

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD.

**ORIGINAL APPLICATION NO. 01 OF 2017**

**DIST. : PARBHANI.**

Dattatraya Balkrishna Pande,  
Age: 57 years, Occu. Service as  
Executive Engineer, Majalgaon Canal  
Division No. 10, Parbhani.  
R/o. 'Aaditya', C/o Shri Chetan  
Aundhekar, Yoshodhan Nagar,  
Karegaon Road,  
Parbhani.

.. APPLICANT.

**V E R S U S**

1. The State of Maharashtra  
Through the Secretary,  
Water Resources Department,  
Mantralaya, Mumbai-400 032.
2. The Superintending Engineer,  
Jayakwadi Project Circle,  
GMIDC, Aurangabad.
3. Shri Bharat Ramkishan shingade,  
Executive Engineer,  
Lift Irrigation Division, Osmanabad.
4. Shri Umesh Vishwanathrao Wankhede,  
Executive Engineer, Minor Irrigation  
Division, Parbhani. .. RESPONDENTS.

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APPEARANCE :- Shri Ajay Deshpande, learned  
Advocate for the Applicant.

: Shri S.B. Talekar, learned Special  
Counsel for respondent No. 1.

- : Shri Shamsundar B. Patil, learned Advocate for respondent No. 2 & 4.
- : Shri A.S. Deshmukh, learned Advocate holding for Shri V.B. Wagh – learned Advocate for respondent No. 3.

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**CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J)**  
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**J U D G E M E N T**

**[Delivered on this 8<sup>th</sup> day of March, 2017]**

1. The applicant has challenged the impugned order of transfer dated 30.12.2016 passed by respondent No. 1 viz. the Secretary, Water Resources Department, Mantralaya, Mumbai, transferring him from the present posting i.e. Executive Engineer, Majalgaon Canal Division No. 10 at Parbhani to the post of Executive Engineer, Minor Irrigation Division, Parbhani, and posting the respondent No. 3, in his place and prayed to quash and set aside the said order.

2. The applicant has joined as Junior Engineer in July, 1982 and thereafter came to be appointed as Assistant Engineer, Grade-II (presently known as Assistant Engineer Grade-I) through the selection process conducted by the

Maharashtra Public Service Commission (for short 'MPSC'), in July 1985. Thereafter, he was promoted as Executive Engineer in March, 2002. By order dated 27.8.2014 he was posted as Executive Engineer in Majalgaon Canal Division No. 10 at Parbhani and since September, 2014 he was working as Executive Engineer in Majalgaon Canal Division No. 10 at Parbhani. He is due for retirement after attaining the age of superannuation on 30<sup>th</sup> April, 2017. He had not completed his normal tenure of three years as Executive Engineer in Majalgaon Canal Division No. 10 at Parbhani. He is presently working under Chief Engineer, CADA Aurangabad. As Executive Engineer, Majalgaon Canal Division No. 10 at Parbhani, the applicant has undertaken a task of completing Lower Dhdhana Project by the end of 31.03.2017 under Pradhan Mantri Krishi Sinchai Yojana (PMKSY). The Central Government has provided fund to the said project on the condition that if the said project is not completed by the end of March, 2017, the financial aid being extended for the project would be treated as loan.

3. He has applied for 6 days' earned leave w.e.f. 2<sup>nd</sup> January, 2017 to 7<sup>th</sup> January, 2017, with a permission to avail the same by prefixing and suffixing holidays thereto. Leave has been sanctioned and approved by respondent No. 2 vide Office Order No. 410 of 2016 dated 31.12.2016. By order dated 30.12.2016 he has been transferred from Majalgaon Canal Division No. 10 at Parbhani to Minor Irrigation, Parbhani and the said order saw the day light on 31.12.2016. Respondent No. 3 was working as Executive Engineer, Lift Irrigation Division, Osmanabad, has been posted on the post of Executive Engineer, Majalgaon Canal Division No. 10 at Parbhani in place of the applicant. Respondent No. 3 took charge of his post in his absence when he was on leave on 31.12.2016. Respondent No. 3 was very much interested to join the post, which was held by the applicant and, therefore, he got himself relieved from Osmanabad and joined in place of the applicant at Parbhani on the next date, in the absence of the applicant without intimating him and without obtaining prior permission of Chief Engineer, C.A.D.A., Aurangabad. The effect of the transfer order has

been given in haste. The transfer order transferring the applicant was illegal and against the provisions of the Maharashtra Government Servants Regulation Of Transfers And Prevention of Delay In Discharge Of Official Duties Act, 2005 (for brevity hereinafter referred to as "the Transfer Act, 2005). Therefore, he challenged the transfer order dated 30.12.2016 and prayed to quash the same and also prayed for consequential relief.

4. Respondents have filed their affidavit in replies and resisted the contentions of the applicant. They have contended that the applicant was working on the post of Executive Engineer, Majalgaon Canal Division No. 10 at Parbhani, and during his tenure Lower Dhdhana Project under Pradhan Mantri Krishi Sinchai Yojana (PMKSY) was undertaken and that project has to be completed by the end of March, 2017 as per guidelines of the department and the updated cost of the project is of Rs. 2341.67 Crores. The Government accorded the Revised Administrative Approval sanction on 13.10.2016. In view of the said fact the project has to be completed by the

office of the applicant, where he was posted, but the applicant was not efficient to complete the project and, therefore, the respondent No. 2 issued several letters to the applicant to take steps to complete the said project in time, but there was no response from the applicant to the said letter. Therefore, respondent No. 2 by his letter dated 30.11.2016 requested the Chief Engineer, C.A.D.A. to post efficient Executive Engineer in place of the applicant, who is going to retire in the month of April, 2017. The matter was placed before the Civil Services Board. Thereafter, decision has been taken to shift the applicant from the said post not by transferring to another place, but retaining him at the said headquarter in view of his retirement in the month of April, 2017. The Civil Services Board after following recommendations has approved the posting of the applicant as Executive Engineer, Minor Irrigation Division, Parbhani from Executive Engineer, Canal Division Majalgaon Division No. 10, Parbhani, at the same headquarter. In fact, it is not a transfer. There is no violation of any provision of the Transfer Act, 2005 in shifting the applicant as Executive Engineer, Minor

Irrigation, Parbhani. In view of the order dated 30.12.2016, the respondent No. 3 had resumed the charge on the post of Executive Engineer, Canal Division Majalgaon Division No. 10, Parbhani, ex-parte, as the applicant was on leave and was not available to handover the charge. The respondent No. 4 has also joined his new posting at Osmanabad. There is no violation of the provisions of the Transfer Act, 2005 and other Maharashtra Civil Services Rules. Therefore, they prayed to dismiss the present Original Application.

5. The applicant has filed rejoinder affidavit and has contended that the respondents have not complied with certain provisions i.e. provisions of Sections 4 (4) (ii) and 4 (5) of the Transfer Act, 2005. There was haste on the part of the respondent Nos. 3 & 4 in taking charge of their new posting in the absence of the applicant by giving go-bye to the Rules.

6. I have heard the arguments advanced by Shri Ajay Deshpande, learned Advocate for the applicant, Shri S.B. Talekar, learned Special Counsel for respondent No. 1,

Shri Shamsundar Patil, learned Advocate for respondent Nos. 2 & 4 and Shri Avinash S. Deshmukh, learned Advocate holding for Shri V.B. Wagh, learned Advocate for respondent No. 3, at length. I have perused the application, affidavit, affidavit in replies filed by the respective respondents and rejoinder filed by the applicant. I have also perused the various documents placed on record by the respective parties.

7. Admittedly, the applicant was serving as Executive Engineer and by an order dated 27.8.2014 he was posted as Executive Engineer, Canal Division Majalgaon Division No. 10 at Parbhani and he was working there since September, 2014. Admittedly, he has not completed his normal tenure of three years on the post of Executive Engineer, Canal Division Majalgaon Division No. 10, Parbhani on the date of the impugned transfer order dated 30.12.2016. By the said impugned transfer order he was transferred from the post of Executive Engineer, Canal Division Majalgaon Division No. 10, Parbhani to the post of Executive Engineer, Minor Irrigation Division at



Parbhani. By the same order the respondent No. 3, who was serving as Executive Engineer, Lift Irrigation Division, Osmanabad has been transferred to the post of Executive Engineer, Canal Division Majalgaon Division No. 10, Parbhani, in place of the applicant and so also by the same order respondent No. 4, who was serving as Executive Engineer, Minor Irrigation Division, Parbhani has been transferred on the post of Executive Engineer, Lift Irrigation Division, Osmanabad in place of respondent No. 3. Admittedly, the applicant has applied for earned leave from 2<sup>nd</sup> January, 2017 to 7<sup>th</sup> January, 2017 with permission to avail prefix and suffix holidays and leave has been granted by respondent No. 2 by the Office Order No. 410/2016 dated 31.12.2016. Respondent No. 4 relinquished the charge of his post as Executive Engineer, Minor Irrigation Division, Parbhani, on 30.12.2016 and on the very day took the charge of his new posting as Executive Engineer, Lift Irrigation Division, Osmanabad. On the very same day, respondent No. 3 left the charge of his post of Executive Engineer, Lift Irrigation Division, Osmanabad and he took charge of his new post of

Executive Engineer, Canal Division Majalgaon Division No. 10, Parbhani, on 31.12.2016, ex-parte, since the applicant was on leave. It is not much disputed that a proposal for transfer of applicant, respondent Nos. 3 & 4 has been placed before the Civil Services Board and the proposal was considered in the meeting of the Civil Services Board held on 22.11.2016 and the Board has not recommended the proposal of transfer of the said officers. Thereafter, the letter dated 30.11.2016 sent by Dy. Superintending Engineer, Jaikwadi Project Circle, Aurangabad addressed to the Chief Engineer & Chief Administrator, C.A.D.A., Aurangabad (page-142 of paper book), was forwarded to the concerned Minister and on the basis of the noting of the Minister, proposal for the transfer of the applicant, respondent Nos. 3 & 4 has been placed and the concerned Minister being a higher authority to Competent Transferring Authority has passed the impugned order of transfer on the basis of letter dated 30.11.2016 and accordingly, the impugned order dated 30.11.2016 has been issued.

8. Learned Advocate for the applicant has submitted that the applicant has been posted at Parbhani in the month of September, 2014 and by the impugned transfer order dated 30.12.2016 he has been transferred, before completion of his normal tenure of three years. He has submitted that the impugned order of transfer is against the provisions of the Transfer Act, 2005. He has submitted that the applicant is a Group 'A' officer falling in category 'A' as specified in Section 6 of the Transfer Act, 2005. He has submitted that the transfer of the applicant is midterm and mid-tenure and for making midterm transfer of the applicant, the respondents have not complied the provisions of Section 4 (4) (ii), as well as, Section 4 (5) of the Transfer Act, 2005. He has submitted that the transfer of the applicant has been made in order to accommodate respondent No. 3 at his place. He has further submitted that the applicant has been transferred to Minor Irrigation Division, Parbhani from Majalgaon Canal, Division No. 10, Parbhani. The said two offices are under two different Circle Officers viz. Chief Engineer, Water Resources Department and Chief Engineer,

C.A.D.A. respectively. Therefore, it amounts 'transfer' as defined under Section 2 (i) of Transfer Act, 2005. He has submitted that the proposal regarding transfer of the applicant, as well as, respondent Nos. 3 & 4 has been placed before the Civil Services Board prior to issuance of the impugned order and the Civil Services Board had not recommended their transfer, but thereafter the respondents have issued the order dated 30.12.2016 transferring the applicant without placing the matter before Civil Services Board on the basis of letter dated 30.11.2016 and against the earlier recommendation of the Board. Therefore, the impugned transfer order is in violation of the provisions of the Transfer Act, 2005.

9. Learned Advocate for the applicant has further submitted that the applicant was on leave and his leave has been sanctioned on 31.12.2016 it shows at that time his superior had not received the transfer order dated 30.12.2016. Respondent Nos. 3 and 4, who are serving at Osmanabad & Parbhani, have been relieved on the same date and they joined on their new posting i.e. at Majalgaon

Canal, Division No. 10, Parbhani and Lift Irrigation Division, Osmanabad on 30.12.2016 & 31.12.2016 respectively. Respondent No. 3 handed over the charge of his posting at Osmanabad to the respondent No. 4 in the evening on 30.12.2016 and joined at Majalgaon Canal Division No. 10 at Parbhani in absence of the applicant on 31.12.2016. He has submitted that the distance between Parbhani and Osmanabad is long distance and two places are connected by road only. Therefore, it was not possible to the respondent No. 4 to join at Osmanabad by leaving charge of his post at Parbhani on the same day i.e. 31.12.2016, but the papers produced by the respondents show that he has been relieved on the very same day i.e. 30.12.2016 and joined new post at Osmanabad. He has submitted that respondent No. 3 got relieved himself without obtaining prior permission of his superior officer and without obtaining permission of his new superior office i.e. Executive Engineer, C.A.D.A. Aurangabad for joining his new posting at Parbhani. He has argued that all these facts are sufficient to show that the impugned transfer order was issued to facilitate respondent No. 3 to

join his new posting at Parbhani. All these facts show that the order under challenge is mala fide and issued arbitrarily. He has submitted that respondent Nos. 3 & 4 are also not due for transfer and no reason has been given by Transferring Authority, while making their transfer. Therefore, he sought intervention in the impugned order at the hands of this Tribunal.

10. Learned Special Counsel for respondent No. 1 has submitted that in view of the provisions of Section 6 of the Transfer Act, 2005, the Hon'ble Chief Minister was the Competent Transferring Authority and the Hon'ble Chief Minister has delegated his powers to the Minister, Water Resources Department by the letter dated 13<sup>th</sup> January, 2016 and the notification dated 25<sup>th</sup> January, 2016 issued in pursuant of the said letter. He has submitted that in view of the said letter dated 16.6.2016, the Secretary was the Competent Transferring Authority for regular transfer. He has submitted that the applicant has not challenged the authority of Minister in that regard. He has submitted that the applicant was working as Executive Engineer,

Canal Division Majalgaon Division No. 10, Parbhani, which had undertaken the work of Lower Dhdhana Project under Pradhan Mantri Krishi Sinchai Yojana (PMKSY), which has to be completed by the end of 31<sup>st</sup> March, 2017. He has submitted that the said project was financed by the Central Government and the work has to be completed before due date. The applicant was not keen to complete the work in time and, therefore, several letters and DO letters had been issued to him by the superior authority, but he had not complied the said letters and, therefore, on 30.11.2016 the Deputy Superintending Engineer, C.A.D.A., Aurangabad, send a letter to the Chief Engineer and Chief Administrator, C.A.D.A., Aurangabad, (Annexure 'R-7' page-168 of the paper book), and requested to appoint efficient officer in place of the applicant, who is going to retire by the end of April, 2017. The letter was placed before the Minister, Water Resources Department, who directed the concerned officer to prepare a proposal. On the basis of proposal made by the Chief Secretary, the Minister, Water Resources Department passed impugned order by recording reason that the

project has to be completed in time and, therefore, approved the proposal dated 1.12.2016 regarding transfer of the applicant, respondent Nos. 3 & 4 (page Nos. 212 to 214 both inclusive).

11. He has submitted that as previously Civil Services Board has not recommended proposal of transfer of the applicant, respondent Nos. 3 & 4 in its meeting dated 21.11.2016, the concerned authority did not feel it necessary to keep the said proposal again before the Civil Services Board and, therefore, it was directly placed before the Minister, Water Resources Department, who is next higher authority of Transferring Authority. In such cases, the Minister concerned, who is next higher authority to Competent Authority and thereafter he passed the order by recording reasons. Therefore, there is no violation of any provisions of the Transfer Act, 2005. He has submitted that the order under challenge is not mala fide and it is a mere change of posting of applicant and it is not a transfer, as his headquarter is not changed. Therefore, no inconvenience is caused to the applicant as



well as no prejudice is caused to the rights of the applicant.

12. Learned Advocate for respondent Nos. 2 & 4 have also submitted that the order under challenge is not mala fide and it will not cause prejudice to the rights of the applicant. They have submitted that mere not mentioning the provisions of Section 4 (5) of the Transfer Act, 2005 in the impugned order. The impugned order of transfer cannot be termed as illegal. He has further submitted that the applicant has not challenged the notification dated 25<sup>th</sup> April, 2016 regarding delegation of powers of Hon'ble Chief Minister to the Secretary, as well as, to the concerned Minister, Water Resources Department and, therefore, the order of transfer dated 30.12.2016 issued by the concerned authority is just, legal and proper.

13. Learned Special Counsel for respondent No. 1 has placed relevant record including minutes of the meeting, proposals regarding the impugned transfer order on record at page Nos. 207 to 241. Learned Special Counsel for respondent No. 1 has placed reliance on the judgment

delivered by the Hon'ble Bombay High Court, Appellate side, Civil Jurisdiction in the case of **SHRI RAJENDRA SHANKAR KALAL VS. THE STATE OF MAHARASHTRA AND ORS. [W.P. No. 8898 of 2010] dated 30<sup>th</sup> November, 2010**. He has also placed reliance on judgment delivered by the Hon'ble Bombay High Court, Civil Appellate Jurisdiction in the case of **SHRI RAMESH PANDURANG SHIVDAS VS. THE STATE OF MAHARASHTRA AND ORS. dated 11<sup>th</sup> October, 2010 [W.P. No. 3301/2010]**, wherein it has been held by the Hon'ble High Court that the transfer of the employee at the same station in different post does not amount transfer.

14. In view of aforesaid submission made on behalf of respondent No. 1, learned Advocate for the applicant has replied that transfer of the present applicant is not in the same office on different post, but it is on the post of different office and, therefore, in view of the provisions of Transfer Act, 2005, it is a transfer. He has also placed reliance on the same judgment on which learned Special

Counsel for respondent No. 1 has relied. Learned Advocate for the applicant has further placed reliance on the judgment delivered by Hon'ble Bombay High Court in the case of **RAMAKANT BABURAO KENDRE VS. STATE OF MAHARASHTRA AND ANOTHER reported in 2012 (1) Mh.L.J. page-951**. He has also placed reliance on the judgment delivered by the Principal Seat of this Tribunal at Mumbai in the case of **SHRI TATYARAO NARAYANRAO MUNDE VS. THE STATE OF MAHARASHTRA & ORS. [O.A.NO. 801/2016] decided on 10.10.2016**. He has also submitted that the respondents have not complied the provisions of Sections 4 (4) (ii) and 4 (5) of the Transfer Act, 2005 and special reasons for transferring the applicant have not been recorded while issuing the impugned transfer order.

15. Learned advocate for respondent Nos. 2 & 3 have placed reliance on the judgment passed by the Principal Seat of this Tribunal at Mumbai in O.A. Nos. 717, 718, 719, 720 & 721 all of 2016 dated 23.01.2017, wherein the order under challenge has been held as legal. He has also

placed reliance on the judgment of Hon'ble Supreme Court in the case of **T.S.R. SUBRAMANIAN VS. UNION OF INDIA & ORS. reported in 2013 DGLS(SC) 885**, wherein it is held as follows: -

***“The Civil Services Board on receipt of the report of inquiry of the designated officer shall advise the Chief Minister regarding justification for transfer of the officer in the public interest before his normal tenure is over. Ordinarily the Chief Minister is expected to agree with the recommendations of the Civil Services Board as transfer of an official is a routine administrative matter on which a Civil Services Board must have a decisive role. But if the Chief Minister does not agree with the Civil Services Board and orders transfer of an official before his tenure is over, he may have to record in writing reasons for such transfer.***

***If the official is transferred before his tenure without adequate justification, he will have the right to approach a three member Civil Service Ombudsman set up for the purpose. Recommendation 38: In***

***the proposed Civil Service law, the highest political executive shall continue to be the final authority to order transfer of any officer before his tenure is over; but he will be expected to give due consideration to Report of the Administrative Inquiry / views of the Civil Service Board / Establishment Board and record reasons on the need for premature transfer of an officer. It is reiterated that the political executive shall have the final authority to transfer an officer at any stage in the public interest.”***

16. They have also placed reliance on the judgment delivered by the Hon’ble Bombay High Court in the case of **STATE OF MAHARASHTRA VS. ASHOK RAMCHANDRA KORE AND ANOTHER reported in 2009 (4) Mh.L.J. page-163** and on the judgment delivered by the Aurangabad Bench of this Tribunal in the case of **NITIN MURLIDHAR UPASANI VS. STATE OF MAHARASHTRA & ANR. [O.A. NO. 425/2014] decided on 11<sup>th</sup> February, 2015.** The said decision has been upheld by the Hon’ble Bombay High Court Bench at Aurangabad in **W.P. No.**

**1768/2015 [NITIN MURLIDHAR UPASANI VS. THE STATE OF MAHARASHTRA AND ANR.] decided on 2<sup>nd</sup> September, 2015.**

17. In order to decide the matter in issue, it is necessary to go through the provisions under Sections 3, 4 (4) (ii) and 4 (5) and 6 of the Transfer Act, 2005. The provision of Sections 4 (4) (ii) and 4 (5) are relevant, therefore, they are reproduced as below:-

**“4. Tenure of transfer.**

- (1) -- -- -- -- -- -- -- -- --  
 (2) -- -- -- -- -- -- -- -- --  
 (3) -- -- -- -- -- -- -- -- --

**(4) The transfer of Government servants shall ordinarily be made only once in a year in the month of April or May;**

**Provided that, transfer may be made any time in the year in the circumstances as specified below, namely :-**

- (i) -- -- --  
 (ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or

**special reasons, after recording the same in writing and with the prior approval of the next higher authority;**

**(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior {approval of the immediately superior} Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post.”**

18. In view of the provisions of the Transfer Act, 2005, the minimum tenure of posting for three years has been assured. The provision of Section 4 states that no Government servant shall ordinarily be transferred unless he has completed normal tenure of three years as provided under Section 3. Sub-section (4) of Section 4 provides that the transfer of Government servants shall ordinarily be made only once in a year in the month of April or May. The proviso to the Sub-section (4) of Section 4 permits midterm transfer under exceptional circumstances or special reasons in special cases.

19. In view of the aforesaid provision such transfers are required to be approved by the authority higher than the Transferring Authority as provided under Section 6 of the Transfer Act, 2005. In view of the Notification dated 25.4.2016 the Minister In-charge of Water Resources Department is the higher authority to approve the midterm transfer proposed by the Competent Transferring Authority i.e. the Secretary of the concerned department. The terms transfer and post have been defined under Section 2 of the Transfer Act, 2005. Provision under Section 2 (i) defines term transfer, which is as follows: -

**“2. Definition.**

**(i) “Transfer” means posting of a Government servant from one post, office or Department to another post, office or Department.”**

20. Keeping in mind the aforesaid provisions I have to determine whether the impugned transfer order dated 30.12.2016 is legal or not? The sequence as narrated above shows that initially the proposal for the transfer of the applicant, respondent Nos. 2 & 3 has been placed



before the Civil Services Board and in its meeting dated 21.11.2016 Board has decided not recommend the transfer of the applicant and respondent Nos. 2 & 3 as they were not due for transfer. The minutes of the said meeting is placed at page No. 209 of the paper book. Thereafter, concerned Minister received the letter dated 30.11.2016 sent by Deputy Superintending Engineer, Jaikwadi Project, Aurangabad, requesting to post the efficient officer at the place of applicant. On receiving the said letter, the concerned Minister directed the Secretary to prepare a proposal and accordingly the proposal has been prepared by the Secretary on 1.12.2006, which is at page Nos. 212 to 214 of the paper book. The Minister, Water Resources Department, who is the next higher authority to the Competent Transferring Authority approved the proposal on the ground that the transfer is necessary in view of the letter dated 30.11.2016 to complete Lower Dhdhana Project under Pradhan Mantri Krishi Sinchai Yojana (PMKSY) within stipulated time. Except the said reason, no just & satisfactory reason has been recorded by the concerned authorities for transfer of

the applicant. The Secretary while making the proposal has made mentions regarding the earlier decision of the Civil Services Board, not recommending the transfer of the applicant, but it had not been taken into consideration by the Minister, Water Resources Department while issuing the impugned transfer order. Not only this, but fresh proposal regarding transfer of the applicant and respondent Nos. 3 & 4 on the basis of letter dated 30.11.2016 had not been placed before the Civil Services Board for its consideration & recommendation.

21. It is material to note here that the Civil Services Board consisting of higher ranking officers and expert in Civil Services Board had been established to ensure good ordinance, transparency in Government functions. Accordingly, Civil Services Board has been established in view of the Notification dated 29.8.2015 (page No. 220 of paper book) and by Notification dated 16.9.2015 (page-229 of the paper book) its jurisdiction and powers has been defined in view of Notification dated 21.10.2015 (page-231 of the paper book). It is true that in view of the

observations made by the Apex Court in the case of **T.S.R. SUBRAMANIAN VS. UNION OF INDIA & ORS. reported in 2013 DGLS(SC) 885 (Supra)** all transfers of the Government employees are required to be placed before appropriate Civil Services Board. It is further held that normally recommendation of Civil Services Board has to be accepted by the competent authority. However, such recommendations can be ignored for good and sufficient reasons recorded by political executive.

22. Keeping in mind above principle, I have to consider whether the reasons recorded by higher authority i.e. Minister of Water Resources Department are sufficient and whether it makes out a special case for transfer of the applicant. If the applicant establishes that the order is issued mala fide then interference in the order under challenge is called for. The record shows that there were no complaints against the applicant. The only letter dated 30.11.2016 mentions that he has not replied the letters issued by his superior authority and not completed the project in time and therefore, the Superintending

Engineer, Jaikwadi Project, requested to appoint efficient officer on the place of the applicant. The Minister while approving proposal has not recorded the sufficient reasons, circumstances which prompted him to transfer the applicant from his post of Executive Engineer, Majalgaon Canal Division No. 10, Parbhani, that too on the verge of his retirement and when he has not completed normal tenure of posting and that too in the midterm. Not only this, but it does not disclose as to why the proposal prepared on the basis of letter dated 30.11.2016 had not been placed before the Civil Services Board, which has been established to consider the transfers of the employees. No reasons have been recorded by the concerned Minister as regards the earlier recommendation of Civil Services Board on the basis of its meeting dated 21.11.2016 though minutes of meeting of the Board were placed before Minister. No satisfactory explanation has been given by the respondents in that regard. The respondents failed to satisfy the Tribunal on this point. Therefore, considering the said facts in my view the impugned order passed by the Minister of Water

Resources Department transferring the applicant has been passed without assigning special reasons, exceptional circumstances, therefore, it is in violation of the provisions of Sections 4 (4) (ii) and 4 (5) of the Transfer Act, 2005. Not only this but no reasons have been recorded by the Transferring Authorities for the transfer of respondent Nos. 3 & 4 though they have not completed their tenure and for making their midterm transfer as required under the provisions of the Transfer Act, 2005.

23. It is also material to note that the impugned order has been issued on 30.12.2016, the copy of the order is placed on record, which is at page No. 15, Annexure 'A-2'. It shows that it has been digitally signed by Joint Secretary on that date at 13:27:39 i.e. at approximately 1.27 p.m. Had it been a fact that the respondent No. 2 received the said order on 30.12.2016, then definitely he would not have been sanctioned the leave of the applicant on 31.12.2016. But the fact is different. The order dated 31.12.2016 issued by respondent No. 2 sanctioning leave of the applicant shows that the office of respondent No. 2

was not in receipt of impugned transfer order dated 30.12.2016 till then. The respondent No. 4 has contended that he received the order of transfer on 30.12.2016 and left the charge of Executive Engineer, Minor Irrigation Division, Parbhani and proceeded to Osmanabad to take the charge of his new posting and he took over the charge of his new posting and relieved the respondent No. 3. Respondent No. 3 on 31.12.2016 took the charge of the post of the applicant ex-parte without obtaining permission of his superior authority either at Osmanabad or at Aurangabad. All these facts are sufficient to show that the respondent Nos. 3 & 4 were in haste to join their new posting without following due procedure. This fact also constitutes mala fide on the part of the respondents. Therefore, in these circumstances the order under challenge is mala fide and in contravention of provisions of Sections 4 (4) (ii) and 4 (5) of the Transfer Act, 2005.

24. I have gone through the decisions referred by the learned Special Counsel for respondent No. 1. The facts in the said decisions are not identical to the facts in the

present matter and, therefore, the same are not applicable to the present case. On the contrary, the decisions referred by the learned Advocate for the applicant appropriately applicable. Taking into consideration the said principles laid down in the citations relied upon by the learned Advocate for the applicant, I am of the view that the impugned order is in violation of the provisions under Sections 4 (4) (i) and 4 (5) of the Transfer Act, 2005 and it is mala fide order and, therefore, it requires to be quashed and set aside. Hence, I pass the following order :-

### **ORDER**

- (i) The present Original Application is allowed.
- (ii) The impugned transfer order dated 30.12.2016 transferring the applicant from the present posting as Executive Engineer, Majalgaon Canal Division No. 10 at Parbhani to the post of Executive Engineer, Minor Irrigation Division, Parbhani, is hereby quashed and set aside.
- (ii) Respondents are directed to repost the applicant as Executive Engineer, Majalgaon

Canal Division No. 10 at Parbhani i.e. at his previous post, within a period of two weeks.

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

**MEMBER (J)**

O.A.NO. 01-2017(hdd)-2017 (Transfer)