

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 123 OF 2021

DISTRICT: - LATUR.

Gaurishankar S/o. Prabhulilng Swami,
Age-49 years, Occu. : Govt. Service,
Executive Engineer, R/o. Swami Niwas,
Maharashtra Housing Society,
Behind Water Tank, Barshi Road,
Tq. & District Latur.

.. APPLICANT.

V E R S U S

- 1) The State of Maharashtra,**
Through it's Principal Secretary,
Public Works Department,
Mantralaya, Mumbai.
- 2) The Principal Secretary,**
Public Works Department,
Mantralaya, Mumbai-32.
- 3) The Superintendent Engineer,**
National Highway Circle,
Bandhkam Bhavan, Aurangabad.
- 4) The Secretary,**
Public Works Department
(National Highway), 5th floor,
Konkan Bhavan, C.B.D.
Belapur, Navi Mumbai.

.. RESPONDENT.

APPEARANCE : Shri K. G. Salunke, learned Advocate
for the applicant.

: Shri N.U. Yadav – learned Presenting
Officer for the respondents.

CORAM : **V.D. DONGRE, MEMBER (J)**
DATE : **06 .08.2021**

ORDER

The applicant by filing this Original Application invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985 has challenged his impugned transfer order dated 22.02.2021 (Annexure 'B', page-16 of paper book) issued by respondent No. 1, the State of Maharashtra thereby transferring the applicant from the post of Executive Engineer, National Highway Division, Latur to the post of Executive Engineer (Public Work) Zilla Parishad, Hingoli.

2. The applicant initially was appointed as Assistant Engineer Grade-1 on 01.04.2002. He worked on various posts under the authority of National Highway Division Nanded. Recently, the applicant was transferred as Executive Engineer, National Highway Division, Latur by an order dated 30.12.2019 (Annexure 'A') and since then he is working on the said post.

3. It is the contention of the applicant that he has efficiently handled the various posts and charge assigned to

him under the authority of the Government. His service record is also excellent and unblemished. More specially he has handled the charge of Executive Engineer and successfully completed the work of various National Highways under the Division of Latur.

4. The applicant, however, all of a sudden by the impugned transfer order dated 22.02.2021 (Annexure 'B') has been transferred from the post of Executive Engineer, National Highway Division Latur to the post of Executive Engineer (Public Work) Zilla Parishad, Hingoli. The said order of transfer is passed before completion of normal tenure of posting on the present post. He has worked on the present post only for 1 year and 1 month as against the normal tenure of 3 years. Hence, the impugned order of transfer is violative of the provisions laid down in the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for sort hereinafter called as "the Transfer Act of 2005").

5. It is the further contention of the applicant that he believes that his transfer is effected under the political influence to accommodate other employee. It is also violative

of the undertakings given by the Government of Maharashtra in the matter of **BALASAHEB VITTHALRAO TIDKE VS. STATE OF MAHARASHTRA [W.P. NO. 8987 OF 2018** (Annexure 'C', page-18 of paper book), before the Hon'ble High Court Bombay Bench that, transfers will not be made under any political influence. Hence, the impugned order of transfer dated 22.02.2021 is liable to be quashed and set aside.

6. The affidavit in reply is filed on behalf of respondent Nos. 1 to 4 by Sanjay S. Sahutre, Executive Engineer, National Highway Division Nanded, who has incidentally taken charge of the post from the applicant *ex parte* on 25.02.2021. As per this affidavit in reply the office of Hon'ble Minister (RT & H and MSME), Ministry of Road Transport & Highways vide communication/note dated 24.1.2021 (Exhibit 'R-1' page-35 of paper book) to the Additional Chief Secretary, Public Works Department, Mantralaya, Mumbai, sought enquiry against the applicant and Mr. Auti, Superintending Engineer (NH Circle), Aurangabad regarding NH tenders. As per the said communication/note it was given to understand that both the above officers from P.W.D. (NH) are trying to

pressurize prospective bidders in bidding of NH tenders to favour some particular agency, for award of particular work. The complaint was recently received by the Hon'ble Minister about two works in respect of upgradation of Kharola Pati to Pangaon section worth Rs. 76.40 cr. and upgradation of NH361F Parli-Gangakhed-Loha of EPC mode worth Rs. 202 cr. It is also mentioned that the applicant has changed the conditions of contract as against the guidelines of ministry.

7. It is further contended that the Secretary (NH) vide his letter dated 2.2.2021 informed the respondent No. 1 that several complaints were received against the applicant and the department has been facing problems in the works and hence he recommended the transfer of the applicant out of National Highway wing. Apart from that the Public Works Department of Government of Maharashtra said to have received various complaints against the applicant, which are dated 2.9.2020, 13.5.2020, 9.2.2021 and 22.9.2020 (Exhibit 'R-3' collectively) from the different persons alleging illegality and irregularities committed by the applicant in respect of construction of Highway.

8. In view of above, transfer proposal of the applicant was placed before the Civil Services Board in its meeting held on 2.2.2021. After taking into consideration the serious nature of the complaints against the applicant, the Civil Services Board recommended the transfer of the applicant from the present post, vide Report (Exhibit R-4). In view of the same, the impugned transfer order of the applicant dated 22.2.2021 (Annexure 'B') is issued with the approval of the competent authority and as per the provisions of Section 4 (4) and 4 (5) of the Transfer Act of 2005 by giving specific reason i.e. in the interest of public at large and for administrative convenience. Hence, the said impugned order of transfer is legal and proper. It is further stated that the respondent No. 3 i.e. Superintending Engineer, National Highway Circle, Aurangabad issued order to one Shri Sanjay S. Sahutre, Executive Engineer, National Highway Division, Nanded to take additional charge of applicant's post. After receiving the said order when the said Sanjay S. Sahutre contacted the applicant for taking charge of the applicant's post, the applicant denied to give him charge of his post. The said Sanjay S. Sahutre communicated the same to the respondent Nos. 3 & 4. Thereupon, respondent No. 4 issued letter dated

25.2.2021 to Shri Sanjay S. Sahutre thereby directing to take the *ex parte* charge of the post of Executive Engineer, National Highway Division, Latur and on 25.2.2021 itself he took charge of the said post.

9. The applicant first filed short affidavit (pages 50 to 53 of paper book) and contended that the applicant was not relieved from his post when the O.A. was pending before this Tribunal and later on the applicant was informed that Shri Sanjay S. Sahutre has taken additional charge of the post of the applicant. It is a matter of record that by order dated 25.2.2021 this Tribunal directed the applicant to join at transferred place of posting under protest.

10. The applicant filed affidavit in rejoinder with annexures (page Nos. 56 to 182) in response to the affidavit in reply filed by the respondents, thereby he denied all the adverse contentions raised in the affidavit in reply filed by the respondents. He specifically denied the contents of various complaints against him and stated that he has carried out the work in accordance with the guidelines of the Government issued from time to time. Moreover, the veracity of the complaints and allegations made against him are not verified.

The punitive action of transfer is taken only against the applicant though name of another officer was also mentioned in the letter written by the Hon'ble Minister. The applicant thereby has been singled out. To substantiate his contentions that he worked in accordance with law, he has annexed documents such as communication dated 28.11.2018 (Annexure 'RR-1', page-111) issued by the Superintending Engineer (EAP), Ministry of Road Transport & Highways together with Instructions to Bidders, communication dated 02.12.2020 issued by the Chief Engineer & Regional Officer of the Government of India, Ministry of Road Transport & Highways to the Secretary (NH), P.W.D., Konkan Bhawan, Navi Mumbai and Corrigendum No. 04 dated 22.01.2021 (Annexure 'RR-2' Colly.), Government Resolution dated 11.02.2015, Government Circular dated 25.02.2015 issued by the G.A.D., Government of Maharashtra (Annexure 'RR-3' Colly.).

11. The applicant in affidavit in rejoinder has further stated that he has already submitted his detailed explanation dated 18.2.2021 to the complaint dated 2.9.2020 made by the private person, Shri Vasant Sampatrao Munde, Parli and to

the complaints dated 13.5.2020 and 10.12.2020 made by Shri Anurath Tatyrao Chandamare, which are annexed at 'RR-4' and 'RR-5' collectively. The applicant further submitted that the complaint dated 9.2.2021 was not even before the Civil Services Board, but the applicant has already given his explanation dated 18.02.2021 (Annexure 'RR-6') to the said complaint dated 09.02.2021. In view of the same, the impugned transfer order said to have been passed only under the political influence and without verifying the veracity of the complaints, which was mandatorily required to be done. In view of the same, according to the applicant, the impugned order of transfer is not sustainable in law and liable to be quashed and set aside.

12. The applicant also filed short affidavit in pursuance to compliance of the orders dated 25.2.2021 & 17.5.2021 passed by this Tribunal (Page Nos. 179 & 180) stating that he has joined on the transferred place of posting on 17.5.2021 under protest.

13. The record shows that during hearing of the present matter, the learned Chief Presenting Officer was directed to produce on record the original record in respect of the

procedure adopted by the respondents for passing the impugned transfer order in order to verify the competent transferring authority and the approval authority in terms of Section 4 (40 (ii), 4 (5) and 6 of the Transfer Act of 2005. The copies of the said record are placed on record at page Nos. 183 to 213. In that regard the respondents have also placed on record a copy of Government Resolution dated 29.5.2013 issued by the G.A.D., Government of Maharashtra, copy of Notification dated 15.1.2015 and copy of Government Resolution dated 27.5.2016 issued by the Public Works Department, Mantrayala, Mumbai.

14. I have heard the arguments advanced by Shri K.G. Salunke, learned Advocate for the applicant on one hand and Shri N.U. Yadav, learned Presenting Officer for the respondents on the other hand. Both of them have taken me through the voluminous records and documents filed by them respectively.

15. The learned Advocate for the applicant strenuously urged before me that the impugned transfer order is certainly influenced by the political pressure and is passed without any care of verifying the contents of the alleged complaints made

against the applicant about his work. It was mandatory on the part of the respondents in terms of undertaking given by the respondents before the Hon'ble High Court in W.P. No. 8987/2018 that none of the transfers will be influenced by the recommendations of the political leaders including the Hon'ble Ministers (who are not a part of the process of transfers). Moreover, the respondents did not bother to consider the fact that the applicant has already filed his detailed explanation to the various complaints of illegality and irregularities made by the private parties against the applicant. There is nothing on record to show the veracity of the complaints made against the applicant. It contravenes the guidelines issued by the G.A.D., Government of Maharashtra in its G.R. dated 25.2.2015 (page-152 of the paper book). He further submitted that the complaint dated 24.1.2021 (Exhibit 'R-1', page-35 of the paper book) made by the Hon'ble Minister shows the name of Shri Awati, Superintending Engineer (NH Circle) Aurangabad, but nothing is put on record to show that any steps were taken against the said Shri Awati. In view of the same, according to the applicant he has been singled out for taking punitive action of transfer.

16. Learned Advocate for the applicant has taken me through the original record produced by the respondents at page Nos. 183 to 213 of the paper book and he specifically invited my attention to the noting in Marathi made against the name of स.स. (सेवा) (श्री सुर्यवंशी) तक्रारीच्या अनुषंगाने सचिव (राअ) यांचा अहवाल घ्यावा आणि मा. केंद्रीय मंत्री महोदयांची तक्रार विचारात घेता श्री स्वामी यांची बदली प्रस्तावित आहे. यांस मान्यता असावी.

He also invited my attention to the noting in Marathi made against Hon'ble Minister, Public Works, "प्र. 9 प.वि. वरील मा. मंत्री (NORTH) यांचे पत्रातील मुद्दे गंभीर स्वरूपाचे आहेत. त्याबाबत सचिव (NH) यांनी तात्काळ अहवाल द्यावा. तुरंत प्रस्तावित बदल करण्यात यावी."

17. In view of the above-said observations of the authorities he submitted that though it was suggested to take report of Secretary, National Highway in respect of the complaints the Competent Transferring Authority and the Approval Authority proceeded to effect the transfer of the applicant since then. According to him, this will show that the impugned transfer order is passed merely in view of the complaint letter written by the Hon'ble Minister and without verifying the contents of

the complaint and even in the absence of source of the information therein.

18. Learned Advocate for the applicant further submitted that in reported judgment of this Tribunal in O.A. No. 990/2018, O.A. Nos. 340, 286 and 300 all of 2020, transfer orders issued under political influence were set aside. He also placed reliance on the judgment and order dated 12.12.2018 passed in W.P. No. 8987/2018 in the matter of Balasaheb Vitthalrao Tidke Vs. the State of Maharashtra and others filed before the Hon'ble High Court Bombay, wherein the undertaking is given by the respondent Government that, "all transfers will be effected strictly in accordance with the provisions of the Transfer Act of 2005 and none of the transfers now be influenced by the recommendations of the political leaders including the Hon'ble Ministers (who are not a part of the process of transfers). He also placed reliance on the decision of the Hon'ble Apex Court dated 16.12.2008 in the matter of **SOMESH TIWARI VS. UNION OF INDIA AND OTHERS**, wherein it is laid down that the transfer effected on unverified complaint against the Government officer would not sustain.

19. As against that, the learned Presenting Officer on behalf of the respondents strenuously urged before me that the original record produced at page Nos. 183 to 213, as well as, various annexures to affidavit in reply would show that there were serious complaints against the applicant about illegalities and irregularities committed by the applicant in his work touching to even his integrity. However, due care has been taken by the respondents to place the proposal of transfer before the Civil Services Board in accordance with law and only after taking approval the impugned transfer order has been passed for the exceptional circumstances and special reasons as contemplated under Section 4 (4) (ii) and 4 (5) of the Transfer Act of 2005. In view of the same, the impugned order of transfer is legal and proper. The case law relied upon by the applicant would not be applicable and the facts of the present case are distinct and peculiar in nature.

20. In the background of the rival submissions if the facts of the present case are considered, it is evident that the impugned order of transfer is passed within 1 year and 1 month of tenure. Hence, it is midterm and mid-tenure transfer order. In view of that I have to see whether the

respondents have adopted the proper procedure while passing the impugned order of transfer of the applicant dated 22.2.2021 (Exhibit 'B'). It is evident from the record that the impugned order of transfer is passed in the background of complaint dated 24.1.2021 (Exhibit 'R-1' page-35 of paper book) made by the Hon'ble Minister of Road Transport and Highways of India and also allegedly in the background of various complaints earlier made against the applicant about his work by the private persons as sought to be made out in the affidavit in reply. The said order is necessarily passed under Section 4 (4) (ii) and 4 (5) of the Transfer Act of 2005.

21. In order to examine the justification of the impugned transfer order issued by the respondents, it would be just and proper to peruse the original record produced by the respondents. The said record is at page Nos. 183 to 213 of the paper book.

22. Before that in order to understand the provisions of Section 4 (4) (ii) and 4 (5) of the Transfer Act of 2005, one has to take into consideration the provisions of Section 6 of the said Act. Provision of Section 6 provides table of Competent Transferring Authority. The provision of Section 4 (4) (ii) and

4 (5) of the Transfer Act of 2005 speaks of prior approval of the next higher authority of the Competent Transferring Authority. In this regard, the learned Presenting Officer for the respondents has placed on record the documents namely Notification dated 15.1.2015 issued by the Public Works Department (page-318 of paper book), Government Circular dated 29.5.2015 (page-313 of paper book) and Government Resolution dated 27.5.2016 issued by the Public Works Department (page-321 of paper book).

23. In the case in hand the applicant is working on the post of Executive Engineer. As per Notification dated 15.1.2015 issued by the Public Works Department, the Competent Transferring Authority to whom the powers are delegated for the post of Executive Engineer is Additional Chief Secretary (Public Works Department)/Secretary (Roads)/Secretary, (Construction) (in consultation with the Hon'ble Minister, P.W.D.). The Government Circular dated 29.5.2015 issued by the G.A.D. prescribes that while passing the order of transfer under Section 4 (4) & 4 (5) of the Transfer Act of 2005 the approval of Hon'ble Chief Minister is necessary.

24. In continuation of the above-said notification dated 15.1.2015 and Government Circular dated 29.5.2015 and making reference of the same, G.R. dated 27.5.2016 is issued by the P.W.D., whereby in respect of transfer under Section 4 (4) and 4 (5) of the Transfer Act of 2005, the competent authority for approval of transfer proposal is Hon'ble Minister, P.W.D.

25. In the backdrop of these three documents, if the facts of the present case as revealed in original record (page Nos. 183 to 213) are considered, it is apparent that the transfer proposal of the applicant on 2.2.2021 is signed by all the authorities mentioned in column No. 3 of the table of notification dated 15.1.2015 and even the signature of the Hon'ble Chief Minister is also obtained on it. The said document is at page Nos. 184 to 186. Perusal of page Nos. 198 & 199 of the paper book would show that the said proposal was considered by the requisite Civil Services Board on 2.2.2021 itself and the transfer proposal is accepted. The document at page No. 187 would show that requisite approval of the higher authority was taken and thereafter the applicant was ordered to be transferred from National Highway Division

Latur to Zilla Parishad, P.W.D. Hingoli. Hence, it can be said that the procedure as contemplated under Section 4 (4), 4 (5) and 6 of the Transfer Act of 2005 is adopted.

26. Now the question arises as to whether the impugned order of transfer is legal fulfilling specified stipulations thereof mentioning exceptional circumstances or special reasons in proper perspective.

27. Perusal of minutes of the Civil Services Board appearing at page Nos. 198 & 199 of the paper book would show that the complaint was lodged by the Hon'ble Central Minister (Road) that the applicant had done serious irregularities while handling bidding process and as such even the departmental enquiry against the applicant was proposed, apart from his transfer. In this regard as stated earlier, the learned Advocate for the applicant has invited my attention to the noting of page No. 186, wherein at two places it is mentioned that the report of Secretary (NH) to be obtained in respect of the complaint of irregularities in bidding allegedly committed by the applicant and meanwhile the applicant may be transferred therefrom.

28. The observations of the Competent Transferring Authority made on page No. 186 of the paper book will have to be considered in the background of Government Circular dated 25.2.2015 issued by the G.A.D. (Page-278 of paper book) and Government Circular dated 11.02.2015 issued by G.A.D. (Page-146 of paper book) relied upon by the applicant, as well as, undertaking given by the Government in **W.P. No. 8987/2018 BALASAHEB VITTHALRAO TIDKE VS. STATE OF MAHARASHTRA [W.P. NO. 8987 OF 2018** (Annexure 'C', page-18 of paper book) and also in the law laid by the Hon'ble Apex Court in the decision dated 16.12.2018 in **Civil Appeal No. 7308/2008 (Arising out of SLP (Civil) No. 3516/2007)** in the matter of **SOMESH TIWARI VS. UNION OF INDIA AND OTHERS.**

29. In the case of Somesh Tiwari Vs. Union of India & Others (supra), the Hon'ble Apex Court has been pleased to observe as follows: -

“19. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two

kinds - one malice in fact and the second malice in law.

20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”

30. In **BALASAHEB VITTHALRAO TIDKE VS. STATE OF MAHARASHTRA [W.P. NO. 8987 OF 2018** (Annexure ‘C’, page-18 of paper book) the then Secretary of Government had given undertaking in his affidavit as follows: -

“(1) I submit that I am filing the present Affidavit for the limited purpose of stating that the process of transfer at the level of the Government will not be influenced by any recommendations made by any political leaders, members of political parties or any Hon’ble Ministers who are not part of the process of transfer.

(2) I submit that all authorities who are competent to effect the transfers will be advised to strictly follow the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 while issuing transfer order.”

Pursuant to that the Hon'ble High Court was pleased to pass the following order: -

“(i) The writ petition is disposed of as withdrawn.

(ii) The statements made in paras 1 and 2 of Affidavit of Mr. Dinesh Kumar Jain, Chief Secretary of the State Rane 6/6 W.P.-8987-2018 (SR-4) 12.12.2018 Government dated 12th December, 2018 are accepted as statements made on behalf of the State Government and the undertakings given by the State Government.

(iii) We hope and trust that the statements made in the Affidavit of Mr. Dinesh Kumar Jain are made known to all concerned authorities exercising powers under the said Act of 2005 to avoid any attempt of political influence in the process of transfer.

(iv) Though the petition is disposed of, the protection granted to Shri Shripat Shinder under Clause-11 of the order dated 2nd November, 2018 stands;

(v) There shall be no order as to costs.”

31. Further perusal of Government Circular dated 25.2.2015 issued by the G.A.D. would show that it is mentioned that anonymous or vague complaints should not be acted upon and as regards other specific complaints those are to be verified.

32. The affidavit in reply filed on behalf of the respondents would show that apart from the complaint made by the

Hon'ble Central Minister, the respondents have also referred to complaint of financial irregularities made by other private persons, which are complaints dated 2.9.2020, 13.5.2020 and 9.2.2021 (Exhibit 'R-3' collectively, page Nos. 37 to 46 of the paper book). The applicant in his affidavit in rejoinder has stated that he has already filed his written explanation to the said complaints by the document dated 18.2.2021 (Annexure RR-4 & RR-5) and he has not received anything adverse from the respondents to him though these complaints are either previous or subsequent to 2.2.2021 when the applicant was sought to be transferred from his present post by preparing and signing proposal on 2.2.2021 itself and, therefore, these documents or complaints would not be of much relevance of the respondents to justify the impugned order of transfer.

33. Learned Advocate for the applicant has also contended that the impugned transfer is not in consonance of the parameters laid down in Government Circular dated 11.2.2015 (page-146 of paper book) issued by the G.A.D. The said Government Circular provides that if any complaints are received against the Government servants unless the

contents of the complaints are verified no punitive action of transfer should be taken. It is specifically laid down in clause 8 of the said Government Circular, as follows:-

“८. एखाद्या प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचा-याच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधीत अधिकारी/कर्मचा-यांची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधीत अधिकारी /कर्मचा-यांच्या तक्रारीसंबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारीमधील गांभीर्य विचारात घेऊन, संबंधीत अधिकारी/कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे याबाबत बदली प्राधिका-याने ठोस निर्णय घ्यावा. संबंधीत अधिकारी/कर्मचा-याच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधीत अधिकारी/कर्मचा-याला त्याच पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याबाबत बदली प्राधिका-याने निर्णय घ्यावा. मात्र संबंधीत अधिकारी/कर्मचा-याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिका-याचे मत झाल्यास त्याबाबतची कारणमिमांसा नमुद करून बदली प्राधिकारी संबंधीत अधिकारी/कर्मचा-याची बदली त्याच्या लगतच्या वरिष्ठ प्राधिका-याकडे प्रस्तावित करू शकतो. लगतच्या वरिष्ठ प्राधिका-याकडे असा प्रस्ताव प्राप्त झाल्यास बदली प्राधिका-याने नमूद केलेली कारणे योग्य आहेत किंवा कसे याची छाननी करून स्वतःचे मत स्पष्ट करून बदली प्राधिका-याच्या प्रस्तावाला मान्यता द्यावी किंवा बदली प्राधिका-याचा प्रस्ताव फेटाळून लावण्यात यावा. ज्या प्रकरणात बदली प्राधिका-याच्या प्रस्तावानुसार गैरवर्तणुकीच्या अनुषंगाने शासकीय अधिकारी /कर्मचारी यांची बदली करण्यात येते अशा प्रकरणात संबंधीत अधिकारी/कर्मचारी यांची बदली केल्यानंतर त्यांच्या विरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी. ”

34. If the facts of the present case are considered in the background of the said material on record, it is seen that though the respondents decided to call for the report about the alleged serious complaints of financial irregularities committed by the applicant, the respondents decided to propose the midterm and mid-tenure transfer of the applicant from Latur to Hingoli meanwhile. In my opinion, that would be in contravention of the contents of clause-8 of Government Circular dated 11.2.2015 of the G.A.D., as well as law laid down in the citations relied upon by the applicant. The respondents were conscious of the fact that the veracity of the complaints made against the applicant were required to be inquired into and even the respondents had called for the report of Secretary (NH) in that regard. It was not that the respondents were not empowered to act upon the complaints forwarded by the Hon'ble Central Minister by way of transferring the applicant but that has to be done in proper perspective of the scope of provisions of Section 4 (4) (ii) and 4 (5) of the Transfer Act of 2005. At the most, it can be said that there were serious allegations of financial irregularities in bidding against the applicant. However, the procedure of verifying the allegations as laid down in the Government

Circular dated 11.2.2015 (Annexure 'RR-3 colly) was not undertaken. In view of the same, the irresistible inference will have to be drawn that the impugned transfer order was passed in a hurry under the political influence at that stage of the matter. If the impugned order is examined from any angle, it cannot be said that the impugned order of transfer is passed due to exceptional circumstances or special reasons as appropriately contemplated under Section 4 (4) (ii) and 4 (5) of the Transfer Act of 2005. In the facts and circumstances it cannot be said that the transfer order is passed due to administrative exigencies arising out of any exceptional circumstances or special reasons. In view of the same, in my opinion, the principles laid down in the case laws relied upon by the applicant would be applicable. Hence, I hold that the impugned order of transfer of the applicant dated 22.2.2021 (Exhibit 'B') is not sustainable in the eyes of law and is liable to be quashed and set aside. In the result, I proceed to pass the following order: -

ORDER

The present Original Application stands allowed and disposed of.

(ii) The impugned order of transfer of the applicant dated 22.2.2021 is hereby quashed and set aside.

(iii) There shall be no order as to costs.

MEMBER (J)

PLACE : AURANGABAD.

DATE : 06.08.2021

O.A.NO.123-2021(SB-Transfer)-HDD-2021