Applicants argued that powers to transfer mid-tenure is government by section 4(5) of the Transfer Act. Such transfers can be made with the prior approval of the "immediately superior Transferring Authority" mentioned in table of section 6. The Applicant is a Group 'B' gazetted Officer and the 'transferring authority' as per

table of Section 6 is Minister-in-charge in consultation with the Secretary of the concerned Department. The powers of transfer of Junior Engineer, Sectional Engineer and Assistant Engineer, Grade-II have been delegated by G.R dated 14.11.2014 to the Chief Engineer. For mid-term transfer, section 4(4)(ii) provides for approval of next higher authority. Accordingly, such transfers can be approved by Director-General/Executive Director.

6. Learned Counsel for the Applicant contended that the powers of "transferring authority" can be delegated under second proviso to section 6. However, there is no provision in the Transfer Act for delegation of powers of the 'next higher authority' under section 4(4)(ii) and the 'immediately superior Transferring Authority' under section 4(5) of the Transfer Act. Learned Counsel for the Applicants argued that in absence of express provision which may permit delegation of powers of the authorities under section 4 of the Act, such powers cannot be delegated. If such delegation is allowed, the protection granted to Government servant against arbitrary transfers under the Transfer Act will become meaningless. Learned Counsel for the Applicants argued that on 30.5.2015 also, the Applicants had not completed their tenures and their transfers required approval of Hon'ble Chief Minister as immediately superior Transferring Authority for special reasons. The impugned transfer order has not cited any special reasons, nor has

it been issued with the approval of Hon'ble Chief Minister. The transfer orders of the Applicants are illegal.

7. Learned Chief Presenting Officer (C.P.O) argued on behalf of the Respondents that the Applicants have not pleaded in the Original Application that powers of the immediately superior Transferring Authority cannot be delegated. In none of the grounds mentioned in paras 7.1 to 7.5 of the Original Application this ground has been mentioned. Learned Chief Presenting Officer stated that in earlier round of litigation (O.A no 1095/2014 and 109/2014), the Applicants had admitted that they had completed their tenures in Pune. They are estopped from claiming that they have not completed their tenure now. Coming to the merits of the case, learned Chief Presenting Officer argued that the Applicants have been transferred in full compliance of provisions of the Transfer Act. 'Next Higher Authority' and the 'immediately superior Transferring Authority' are covered by the 'Competent Transferring Authority' as mentioned in second proviso to section 6 of the Transfer Act and they have delegated powers to subordinate authority as per Government Circular dated 5.12.2014.

8. Learned Counsel for the Applicants argued that it is not necessary to plead the legal positions in the Original Application and as such, it was not necessary to mention that in the 'grounds' in para 7 of the Original



Application. He argued that the Applicants might have by mistake mentioned in earlier Original Applications filed by them that they had completed their tenures on 30.5.2015 when the impugned order was issued. However, the fact remains that they had not completed their tenures.

9. It is seen that the Applicants (and other persons) had filed O.A no 1095/2014 and 1091/2014 before this Tribunal which was disposed of by order dated 13.3.2015. It will be instructive to reproduce para 4 of the aforesaid order which reads:-

“The learned C.P.O on instructions had stated that the said deployment is for a limited period till next general transfers. The said deployment cannot be continued indefinitely. The Tribunal did not grant interim relief because a statement was made that it is only for a specific period, say, up to general transfers. Any ‘redeployment’ without specifying any time will have to be treated as transfer. The impugned orders had been issued on 15.12.2014. If so called deployments are for an indeterminate period they have to be treated as transfers and since they were mid-term appropriate procedure should have been followed. It is nowhere contended by the respondents that the persons who have been shifted have completed their tenures.”

24



It was clearly held that the Respondents have not taken the plea that the Applicant had completed their tenures. It is not open for the Respondents to now take that plea in the present Original Application. As regards delegation of powers under the Transfer Act, the contention of Learned Counsel for the Applicant appears to be correct that it is not necessary to plead the law in the Original Application. The facts have been pleaded in para 6 of this Original Application. The Applicants were 'redeployed' by order dated 15.12.2014 by the Respondents from the Project Design Canal Division no. 2, Pune to Kulkdi Distribution Construction Division, Kalwadi. The aforesaid order was challenged by the Applicants in O.A no 1095/2014 and 1091/2014. This Tribunal has held that so-called deployment for an indeterminate period has to be treated as transfer and the order dated 15.12.2014 was quashed and set aside. The Applicants were directed to be posted back to their erstwhile postings, before the ensuing general transfers are effected. However, the Applicants were never reposted. Though the Contempt Application no 64/2015 filed by the Applicants was withdrawn by them, which is noted in the order of this Tribunal dated 7.10.2015, but the fact remains that the Applicants were not reposted to their original posts despite clear orders of this Tribunal. In para 7 of the order dated 13.3.2015, it was directed that:-



“While doing so, it is necessary, in case the Government wants to invoke special reasons and the provisions under section 4(4)(i), 4(4)(ii) and 4(5), a careful analysis of the workload is undertaken at the transferring stations and receiving stations, if the same on the ground of workload and further action taken.

It is clear that the Respondents could transfer the Applicants provided there was careful analysis of workload at the posts where they were working earlier and the posts where they were transferred and the workload at two places justified transfers. The Respondents have placed a copy of the transfer order dated 30.5.2015 on record as Exhibit R-2 to the affidavit in reply filed by the Respondents on 24.11.2015. This order does not contain any details about the work load at Project Design, Canal Division no. 2, Pune and the Kukdi Distribution Construction Division, Kalwadi. In para 7.2 of the Original Application it is mentioned that careful analysis of workload at Kalwadi was done. However, there is no mention of the same in the impugned transfer order. It is seen that the Respondents have not followed the specific orders dated 13.3.2015 of this Tribunal in O.A no 1091/2014 etc.

10. The impugned order dated 30.5.2015 is purportedly passed under the provisions of section 4(4)(ii)

14

and 4(5) of the Transfer Act. As the order was passed in the month of May, (i.e. on 30.5.2015), there was no need to invoke section 4(4)(ii). However, invoking section 4(5) clearly shows that the Applicant had not completed their tenures. As per section 4(5) of the Transfer Act, such transfers can be made with the prior approval of the 'immediately superior Transferring Authority' mentioned in the table of Section 6, in special cases. Admittedly, the 'Transferring Authority' as per section 6 of the Transfer Act is 'Minister-in-charge in consultation with Secretaries of the concerned Departments'. Second proviso to section 6 reads:-

“Provided further that the Competent Transferring Authority specified in the table may be general or special order, delegates its power under this section to any of the subordinate authority.”

Section 6 deals with Transferring Authority and powers to transfer employees of various categories to be exercised by such authorities. This section does not deal with transfer envisaged in section 4 of the Transfer Act, which are so to say extraordinary powers. The terms used in section 4 and 'next higher authority' and 'immediately superior Transferring Authority'. Prior approval of these authorities in writing is required in exceptional circumstances or for special reasons. However, after prior approval is given, the order issued

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by the Transferring Authority will be valid. Second proviso to section 6 permits delegation of powers under that section only. It cannot be enlarged to include delegation of powers of authorities mentioned in section 4(4)(ii) and 4(5), who are not the Transferring Authorities. Learned Counsel for the Applicant contended that section 4 of the Transfer Act deals with cases, where extraordinary powers are being exercised and if such powers are delegated to lower level functionaries, the very purpose of enacting the Transfer Act would be defeated. I agree with his contention fully. The law does not provide for delegation of powers of the authorities under section 4(4)(ii) and 4(5) of the Act and transfer under these sections will have to be with the approval of original authorities mentioned in Table of Section 6, and not by the authorities to whom powers have been delegated, as was done by circular dated 5.12.2014. The impugned order has not been issued with the approval of Hon'ble Chief Minister as required under section 4(5) of the Transfer Act and is unsustainable.

11. Learned Chief Presenting Officer relied on the judgment of Hon'ble Supreme Court in the case of **RAJENDRA SINGH etc. Vs. STATE OF U.P & ORS in CIVIL APPEAL NO 4975/2009**. He argued that Hon'ble Supreme Court has held that unless the order of transfer is shown to be an outcome of a malafide exercise of power or violative of any statutory provision, or passed by

an authority not competent to do so, an order of transfer should not be interfered with. In the present case, it has been held that the impugned transfer order has been issued in violation of section 4(5) of the Transfer Act, without approval of the competent authority, viz Hon'ble Chief Minister. The Respondents have also not followed the directions of this Tribunal as per order dated 13.3.2015 in O.A no 1091/2014 etc. This case is clearly distinguishable.

12. Having regard to the aforesaid facts and circumstances of the case, impugned order dated 30.5.2015 is quashed and set aside. The Respondents will allow the Applicants to join in their original posts within 2 weeks from the date of this order. The period from 15.12.2014 to the date of actual joining in the original posts will not be counted for computing tenures of the Applicants. This Original Application is allowed accordingly with no order as to costs.

Sd/-

(**Rajiv Agarwal**)  
**Vice-Chairman**

**Place : Mumbai**  
**Date : 16.06.2016**  
**Dictation taken by : A.K. Nair.**