

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 355 OF 2018**

DISTRICT: - JALNA.

**Krushna S/o Sanduji Edke,**  
Age-44 years, Occu. : Circle  
Inspector, R/o. Ashokbet behind Police  
Station, Ambad, Tq. Ambad,  
Dist. Jalna.

.. APPLICANT.

**V E R S U S**

- 1. The State of Maharashtra,**  
Through its Secretary,  
Ministry of Revenue & Forest  
Department, Mantralaya,  
Mumbai.
- 2. The Divisional Commissioner,**  
Aurangabad Division,  
Aurangabad.
- 3. The Collector,**  
Collector Office, Jalna.
- 4. The Sub-Divisional Officer,**  
Ambad, Tq. Ambad, Dist. Jalna
- 5. The Tahsildar,**  
Tahsil Office, Ambad,  
Tq. Ambad, Dist: Jalna.

.. RESPONDENTS.

---

**APPEARANCE** : Shri. Swapnil A. Deshmukh, learned  
Advocate for the applicant.

: Shri M.P. Gude – learned Presenting  
Officer for the respondents.

---

**CORAM** : **JUSTICE A.H. JOSHI, CHAIRMAN**

**RESERVED ON** : **07.03.2019**

**PRONOUNCED ON** : **08.03.2019**

---

**JUDGMENT**

Heard Shri Swapnil A. Deshmukh, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents.

2. The applicant has approached this Tribunal challenging the order of transfer dated 31.5.2018.

3. The applicant has been transferred from his present posting as Circle Inspector, Gondhi, Ta. Ambad, District Jalna to Circle Inspector, Varud, Tq. Jafrabad, District Jalna.

4. The applicant's claim as regards facts and grounds is as follows: -

- (a) He was posted at Gondi, Tq. Ambad, Dist. Jalna by an order dated 31.5.2016, and has been serving there since then.
- (b) He belongs to Group 'C' and his statutory tenure is two terms i.e. six years.
- (c) He has challenged transfer order on the ground that it is issued in violation of Section 4 (4) (ii) and 4 (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short 'the ROT Act, 2005).

5. In the affidavit in reply filed by the State the plea as is raised reads as under : -

“09. As regard to para no. VI(6) is concern, the applicant has quoted the provisions of Section 4 (III) and Section 4 (V) of the said Act, same is admitted position hence need no any reply.

10. As regard to para no. VI (7) the deponent submits that on the ground of administrative exigency the exceptional circumstance pursuant upon the State Government can transfer the employee ever prior to completion of three year of normal tenure and even in accordance with the provision of the Act of 2005, employee is liable to be transfer, if in respectful submission the circumstance exists for such a transfer. That however all those transfer have been effected in the month of May.”

(Quoted from page No. 47 of the O.A.)

6. Along with affidavit in reply filed by the State a copy of the minutes of the Civil Services Board is placed on record. The text which relates to the applicant is seen at page-60, which is quoted below :-

तसेच यावेळी नागरी सेवा मंडळाने खालील कर्मचारी यांचेसंदर्भात या कार्यालयास कार्यालय प्रमुख यांचेकडून प्राप्त तक्रारीनुसार नियतकालिक बदल्या - २०१८ मध्ये प्रशासकीय सोईने व कार्यालय प्रमुखांचे शिफारसी विचारात घेवून त्यांचे बदलीसंदर्भात शिफारसी केलेल्या आहेत.

अ. क्र.	कर्मचा-याचे नाव	नगरी सेवा मंडळाची शिफारस	शेरा
१	श्री. कृष्णा सांडुजी एडके, मं.अ. गोंदी ता. अंबड	मंडळ अधिकारी, वरुड ता.जाफाबाद येथील रिक्त	

(Quoted from page 60 of the O.A.)

7. Perusal of the affidavit in reply filed by the State reveals that the reply is philosophical and not factual. The State was required to give reply on question of fact as to what were the 'special reasons and exceptional circumstances' for transfer in the background that the applicant was being transferred within three years. By virtue of the affidavit in reply of the State, now the State has offered itself as *fate accompli* by electing to forbear from replying.

8. It is seen that the transfer is made only on account of some complaint against the applicant by the Head of the Office. The details of the said complaint are not incorporated either in the minutes of Civil Services Board or otherwise placed on record. The pleading in affidavit in reply is that the transfer is for administrative reason which by itself does not constitute compliance of Section 4 (4) & 4 (5) of ROT Act, 2005.

9. The record must spell out the facts, which constitute the reasons which has not happened in present case.

10. The record shows that no facts whatsoever are brought on record.

11. The reasons in the mind of the executive do not constitute compliance of Section 4 (4) & 4 (5) of ROT Act, 2005.

12. Since special reasons and exceptional circumstances which have led to the transfer are not shown, the impugned transfer order terms out to be based on subjective element.

13. Hence, the Original Application deserves to be allowed and is allowed in terms of prayer clause 16 (B) with further directions that the applicant be restored to the position i.e. *status quo ante* as was inexistence prior issuance of impugned order.

There shall be no order as to costs.

**CHAIRMAN**

**PLACE : AURANGABAD.**

**DATE : 08.03.2019**

O.A.NO.355-2018(SB-Transfer)-HDD-2019