

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 900 OF 2018**

**DISTRICT : PUNE**

Shri Prashant Suresh Pisal, )  
Working as Tahsildar, )  
R/o: 1-5, 18-Queens Garden, )  
Pune 411 001. )

**...Applicant**

**Versus**

1. The Principal Secretary, )  
Revenue & Forest Department, )  
Madam Cama Marg, )  
Hutatma Rajguru Chowk, )  
Mantralaya, Mumbai 400 032. )

2. Divisional Commissioner, )  
Pune Division, Central Building, )  
Pune 411 001. )

3. Shri Sunil Koli, )  
Tahsildar, )  
Presently working as Tahsildar, )  
Haveli, Pune. )

**...Respondents**

Smt. Punam Mahajan, learned advocate for the Applicant.

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents no 1 & 2.

Shri M.D Lonkar, learned advocate for Respondent no. 3.

**CORAM : Shri Justice A.H Joshi (Chairman)**

**RESERVED ON : 04.12.2018**

**PRONOUNCED ON : 20.12.2018**

**J U D G M E N T**

1. Heard Smt. Punam Mahajan, learned advocate for the Applicant, Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents no 1 & 2 and Shri M.D Lonkar, learned advocate for Respondent no. 3.

2. Summary of facts and contentions as pleaded by the applicant is as follows:-

- (a) Applicant was transferred from the post of Assistant District Supply Officer, Pune to the post of Tahsildar, Haveli, Pune.
- (b) The impugned transfer orders are arbitrary, issued in violation of Section 4(4)(ii) & 4(5) of the Transfer Act, and is malafide in law.
- (c) The applicant is aggrieved by the midterm and mid-tenure transfer orders dated 1.10.2018, by which the Respondent no. 3 is transferred and posted in place of the applicant, i.e. Haveli, Pune and the applicant is sent on deputation to PMRDA, Pune.
- (d) The impugned order is issued in colourable exercise of the power at the behest of Respondent no.3. Respondent no. 3 has been transferred in place of the applicant, viz. Tahsildar, Haveli, Pune Rural in contravention of the Rules.
- (f) Grave injustice and prejudice has been caused to the applicant for no fault of the applicant.

3. The averments contained in the Original Application which are foundation of challenge to the transfer are quoted ad verbatim as follows:-

*“6.12.1) The post of Tahsildar is a Group-B post and the tenure as per the Transfer Act is of three years. The Applicant is not due for transfer, as he has not completed the tenure of three years on the post of Tahsildar, Haveli, Pune.*

*Therefore, the transfer of the applicant violates Section 3 of the ROT Act.*

*6.12.2) The impugned transfer is mid-term transfer as it has been issued on 1<sup>st</sup> Oct, 2018. The impugned order has been issued in violation of the provisions of Section 4(4)(ii) of the Transfer Act. As per the statutory provisions of Section 4(4)(ii), it is necessary to record special reasons, state exceptional circumstances and obtain the prior approval of the next higher authority, i.e. the Hon'ble Chief Minister in the present case. To the best of the knowledge of the applicant, no exceptional circumstances have been stated nor special reasons have been recorded while issuing transfer order of the applicant as well as the Respondent no. 3. The Respondent no. 1 has not followed the special procedure laid down under the statute for mid-term transfer, therefore the impugned transfer orders are illegal and bad in law. The impugned transfer order are nonest and void ab initio.*

*6.12.3) The applicant has not completed the tenure of three years and therefore it is a mid-term transfer. To the best of the knowledge of the applicant no exceptional circumstances has been recorded in writing, as no exceptional circumstances exist for transfer either of the applicant or Respondent no. 3 and also no prior approval has been taken from the immediately superior Transferring Authority, i.e. the Hon'ble Chief Minister. The transfer order is issued in blatant violation of the provisions of Section 4(5) and (6) of the Transfer Act. Therefore, the impugned transfer order are illegal and bad in law. The impugned order is nonest and void ab initio.*

*6.12.4) The impugned transfer order suffer from malice in law, asto the best of knowledge of the Applicant, it has not issued in accordance with statutory provisions the Section 4(4)(ii) and 4(5) of the Transfer Act and are arbitrary and malafide.*

6.12.5) *The impugned transfer order are also illegal and bad in law on the ground that no reasons are assigned for transfer of either the applicant or the Respondent no. 3. To the best of the knowledge of the applicant, there is no proposal is initiated for transferring the Respondent no. 3 and the proposal of the transfer of the Applicant is without just, reasonable and fair caused. Thus the impugned orders are issued in violation of principles of natural and it is violation of Article 14 of the Constitution of India.*

6.12.6) *To the best of the knowledge of the applicant, the case of the applicant and Respondent no.3 were not placed before the Civil Services Board, though it is mandatory. The transfer is in violation of the express dictate of Hon'ble Supreme Court order in T.S.R Subramanian's case and the policy vetted by the Government of Maharashtra to follow this judgment. The impugned orders are liable to be quashed and set aside on this ground alone.*

6.12.7) *The impugned transfer order is issued for extraneous reasons and it is a clear case of colourable exercise of power by the Respondent no. 1.*

6.12.8) *The impugned transfer order is also issued in violation of the Government Circular dated 11.2.2015 which is issued on the basis of the decision of the Hon'ble Tribunal. It clearly states that the mid-term and mid-tenure transfer should not be issued unless the special procedure laid down u/s 4(4)(ii) and 4(5) are followed.*

6.12.9) *The impugned transfer order of the applicant refers to deputation to Foreign service but actually it is not a deputation as posting to PMRDA, is not a foreign service, as it comes under the Urban Development Department of the Government of Maharashtra. Even as per the G.R dated 16.2.2018, the applicant is governed by the Transfer Act.*

*This also reflects total non-application of mind, confusion and lack of any concrete reason for transfer of the applicant.*

*6.12.10) The cadre of Tahsildar is a Divisional cadre. The Respondent No. 3 is appointed in Konkan Division. Therefore, the transfer of the Respondent no. 3 cannot be made outside the Konkan Division, in place of the applicant in Pune Division, in contravention of the Recruitment Rules of Tahsildar.*

*6.12.11) The applicant is sought to be transferred only to give undue accommodation to the Respondent no. 3. The impugned order is malafide and arbitrary, as it is issued in colourable exercise of the power for extraneous reasons at the behest of the Respondent no. 3. The impugned order is liable to be quashed and set aside on this ground alone.”*

(Quoted from pages 6, 7 & 8 of O.A)

4. The Respondent No.2 is the contesting party and the contest is supported by Respondent No. 3, who is the beneficiary of the post.

5. Affidavit of Respondent no. 1 is on record at pages no. 46 of the O.A. The plea of the Respondents no. 1 & 2 is very simple as it emerges from para 9 thereof, which reads as follows:-

*“9. With reference to contents of Paragraph no. 6.12.1 to 6.12.5, I say that the post of Tahsildar is Group-A post and the present applicant has been transferred by the competent authority with mentioning the reasons and as per the provisions of Section 4(4) and 4(5) of Transfer Act, 2005 and with prior approval of immediate higher Competent Authority. The reason has been recorded before transferring the Applicant and the provisions of Section 4(4) and 4(5) has been duly complied with and hence the transfer of the applicant is valid within the four corners of law.”*

(Quoted from pages 49 & 50 of O.A)

6. Respondent no. 3 has contested the Original Application vigorously. The plea raised in the reply is summarized as follows:-

(a) The transfer of the applicant is made at the same headquarters, and hence it does not amount to transfer, much less it does not violate mandatory provisions contained in the ROT Act, 2005.

(b) The applicant has been deputed and not transferred.

(c) The reasons recorded in the transfer order is for “administrative reasons” and use of that phrase constitutes due compliance of Sec 4(4) & 4(5) of ROT Act, 2005.

(d) Due process of law of sanctioning the transfer by Competent Authority is complied with and the Original Application has no merit and deserves to be dismissed.

7. Learned advocate for the applicant has placed reliance on following judgments:-

(a) Judgment of Hon’ble High Court, Bombay in Balasaheb Vitthalrao Tidke Vs. The State of Maharashtra & Anr, Writ Petition no. 89878 of 2018. In this case, their Lordships went to observe that:-

“This is an interim order. In this case, Hon’ble High Court noted that mandatory provisions of ROT Act, 2005 have been deviated. Hon’ble High Court after recording grave dissatisfaction directed the Chief Secretary to file affidavit as to what measures he would like to take to avoid transfers due to influence and to be carried out strictly in accordance with law.”

(b) Judgment of Hon’ble High Court in State of Maharashtra & Others Vs. Dr (Ms) Padmashri Shriram Bainade & Ors, 2015 (2) Mh.L.J 679. In this case, their Lordships went to observe that:-

“The record does not show that the Government had applied its mind and recorded satisfaction to the proposal meaning that “special reasons” existed due to which mid-term transfer became imperative.

Thus, it is evident that the version contained in the proposal for transfer, i.e. letter dated 16.8.2014 alone is the factual foundation of “special reasons” or exceptional circumstances. Acts of disobedience picked up in a short

duration, which do not prove and pose any emergency to public interest, cannot and do not ipso facto constitute factual material to answer and justify the stipulation of “special reasons” or “exceptional circumstances” either.

Therefore, this Tribunal is satisfied as regards the fact that the Respondents have failed to make out the case to justify the transfer within the sphere of existence of “special reasons” or “extraordinary circumstances”, public interest, larger good of larger number of people, called in name whatsoever.”

The decision needs to be actuated by consideration based on law and the record and certainly not an extraneous consideration. Unreasoned order is always vulnerable to challenge and stated to be malafide.”

(Quoted from pages 13, 14 & 17 of Paper Book)

(c) Judgment of Hon’ble High Court in Kishor Shridharrao Mhaske Vs. Maharashtra OBC finance & Development Corporation, Mumbai, 2013(3) Mh.L.J 463. In this case, their Lordships went to observe that

“Learned Counsel for the petitioner in that case placed reliance upon the ruling in S.B Bagwat Vs. State of Maharashtra, reported in 2012(3) Mh.L.J 197 (DB). Division Bench of this Court referred to the settled position in law that when a statutory power is conferred upon a authority to do an particular thing, that exercise has to be carried out in the manner as prescribed by the Statue.

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.

(Quoted from pages 22 & 23 of Paper Book)

(d) Judgment of this Tribunal dated 17.10.2018 in O.A 832/2018, Shri R.A Kadampatil Vs. The State of Maharashtra & Ors. This Tribunal observed that:- [CORAM : Shri B.P Patil, Member(J)]

“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”.

(Quoted from page 36 of the Paper Book)

(e) Judgment of this Tribunal dated 19<sup>th</sup> November, 2018 in O.A 527/2018, Dr Ravindranath B. Chavan Vs. The State of Maharashtra & Ors. This Tribunal held that: [CORAM : Shri A.P Kurhekar, Member(J)]

“28. In view of the aforesaid decisions, there is no escape from the conclusion that mere use of word transfer “on administrative ground” is not enough or compliance of the mandatory requirement contemplated in Section 4(4)(ii) and 4(5) of the Act, 2005. No reason is recorded to justify the transfer. In fact, the issue of alleged complaint was not at all even discussed much less concluded in the meeting of Civil Services Board which shows lack of application of mind and mechanical approach of the Civil Services Board.”

(Quoted from page 52 of the Paper Book)

(f) Judgment of this Tribunal dated 9.11.2017 in O.A 770/2017 Shri Sunil M. Saundane Vs. The State of Maharashtra & Ors. This Tribunal held that:- [CORAM : Justice Shri A.H Joshi, (Chairman)]

11. In the background that impugned Transfer is ordered in open and gross defiance of the judgment in the case of **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013**, present Original Application succeeds. Impugned order, Exhibit-A, page 23 is quashed and set aside. The order passed by Divisional Commissioner dated 10.08.2017 which is based on the impugned order dated 08.08.2017 has to die a natural death

(Quoted from page 59 of Paper Book)

(g) Judgment of this Tribunal dated 17.1.2018 in O.A 668/2017, Smt Ujwala S. Ghavte Vs. The State of Maharashtra & Ors. This Tribunal framed following question:- [CORAM : Justice Shri A.H Joshi, (Chairman)]

“14(VII) Whether the transfer, which is in another office in the same town, is open for challenge and judicial review?”

This Tribunal took a view after considering entire matter 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 statute 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 70, 78 & 79 of Paper Book)

(h) Judgment of this Tribunal dated 27.3.2018 in O.A 614/2017, Shri P.H Sawakhande Vs. The State of Maharashtra & Ors. This Tribunal held: [CORAM : Justice Shri A.H Joshi, (Chairman)]

“Non-observance of the mandate as laid down in T.S.R Subramanian & Ors Vs. Union of India & Ors, (2013) 15 SCC 732, and the Circular issued by the Hon’ble Chief Minister to various Ministers asking them to adhere to the principles in T.S.R Submanian’s case, the transfer was held to be bad.”

(i) Judgment of this Tribunal dated 13<sup>th</sup> October, 2014 in O.A 839/2014, Dr (Ms) Padmashri S. Bainade Vs. State of Maharashtra & 4

ors. This Tribunal held that: [CORAM: Justice Shri A.H Joshi (Chairman)]

“The transfer ought to be made for the reasons to be recorded and the reasons ought to confirm to the concept of special reasons and exceptional circumstances. Bear reference to the term public interest and larger hood do not ipso facto constitute “special reasons or exceptional circumstances”.

(j) Judgment of this Tribunal dated 10<sup>th</sup> October, 2014 in O.A 781/2014, Shri R.P. Shivdas Vs. The State of Maharashtra & one Anr. This Tribunal held that: [CORAM: Shri M. Ramesh Kumar, Member (A)].

“Even local transfer is held to be transfer and when it is made without recording reasons, such transfer is held to be in violation of Section 4(4)(ii) and 4(5) of ROT Act, 2005.”

(k) Judgment of Hon’ble High Court in Kamleshkumar I. Patel Vs. Union of India & Ors, 1994 Mh.L.J 1669.

“Judgment of the Supreme Court which cannot stand together, present a serious problem to the High Courts and Subordinate Courts” and that “in such circumstances the correct thing is to follow that judgment which appears to the Court to state the law accurately or more accurately than the other conflicting judgment.”

“Where the conflict is between two decisions pronounced by a Bench consisting of the same number of Judges, and the subordinate Court after a careful examination of the decision came to be conclusion that both of them directly apply to the case before it, it will then be at liberty to follow that decision which seems to it more correct, whether such decision be the later or the earlier one.” According to the Nagpur High Court also, as would appear from its Full Bench decision in D.D Bilimoria vs. Central Bank of India, 1943 NLJ 569 = AIR 1943 Nag. 340 at p. 343, in such case of conflicting authorities, “the result is not that the later authority is substituted for the earlier, but that the two stand side by side conflicting with each other”, thereby indicating that the subordinate Courts would have to prefer one to the other and, therefore would be at liberty to follow the one or the other.”

“Where authorities of equal standing are irreconcilably in conflict, a lower court has the same freedom to pick and choose between them as the schizophrenic court itself. The lower court may refuse to follow the later decision on the ground that it was arrived at per incuriam, or it may follow such decision on the ground that it is the latest authority. Which of these courses the court adopts depends, or should depend, upon its own view of what the law ought to be.”

(Quoted from pages 170 & 172 of Paper Book)

8. Learned Presenting Officer cited certain judgments relied upon and the purpose thereof are as below:-

(a) Judgment of Hon'ble High Court in 2008 (2) Mh.L.J 640, Shri V.B Gadekar, Deputy Engineer Vs. Maharashtra Housing and Area Development. In this case, their Lordships went on observe that:-

“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in the public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfers could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power.”

“In the present case, from the record before us, there are no patent malafides or arbitrariness in exercise of power by the respondents. The conduct of the petitioners is to be looked into by the authorities and it will neither be just nor fair for the Court to interfere at this stage and hold that the orders of transfer are vitiated on account of malafide or colourable exercise of power or that they are in violation of the Rules.”

(b) Judgment of Hon'ble Supreme Court in Civil Appeal No. 5550/2009, arising out of SLP (C) No. 17128/2009), Airports Authority of India Vs. Rajeev Ratan Pandey & Ors. In this case, their Lordships went on to observe that:-

“In a matter such as the present one where plea of malafides is not made in the writ petition and the assertion of malafides is made for the first time in a supplementary affidavit which too is not supported by any convincing and cogent material, the plea of malafides hardly deserved acceptance, prima facie, justifying stay of operation of a transfer order.

The High Court did not even find any contravention of transfer policy in transferring the Respondent no. 1 from Lucknow to Calicut. In a matter of transfer of a government employee, scope of judicial review is limited and High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer.”

(c) Judgment of this Tribunal dated 9<sup>th</sup> March, 2018 in O.A 14/2018, Shri Damdeo Wamanrao Mandalwar Vs. The State of Maharashtra & Others. This Tribunal held that: [CORAM: Shri J.D Kulkarni, Vice-Chairman (J)].

“The minutes of the meeting at P.B page No. 47 dated 5.1.2018 also shows that it was mentioned that the transfer of the Officers was in the interest of administration and there is no need to go into the merits as to whether the administrative exigency was in existence or not as it is for the competent authority to decide such exigency.”

9. Shri M.D Lonkar, learned advocate for Respondent no. 3 has placed reliance on following judgments:-

(a) Judgment of this Tribunal dated 12.8.2018 in O.A 429, 450 & 454/2013, Shri J.J Jadhav Vs. Government of Maharashtra & Others. This Tribunal held that:- [CORAM : Shri Rajiv Agarwal, (Vice-Chairman)]

18. The Hon. High Court in **SHIVDAS's** case has observed as follows:-

“(8) However, before we part with the petition, we deem it appropriate to record some observations in respect of the Transfer Act, which, in one opinion, has posed more problems, than solving them before the State Government. The term ‘transfer’ must have its limited meaning. The dictionary meaning “transfer” shows that it is a posting from one place to another or a change from one station to another and it cannot be limited to a posting in the

same department or in the same office or under the same Police Commissionerate. The term 'posting' would indicate place of duty."

In **KALAL's** case, it is observed by the Hon. Bombay High Court that:-

"(8) It is pertinent to note that the order dated 1<sup>st</sup> June 2010 did not specify any reasons for transfer of in all 9 officers. In case of the officers at Serial Nos 2 to 5, there is a change in Head Quarter, but in case of the officers at serial No. 1 and 6 to 9 there is no change of Head Quarter and the transfers are at the same station and in the same office as in the case of the applicant. In Writ Petition No. 3301 of 2010 decided on 11.10.2010, we have already held that such internal transfers within the same office or at the same Head Quarter should not be treated as transfers in the normal meaning and these are only internal postings for the convenience of the administration. What has been guaranteed to a Government officer under the Act is a minimum tenure at a particular station / head quarter. By the said judgment we have also suggested to the State Government to examine the issue of amending the Act."

From these two cases, it is crystal clear that the Hon. Bombay High Court has held that internal transfers within the same office or at the same Head Quarter cannot be termed as transfer under the Transfer Act. Learned counsel for the Applicants strongly argued that the State Government has not taken any action to amend the Transfer Act in the light of the observations of Hon. Bombay High Court in Kalal's case. However, that is for the State Government to decide. In the present Original Applications, as rightly contended by the Learned Counsel for the Respondent no 3, the impugned transfer order in all the three Original Applications cannot be treated as transfer under the Transfer Act in view of the law laid down by Hon. Bombay High Court in the above Writ Petitions. This Tribunal in O.As No 573/2010, 1032/2011 and 9712011 has taken the same view as contended by the Learned Advocate Ms Swati Manchekar on behalf of the Respondent No. 4 in Original Application no 429/2013.

(Quoted from pages 26, 27 & 28 of Paper Book)

(b) Judgment of Hon'ble High Court in W.P no. 7554/2013, Shri P.B Lonandkar Vs. The State of Maharashtra & Ors. In this case, their Lordships went on to observe that:-

"In the present case we have noted that each of the Petitioners are within the city of Mumbai. Their status pay and benefits or perquisites are not being disturbed. They are not being called upon to perform any duties other than attached to their posts. The posts carry executive as well as non executive functions and duties and which is but natural. That latitude and discretion of

the administrator to post an officer performing executive duties to non executive posts is recognized and accepted and not disturbed by the enactment as well. In these circumstances when there is absolutely no prejudice, but merely requirement to report at a different office within the same force is to be completed that does not mean that the Tribunal could have interfered with the exercise of the nature undertaken by the Commissioner of Police. That it was well within his power to post or assign the duties to the Petitioners is undisputed. It is only that exercise amounts to transfer, then the question as to whether the Police Commissioner was competent to pass the order or not, would arise. So long as the order is passed in this case and impugned before the Tribunal is not transfer order, then there is no need or requirement to comply with any of the provisions of the Transfer Act, 2005.

As a result of the above discussion and finding that each of the orders have been correctly understood by the Tribunal to mean as not amounting to transfer, then the discussion in its order on applicability of the Transfer Act, 2005 and compliance with the provisions thereof is purely academic. Suffice it to note that the Tribunal in each case must find out as to whether the Transfer Act, 2005 is attracted or not. Sometimes, an order placing an officer from one to another table within the same city may be passed and unless and until materials are produced to demonstrate and prove that it is a transfer the Tribunal is not required to find out as to whether the compliance with the provisions of the Transfer Act, 2005 has to be made. In the present case that exercise is unnecessary one the Tribunal was of the view that the order is not amounting to transfer.”

(Quoted from pages 52, 53 & 54 of Paper Book)

(c) Judgment of this Tribunal dated 19.12.2014, in O.A 897/2014, Shri S.A Mandarekar Vs. The State of Maharashtra & Ors. This Tribunal held that:- [CORAM : Justice A.H Joshi, (Chairman)]

“The interpretation laid down in Pradip Lonandkar’s case supra is binding precedent and considering the findings from all the four points, the Original Applications do not have merit and those are dismissed.”

(Quoted from page 69 of Paper Book)

(d) Judgment of this Tribunal dated 23.11.2016 in O.A 928/2016, Smt L.N Koli Vs. The Divisional Commissioner, Konkan Division & Ors. This Tribunal held that: [CORAM: Shri Rajiv Agarwal, (Vice-Chairman)]

“10. As there was no arbitrariness or malafide, the transfer of the applicant cannot be termed as a transfer under the Transfer Act. There was no change of H.Q. The applicant has not been transferred frequently. In fact, she has remained in Mumbai for last seven years. As per the judgment of Hon’ble High Court in Lonandkar’s case (supra), the impugned order does not attract the Transfer Act.”

(Quoted from page 78 8of Paper Book)

(e) Judgment of Hon’ble Supreme Court in 1986 SCC (L & S) 750, Shri B. Varadha Rao Vs. State of Karnataka & Ors. In this case, their Lordships went on to observe that:-

“It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The government is the best judge to decide how to distribute and utilize the services of its employees.”

(Quoted from page 86 of Paper Book)

(f) Judgment of this Tribunal dated 7.8.2018 in O.A 515/2018, Shri S.M Thite Vs. The State of Maharashtra & Ors. This Tribunal held that:-  
[CORAM: Shri P.N Dixit, Member (A)].

“15. Considering that the impugned order was mid-term and mid-tenure, obviously the CSB did not have names of officers who were short of completing three years as per the provisions. After noticing the omission and realizing the importance of completing the ‘Samrudhi project’ without entertaining administrative difficulties, the name of the applicant has been mentioned in the proposal and approved by the Minister. The Minister has further submitted the same to Hon’ble C.M who is the supervisory authority. The C.M has considered the same and approved it as per the provisions of the Transfer Act. The competent authority has mentioned the special reasons for transfer of the applicant.

(Quoted from page 101 of Paper Book)

(g) Judgment of Hon’ble High Court dated 9.10.2012 in W.P 1677/2012, Shri Sanjeev B. Kokil Vs. The State of Maharashtra & Ors. In this case, their Lordships went on to observe that:-

“On the basis of this communication, the transfer order is passed which records reason for transfer as “for administrative reasons”. The proposal for transfer of petitioner mooted at the different levels right upto the Chief Minister also mentions the same reason

for transferring the petitioner to another post from M.R.A Marg Police Station. Thus, it is not a case of no reason recorded at all. The reason is found in the order itself. The fact that the reason noted as “administrative reason”, can be no less an exceptional circumstances or special reason or for that matter, as a special case. Whether the reason which weighed with the Authority for arriving at subjective satisfaction would qualify it as exceptional circumstances or special reason or a special case, would qualify on facts of each case.”

(h) Judgment of Hon’ble High Court dated 17.11.2009, in W.P 8447/2009, Shri Dadabhau N. Kale Vs. The State of Maharashtra & Others. In this case, their Lordships went on to observe that:-

“4. The question before us is whether the request of the Minister-in-charge of the department and elected representatives can be said to be no reasons.

5. In our opinion, in any parliamentary form of democracy, minister-in-charge does normally have a say in running of his department. Representations by elected representative cannot be said to be totally extraneous as long as they are not motivated. We can understand if the reasons were extraneous or the transfer is malafide or arbitrary. In such event, Courts do on occasion interfere with the order of the transfer.

6. In the instant case, considering the record before the Tribunal and the noting on the file, it cannot be said that there were no reasons. In our opinion, therefore, the learned Tribunal misdirected itself in law in interfering with the order of transfer. For the aforesaid reasons, impugned order is set aside.”

(Quoted from page 131 & 132 of O.A)

(i) Judgment of Hon’ble High Supreme Court dated 25.7.1997 in Civil Appeal No. 35 20/1991, K Ajit Babu & Ors Vs. Union of India & Ors. In this case, their Lordships went on to observe that:-

“6. Consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of the "Doctrine of Precedent". The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is, that the cases should be decided alike. Thus the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever an application under [Section 19](#) of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in earlier case, as a precedent and decide the



application accordingly. The Tribunal may either agree with the view taken in the earlier judgment or it may dissent. If it dissents, then the matter can be referred to a larger bench/full bench and place the matter before the Chairman for constituting a larger bench so that there may be no conflict upon the two Benches. The large Bench, then, has to consider the correctness of earlier decision in disposing of the later application. The larger Bench can over-rule the view taken in the earlier judgment and declare the law, which would be binding on all the Benches (See Jhon Lucas (supra). In the present case, what we find is that tribunal rejected the application of the appellants thinking that appellants are seeking setting aside of the decision of the tribunal in Transfer Application No. 263 of 1986. This view taken by the Tribunal was not correct. The application of the appellant was required to be decided in accordance with law.”

(Quoted from page 136 of Paper Book)

(j) Judgment of Hon'ble High Court dated 16.4.2009 in W.P 8116/2008, The State of Maharashtra Vs. Shri A.R Kore. In this case, their Lordships went on to observe that:-

“9. The Supreme Court has on several occasions outlined the scope of the court's power to interfere with transfer orders. It would be advantageous to sum up the observations made by the Supreme Court in the judgments to which our attention is drawn by learned counsel. Following are the guiding principles laid down by the Supreme Court.

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 malafides. (Mrs. Shilpi Bose & Ors Vs. State of Bihar & Ors. 1991 Supp, (2) SCC 659)

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 malafides and is made in violation of any statutory provisions, the court cannot interfere with it. (Union of India & Ors. Vs. S.L Abbas (1993) 4 SCC 357).

iv) Transfer of an employee is not only an incidence inherent in the terms of 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 (2004) 11 SCC 402).

v) Transfer made even in transgression of administrative guidelines cannot also be interfered with, as it does not confer any legality enforceable rights, unless, it is shown to be vitiated by malafides or made in 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 malafides 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 malafides should not be entertained on the mere making of it or on consideration borne out of conjectures of surmises. (Gobardhan Lal's case (supra)).

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

(Quoted from pages 146, 147, 148 & 149 of Paper Book)

(k) Judgment of this Tribunal dated 3.7.2013 in O.A 904/2011 with O.A 462, 513 & 572/2012, Smt Suchitra Patil & Ors. Vs. The State of Maharashtra & Others. This Tribunal held that: [CORAM: Dr Justice S. Radhakrishnan (Chairman) & Shri Rajiv Agarwal, (Vice-Chairman)]

"15. From the above discussion, it is clear that the reliefs sought by the Applicants are not for themselves and the Original Application appears to be in the nature of a Public Interest Litigation. It is settled law that this Tribunal cannot entertain Public Interest Litigation as has been held by Hon. Supreme Court in 1998 Supreme Court Cases (L & S) 1802. Also, as pointed out by the Respondents, the Applicants have to be personally aggrieved to approach this Tribunal which does not appear to be the case here. Applicants No 1 to 8 in O.A No 904/2011, have already been promoted and posted in Pune Division. Applicant No. 9 is the only one who is yet to be promoted. Her apprehension that on promotion she may not be posted in Pune Division is not based on any solid ground. She does not have any locus to challenge the transfer of the Respondent No. 3 to Pune Division."

(Quoted from pages 203 & 204 of Paper Book)

10. The questions which arise for consideration in the present Original Application are as follows:-

- (1) Whether impugned transfer is mid-term and mid-tenure?
- (2) Whether Respondents no 1 & 2 prove that provisions contained in Section 4(4) & 4(5) of ROT Act, 2005 are complied with?
- (3) When the transfer is made at the same town or in the same office, would it amount to be a transfer and could it be open to challenge?
- (4) Whether use of phrase “administrative reasons” satisfies the requirement of law of recording reasons?
- (5) Whether transfer of Respondent no. 3 is made with an object on accommodating the Respondent no. 3?
- (6) What adverse inference is to be drawn as the name of the respondent no.3 has been inserted at the last moment?
- (7) When different judgments are cited where the judicial pronouncements on the statement of law contradict with one another, what course is to be adopted by this Tribunal?
- (8) What finding and order?

11. After perusal of rival pleadings and perusal of judgments, certain facts and certain position of law which are not disputed, need to be stated at the outset, which is as follows:-

- (a) Before commencement of ROT Act, 2005, matters of transfer were governed exercise of power and prerogative as regards the transfer of Government servant.
- (b) The decision as regards Transfer used to be based on good and fair sense of administration as guided and interpreted by judicial pronouncement and was a matter purely governed by executive powers and administrative discretion.
- (c) Even after commencement of ROT Act, 2005, even now the power of transfer and its finality continues to be a matter of absolute executive business. However, now the executive business is no more left sheerly to the absolute executive discretion or unquestionable prerogative.

(d) Though final decision continues to be a matter of absolute executive power, however, the procedure, path or locus of reaching that decision is prescribed by provisions of law, which are construed by this Tribunal as well by Hon'ble High Court to be mandatory.

(e) This Tribunal as well as Hon'ble High Court have come across patent violation of the mandatory provisions, and therefore, after taking into consideration the adverse observations of Tribunal and Hon'ble High Court it had become necessary for the Government to reiterate and re-proclaim the procedure and manner in which the decision to transfers should be reached through Government Circulars dated 31.1.2014, 19.1.2015 and 24.9.2015.

(f) There are divergent views on the point namely, whether transfer at one and same place is open for challenge.

(g) These circulars do in unequivocal terms and in language, pronounce the mandatory dictum that the provisions of ROT Act, 2005 must be meticulously and rigorously followed.

12. In the light of foregoing admitted legal position this Tribunal has to decide the points/issues framed by this Tribunal in foregoing paragraph no.11.

13. Before periodical process of season of transfer due in every April and to be effected in May/June each year, the Government has to ascertain the number of posts and names of Government servants from various cadres and number of officers due for transfer. Thereafter those names are required to be placed before the Civil Services Boards concerned to each different cadre to enable it to reach decision / recommendation in that regard.

14. Transfers which are not periodical, are governed by Section 4(4)(ii) & 4(5) of ROT Act.

15. On facts of present case, a proposal for transfer of regular transfer of officers in the cadre of Tahsildars was mooted and passed in routine transfer season, i.e. May-June.

16. Exh. R-1 annexed to the affidavit in reply of the Respondents reveals that a proposal for mid-term transfer, was mooted taking recourse to Section 4(4)(ii) and 4(5) of ROT Act, 2005. The proposal was placed before the Civil Services Board and in its meeting held on 29.6.2018 the Board considered the proposals. Copy of the minutes of the Civil Services Board is on record at pages 54 to 65. Page 54 contains the resolution of the Civil Services Board and Pages 55 to 65 contain the list of 47 officers in the rank of Tahsildar whose proposal/requests were either recommended or declined, were submitted before the Competent Authority.

17. Name of the applicant (for shifting out of his present post) as well the name of Respondent no. 3 (for induction in the post held by the applicant) is not included amongst the names of 47 officers contained in the proposal considered by Civil Services Board,.

18. Thus name of applicant and of Respondent no. 3 were not considered by the Civil Services Board.

19. The transferring authority is Hon'ble Minister, Revenue. Hon'ble Revenue Minister has endorsed the proposal received from Civil Services Board by appending a list which was initiated at Hon'ble Minister's level. The name of the applicant is proposed for deputation as Tahsildar, PMRDA and Shri Dashrath Kale, as Tahsildar, Haveli, Pune, This list appended at the level of Hon'ble Minister is at page 67 of the O.A.

20. Hon'ble Revenue Minister has not recorded any reason whatsoever for deviation/reason of transfer as against any one officer/s whose names is/are introduced for transfer by the Hon'ble Minister including against applicant's name. Hon'ble Minister possesses power to transfer. However, for exercise of that power consultation from Civil Services Board and also the recording of reasons is mandatory.

21. When the proposal for approval of mid-term transfer reached the Hon'ble Chief Minister, the proposal was approved by Hon'ble Chief Minister with modification as regards 8 officers listed therein. Hon'ble Chief Minister's conditional approval with modification is at page 68 of O.A. Hon'ble Chief Minister had also directed that fresh proposal for transfer of two officers, namely, Shri Hanmant Kolekar and Shri Ganesh Shinde be resubmitted.

22. The record shows that after the proposal was resubmitted to the Hon'ble Chief Minister, in the process of resubmission, Hon'ble Revenue Minister, inter alia proposed that Respondent no. 3 Shri Sunil Koli be posted instead of Shri Dashrath Kolekar as Tahsildar, Haveli, Dist-Pune.

23. This proposal resubmitted by Hon'ble Revenue Minister does not contain reasons for mid-term transfer of the Respondent no.3 in place of the applicant.

24. The proposal as was recommended by the Hon'ble Minister is approved by the Hon'ble Chief Minister but no reasons for non-compliance of Sec 4(5) and of the ROT Act are recorded even by Hon'ble Chief Minister, nor was the proposal resent to Civil Services Board for its recommendation/consultation/opinion.

25. The record shows that the decision to transfer must have been signed by Hon'ble Chief Minister on 14.9.2018, as can be seen from the entry above the rubber stamp.

26. It needs to be observed at the cost of repetition that the name of the applicant has not appeared in the process of documentation of transfer, i.e. in the recommendations of the Civil Services Board, and applicant's name came in picture only through the endorsement of Hon'ble Revenue Minister. Name of Respondent no. 3 too has appeared for the first time and in the second endorsement of Hon'ble Revenue

Minister done in the second round, which is evident from page no. 79 (back side of the page).

27. The observations of this Tribunal recorded in foregoing paragraphs are based on evidence on record of the State Government which is discussed in foregoing paragraphs 20, 21 & 22.

28. Copy of the impugned order issued by the Government is at pages 41 and 43. Both the orders read as follows:-

महाराष्ट्र शासन  
महसूल व वन विभाग,  
मादम कामा मार्ग, हुतात्मा राजगुरु चौक,  
मंत्रालय, मुंबई ४०० ०३२.  
शासन आदेश क्रमांक: बदली-१९१८/प्र.क्र./१२९/ई-३  
दिनांक: १.१०.२०१८

**शासन आदेश:-**

श्री. प्रशांत पिसाळ, तहसिलदार यांना पी.एम.आर.डी.ए.पुणे येथील तहसीलदार या समकक्ष पदावर महाराष्ट्र नागरी सेवा (पदग्रहण अवधी, स्वीवेतर सेवा, आणि निलंबन, बडतर्फी सेवेतुन काढून टाकणे) नियम १९८९, नियम ३६ परिशिष्ट-२ मध्ये विहित केलेल्या प्रतिनियुक्तीच्या अटी व शर्तीना अधीन राहून प्रतिनियुक्तीने प्रथमतः एक वर्षासाठी नियुक्ती करण्यात येत आहे.

२. सदर पदावरील नियुक्तीसाठी श्री. प्रशांत पिसाळ, तहसीलदार यांच्या सेवा पी.एम.आर.डी.ए. पुणे यांचेकडे सुपुर्द करण्यासाठी विभागीय आयुक्त, पुणे यांनी श्री. प्रशांत पिसाळ, तहसीलदार यांना तात्काळ कार्यमुक्त करावे.

३. सदर पदावरील नियुक्तीसाठी, प्रशांत पिसाळ, तहसीलदार यांच्या सेवा यांचा सेवा प्रधान सचिव, नगर विकास, मंत्रालय, मुंबई यांचेकडे सुपुर्द करण्यात येत आहेत. श्री. प्रशांत पिसाळ, तहसीलदार यांनी पुढील सुचनांसाठी प्रधान सचिव, नगर विकास, मंत्रालय, मुंबई यांचेकडे हजर व्हावे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.

(मा.आ.गुड्डे)

शासनाचे सह सचिव

प्रति,  
आयुक्त, पी.एम.आर.डी.ए, पुणे  
विभागीय आयुक्त, पुणे विभाग, पुणे

प्रतिलिपी,  
प्रधान सचिव, नगर विकास, मंत्रालय, मुंबई ४०० ०३२.  
प्रधान महालेखापाल-१/२ (लेखा व अनुज्ञेयता)/(लेखा परीक्षा), मुंबई/नागपूर  
मा. मुख्यमंत्री यांचे प्रधान सचिव, मंत्रालय, मुंबई-४०० ०३२.  
मा. मंत्री (महसूल) यांचे खाजगी सचिव, मंत्रालय, मुंबई-४०० ०३२.  
जिल्हा कोषागार अधिकारी, पुणे  
अ.मु.स. (महसूल) यांचे स्वीय सहाय्यक, महसूल व वन विभाग, मंत्रालय, मुंबई.४०००३२.  
सह सचिव (ई-३) यांचे स्वीय सहाय्यक, महसूल व वन विभाग, मंत्रालय, मुंबई.४०००३२.

(Quoted from page 41 of O.A)

29. Copy of another impugned order issued by Divisional Commissioner, Pune, reads as follows:-

क्र. मह-१/आस्था-१(ई)/कावि/३३६३७,३८/२०१८.  
आयुक्त पुणे विभाग पुणे यांचे कार्यालय,  
विधानभवन, पुणे-४९९००१.  
दिनांक:-०३ आक्टोंबर २०१८.

ज्ञापन

शासन, महसूल व वन विभागाकडील उपोद्घातातील आदेशान्वये, महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडताना होण-या विलंबास प्रतिबंध अधिनियम २००५ मधील कलम ४ (४) व ४ (५) नुसार तहसिलदार खाली नमुद केलेल्या अधिका-यांची त्यांच्या नावासमोर रकाना क्र.४ मध्ये दर्शविण्यात आलेल्या पदावर बदली करण्यात आली आहे.

अ. क्र.	अधिका-याचे नांव	सध्याचे पदनाम	बदलीनंतरची पदस्थापना
१	श्री. प्रशांत पिसाळ	तहसिलदार हवेली जि. पुणे	तहसिलदार, पुणे महानगर पदेश विकास प्राधिकरण पुणे येथे तहसिलदार या समकक्ष पदावर प्रतिनियुक्तीने नियुक्ती
२	श्री. किरणकुमार काकडे	तहसिलदार जुन्नर जि. पुणे	तहसिलदार, नगरपालीका प्रशासन, विभागीय आयुक्त कार्यालय, पुणे.
३	श्री. हणमंत कोळेकर	तहसिलदार (निवडणूक) जिल्हाधिकारी कार्यालय, सोलापूर	तहसिलदार, जुन्नर जि. पुणे

वर नमुद केलेल्या तहसिलदार संवर्गातील अधिकारी यांना बदलीनंतरच्या पदस्थापनेच्या ठिकाणी रुजू होणेसाठी करण्याची कार्यवाही जिल्हाधिकारी पुणे व जिल्हाधिकारी सोलापूर यांनी करावी.केलेल्या कार्यवाहीचा अहवाल या कार्यालयास सादर करावा.

सही/-  
(डॉ. दिपक म्हैसेकर)  
विभागीय आयुक्त,  
पुणे विभाग, पुणे

प्रत: मा. अपर मुख्य सचिव, महसूल व वन विभाग (ई-३) मंत्रालय,  
मुंबई ४०० ०३२ यांजकडे माहितीस्तव सादर.  
प्रत: जिल्हाधिकारी पुणे/ सोलापूर यांचेकडे आवश्यक त्या कार्यवाहीसाठी अग्रेषित  
प्रत: मुख्य कार्यकारी अधिकारी, पुणे महानगर प्रदेश विकास प्रधिकरण,  
पुणे यांना माहितीसाठी  
प्रत: संबंधित अधिकारी.

(Quoted from pages 43 of O.A)

30. It is pertinent to note that by order dated 1.10.2013, Respondent no. 3 is posted as Tahsildar, Haveli and text of the order is quoted below for ready reference.

आंतर विभागीय बदली  
(श्री सुनील कोळी, तहसीलदार)

महाराष्ट्र शासन  
महसूल व वन विभाग,  
शासन आदेश क्रमांक. बदली-/प्र.क्र.१२९/ई-३  
मादम कामा मार्ग, हुतात्मा राजगुरु चौक,  
मंत्रालय, मुंबई ४०० ०३२.  
दिनांक: १.१०.२०१८

**शासन आदेश:-**

महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडताना होणा-या विलंबास प्रतिबंध अधिनियम, २००५ मधील कलम ४(४) व ४ (५) नुसार तहसीलदार संवर्गातील खाली केलेल्या अधिका-यांची त्यांना मूळ विभाग कायम ठेवून त्यांच्या नावासमोर रकाना क्र.३ मध्ये दर्शविण्यात आलेल्या पदावर तात्पुरत्या स्वरूपात पुढील आदेश होइपर्यंत आंतर विभागीय बदली करण्यात येत आहे.



अधिका-यांचे नांव (१)	सध्याचे पदनाम (२)	बदलीनंतरची पदस्थापना (३)
श्री. सुनील कोळी	अपर तहसीलदार (अकृषिक-१), बोरीवली, मुंबई अपनगर	तहसीलदार हवेली, पुणे

२. विभागीय आयुक्त, कोकण विभाग, कोकण यांनी वरील अधिका-यास सद्याच्या पदावरून तात्काळ कार्यमुक्त करावे. तसेच विभागीय आयुक्त, पुणे यांनी श्री. सुनील कोळी, तहसीलदार यांना रुजू करून घेऊन उपरोक्त पदावर पदस्थापना देण्याची कार्यवाही त्वरीत करावी. विभागीय आयुक्त यांनी सदर आदेशाच्या अनुषंगाने तात्काळ कार्यवाही करून शासनास अनुपालन अहवाल सादर करावा. महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.

(मा. आ. गुट्टे)  
शासनाचे सह सचिव

प्रति,

विभागीय आयुक्त, कोकण विभाग, कोकण.  
विभागीय आयुक्त, पुणे विभाग, पुणे.

(Quoted from page 40 of O.A)

31. Text of orders quoted in foregoing paras go to prove that though the Government has recited that Sections 4(4) & 4(5) have been complied with, the compliance is not done, even for the sake of formal mention of reasons, much less eloquent expression of compliance thereof.

32. None of these documents contain reasons whatsoever, much less special reasons and exceptional circumstances, the transfer being mid-term and mid-tenure.

33. It is thus evident that the affidavit in reply filed by the Officer of the State consists of an utter lie, that too to the knowledge of the Officer swearing it. The conduct of the Government utterly and patently violates not only the provisions of law, but also the violates the mandate need of compliance of the provisions of law done by the Government which are repeatedly proclaimed, duly based on judgments of this Tribunal and of Hon'ble High Court.

34. Fervent reliance is placed by learned advocate Shri Lonkar for Respondent no. 3 on the judgment delivered in the case of Shri Sanjeev Bhagwanrao Kokil Vs. State of Maharashtra & Ors, W.P 1677/2012, to suggest that mention of phrase "administrative reasons" would be sufficient and adequate, to answer due compliance of "reading of special reasons" and exceptional circumstances.

35. Record shows that at Pages 67 or 79 or any other document does not even barely contain reasons even in one word so as to express alleged “administrative reasons”, much less special reasons and exceptional circumstances on record. Though there is a view of Hon’ble High Court proclaimed in other judgments of Hon’ble High Court, namely where “recording of reasons”, which is mandatory would suffice by saying that transfer is ordered for administrative reasons.

36. However, there are judgments of other Division Benches of Hon’ble High Court of Bombay having equal strength of Bench taking view that recording eloquent reasons ‘special’ and exceptional circumstances is mandatory. These judgments are already listed in earlier paragraph of this judgment.

37. Similar is the situation. Few judgments take a view that a local transfer is not a transfer or it need not be interfered. The position of law that a local transfer falls within the compass of term ‘transfer’ is a legislative Act and is also approved by Hon’ble High Court having equal bench strength.

38. In this situation, this Tribunal has to be guided by law which is proximate to the law as laid down and construed in keeping in line with the text of law as has been enacted.

39. Ordinarily, when two sets of judgments which run counter to one another are cited, it may be necessary for this Tribunal to discuss which amongst the judgments contain statement of law nearer to exact law, as has been laid down in the Full Bench judgment of Hon’ble High Court in the case of Kamleshkumar I. Patel Vs. Union of India & Others, 1994 Mh.L.J. 1669.

40. However, all this exercise in the present facts of the case as laid down in Kamleshkumar Patel’s case, supra, is totally unwarranted due to the patent fact grossly borne on record, namely, much less adequate

and satisfactory, (special reasons and exceptional circumstances) are recorded. Even one word of reason is not found on record, nevertheless by filing false affidavit the transfer is sought to be justified as based on Sec 4(4) & 4(5) of ROT Act, 2005.

41. It is highly unbecoming of public servant or Government servants of the post of Joint Secretary to file an affidavit stating "reasons are recorded", when the record is to the knowledge of the officer contrary to his statement.

42. It has to be held that applicant is not transferred to accommodate the Respondent no. 3, however Respondent no. 3 is accommodated in the vacancy which has occurred due to applicant's transfer. Respondent no. 3 has been accommodated and he is the beneficiary of the fruits of illegal act of the Government.

43. In the result, impugned order of transfer of Respondent no. 3 is to be inferred to be made in order to accommodate him lest there is no reason as to why his name would appear at the last movement in the second round were there was no occasion to consider the transfer of Respondent no. 3, because the matter was being resubmitted for consideration of transfer of two officers, namely, Shri Shinde and Shri Kale.

44. Transfer of the applicant is without recording reasons and hence it is in violation of Section 4(4) & 4(5) of the ROT Act, 2005 and deserves to be quashed and is hereby quashed and set aside. Consequently, transfer and posting of Respondent no. 3 too has to be quashed and set aside.

45. Original Application is allowed in terms of prayer clause 9(a) which reads as follows:-

"9(a) That this Hon'ble Tribunal be pleased to quash and set aside the impugned transfer orders dated 1.10.2018 of the

applicant and Respondent no. 3 vide Annexure A-5 and allow the applicant to continue to work as Tahsildar, Haveli, Pune with all consequential service benefits.”

46. Consequence of order shall follow and applicant be restored his position before passing of impugned order within 15 days from the date of this order.

47. In the facts and circumstance of the case, parties are directed to bear their own costs.

Sd/-  
**(A.H. Joshi, J.)**  
**Chairman**

**Place : Mumbai**  
**Date : 20.12.2018**  
**Dictation taken by : A.K. Nair.**