

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.669 OF 2022

DISTRICT : AURANGABAD

Vivek s/o. Trimbak Bade,
Age : 51 years, Occu. : Service
(as Superintending Engineer, P.W.
Circle, Aurangabad),
R/o. 'Jetvan' P.W.D. Campus,
Padampura, Aurangabad.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Addl. Chief Secretary,
Public Works Department, M.S.,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Chowk,
Mumbai-400 001.
- 2) The Chief Engineer,
Public Works Region, Aurangabad,
Bandhkaam Bhawan, Sneh Nagar,
Adalat Road, Aurangabad-05.
- 3) Mr. S.S. Bhagat,
Superintending Engineer,
Vigilance & Quality Control Circle, Aurangabad,
Bandhkaam Bhawan, Sneh Nagar,
Adalat Road, Aurangabad-05. **...RESPONDENTS**

APPEARANCE : Shri A.S.Deshmukh, Counsel for
applicant.

: Shri V.R.Bhumkar, Presenting
Officer for respondent nos.1 & 2.

: Shri J.B.Choudhary, Counsel for
respondent no.3.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN.

DECIDED ON : 16.03.2023.

ORAL ORDER

1. Heard Shri A.S.Deshmukh, learned Counsel for applicant, Shri V.R.Bhumkar, learned Presenting Officer for respondent nos.1 & 2 and Shri J.B.Choudhary, learned Counsel for respondent no.3.

2. Applicant has preferred the present O.A. seeking quashment of the order dated 22-07-2022 whereby he has been transferred from his existing post of Superintending Engineer, Public Works Circle, Aurangabad to the post of Superintending Engineer, Pradhan Mantri Gram Sadak Yojna (PMGSY), Aurangabad. Applicant has also sought quashment of another order of same date i.e. 22-07-2022 whereby respondent no.3 has been posted at his place.

3. Applicant was promoted to the post of Superintending Engineer vide order dated 21-10-2021. At the relevant time, applicant was posted at Nagpur and was working as Assistant Chief Engineer, Public Works Circle, Nagpur. On promotion to the post of Superintending Engineer, he was transferred and posted at Aurangabad as Superintending Engineer, Public Works Circle, Aurangabad. He resumed duties of the said post on 22-10-2021. Hardly about 9

months thereafter the applicant was served with order of transfer dated 22-07-2022 which has been impugned in the present O.A. While presenting the O.A. applicant had also prayed for interim relief thereby staying effect and operation of the impugned order. As contended by the applicant, by that time, he had not handed over the charge of his existing post. In the circumstances, interim order was passed on 22-07-2022 thereby directing the respondents to keep the impugned orders in abeyance.

4. Shri Deshmukh, learned Counsel appearing for the applicant assailed the impugned orders on various grounds. Learned Counsel submitted that as per the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "the Transfer Act" for short), the normal tenure of Government servant in one post at one station is 3 years. Applicant has been transferred when he has served on the existing post hardly for 9 months. Learned Counsel submitted that ordinarily the transfers are made in the month of May and June. As such, according to learned Counsel to effect transfer at the end of July has to be termed as mid-tenure and mid-term transfer. Learned Counsel

submitted that under the provisions of the Transfer Act, respondents are not precluded from effecting midterm and mid tenure transfers, provided such reasons exist. Learned Counsel referred to Section 4(4) and 4(5) of the Transfer Act wherein such provisions exist. Learned Counsel then read out the order whereby the applicant has been transferred and also the order of transfer pertaining to respondent no.3. Learned Counsel submitted that considering the contents of both these orders and thereafter the contentions raised in the affidavit in reply filed on behalf of the respondents, it is quite evident that the only reason for transferring the applicant from his existing post to another post is to accommodate respondent no.3 in his place. Learned Counsel submitted that applicant cannot be transferred mid-term and mid tenure in view of the provisions of section 4(4) and 4(5) of the Transfer Act for such reason. Learned Counsel submitted that, the Hon'ble High Court as well as the Hon'ble Supreme Court have time and again deprecated such practice effecting transfers for accommodating a particular employee or a particular officer.

5. Learned Counsel pointed out that respondent no.3 was also promoted along with the applicant vide the same order

dated 21-10-2021 and was posted as Superintending Engineer (Vigilance & Quality Control), Aurangabad Circle. Learned Counsel submitted that thereafter on request of respondent no.3 that he shall be given posting on the post of Superintending Engineer, Public Works Circle, Aurangabad, the applicant has been shifted from his existing post and transferred to the post of Superintending Engineer, PMGSY, Aurangabad. Learned Counsel submitted that the transfer effected of the applicant on the aforesaid ground is in utter violation of the provisions under the Transfer Act as well as the Constitutional provisions. Learned Counsel submitted that there was no special reason for accepting the request of respondent no.3 and for that purpose to shift the applicant from his existing post when he has worked only for the period of 9 months on the said post.

6. Learned Counsel taking me through the noting produced on record by the State submitted that identical reasons are given in both the impugned orders that the transfers are effected on administrative grounds but no administrative grounds are elaborated in both the orders. Learned Counsel submitted that the transfer order which has been issued on request made by respondent no.3 cannot be

said to be a Transfer Order on administrative ground or in public interest. Learned Counsel pointed out that in the order of transfer pertaining to respondent no.3 along with the ground that of administrative exigency, it has also been specifically mentioned that the said transfer is being made on his request. Learned Counsel submitted that such an order of transfer is illegal and cannot be sustained. He has, therefore, prayed for quashment of both the orders of transfer.

7. Shri V.R.Bhumkar, learned P.O. appearing for the respondent authorities reiterated the averments taken in the affidavit in reply filed on behalf of the respondents. Learned P.O. submitted that transfer of the applicant as well as transfer of respondent no.3, both have been made on administrative grounds considering the administrative exigencies and by following the procedure prescribed therefor. Learned P.O. submitted that the proposals for transfer of these officers were duly placed before the Civil Services Board and the Civil Services Board had recommended the transfers of both these officers. The highest administrative authority i.e. Hon'ble Chief Minister has approved both the proposals and only thereafter the

transfer orders have been issued. Learned P.O. submitted that when the transfers are made of such officers working in the higher cadre, various aspects are considered and many a times such decisions are required to be taken in the interest of the State. Which officer will be best suited for a particular post is to be decided by the State authorities and accordingly if the decisions are taken no mala fides can be attributed to such decisions taken by the State.

8. Learned P.O. submitted that the Civil Services Board had taken into account all these aspects and only on its recommendations the proposal was presented for approval before the authorities concerned and accordingly it has been approved by the highest administrative authority. Learned P.O. pointed out that there are specific directions by the Hon'ble Chief Minister to post the applicant in PMGSY at Aurangabad and accordingly, the order of transfer has been issued. Learned P.O. submitted that even the applicant has not alleged any mala fides on the part of these officers. In the circumstances, the impugned orders must be held to have been passed for the reasons as stated therein i.e. on administrative grounds and no interference is required in the orders so passed.

9. Learned P.O. further submitted that the applicant has been posted on vacant post. He further submitted that from last 2 years the said post is laying vacant. Referring to the provision under sub section (4)(i) of section 4 of the Transfer Act, learned P.O. submitted that as mentioned in the said sub section, if transfer is made on vacant post that falls within the competence of the State Government or the competent authority and such orders of transfer made in the larger public interest cannot be interfered with. Learned P.O. submitted that there was a request from respondent no.3 and when the decision was taken of transfer of the present applicant to the PMGSY, the post fell vacant and respondent no.3 has been transferred to the said post. Learned P.O. submitted that the O.A. is without substance and therefore prayed for rejecting the same.

10. Shri J.B.Choudhary, learned Counsel appearing for respondent no.3 resisted the contentions raised in the O.A. and supported the orders of transfer impugned in the present O.A. Learned Counsel submitted that the Government servant can be transferred even mid-term and mid tenure on vacant post by virtue of Section 4(4)(i) of the Transfer Act. Learned Counsel in support of his contention relied upon the

judgment of this Tribunal delivered at Principal Seat at Mumbai in O.A.No.274/2020 decided on 22-12-2020. Learned Counsel taking me through the observations made in the said judgment, in context with the facts of the said case, submitted that the applicant in the said case was also transferred on a vacant post and her challenge to the said transfer was turned down by the Tribunal by referring to the provisions under section 4(4)(i) of the Transfer Act and more particularly having regard to the fact that if the transfer is made on any of the grounds as are mentioned in the said subsection, same cannot be termed as illegal or untenable transfer order. Learned Counsel submitted that in the present matter also since the applicant has been transferred on vacant post there cannot be any objection from him on the said ground. Learned Counsel further submitted that no prejudice is likely to be caused to the applicant because of his present transfer. Learned Counsel pointed out that applicant is kept at Aurangabad itself and has been posted on equivalent post. Learned Counsel submitted that unless the case is made out showing prejudice caused, ordinarily, there shall not be any reason for causing any interference in such order. Learned Counsel has also relied upon the order passed by this Tribunal also in O.A.No.1001/2022. Learned

Counsel submitted that, identical fact situation is existing in the matter and as such view as has been taken by the Tribunal while deciding the said matter, squarely applies to the facts of the present case. Learned Counsel on the aforesaid grounds prayed for rejecting the O.A.

11. I have duly considered the submissions advanced by the learned Counsel appearing for the parties and the learned P.O. appearing for the State authorities. It is not in dispute that applicant came to be transferred at Aurangabad on the existing post on promotion. He resumed the charge of the said post on 22-10-2021. I deem it appropriate to reproduce the entire text of the impugned order dated 22-07-2022 whereby the applicant has been transferred, which reads thus:

“अधीक्षक अभियंता (स्थापत्य) संवगातील
अधिकाऱ्यांच्या बदल्या / पदस्थापना.

महाराष्ट्र शासन

सावर्जनिक बांधकाम विभाग

शासन आदेश क्रमांक टोएफएस-१२२२/प्र.क्र. ()/ -

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12. Since the order of transfer pertaining to respondent no.3 has also been questioned in the present O.A., it would be necessary to see the text of the said order also, which reads thus:

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रू ष्ट्र च www.maharashtra.gov.in
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13. In both the above orders reference is given of the provisions under section 4(4) and 4(5) of the Transfer Act. Section 4(1) of the Transfer Act says that, "no Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3".

Section 3(1) of the Act provides that, “*for All India Service Officers and all Groups A, B and C State Government Servants or employees, the normal tenure in a post shall be three years*”.

Sub section 2 of Section 4 provides that, “*transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalised by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be : Provided that, any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.*”

Section 4(4) states that, “*the transfers 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) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave ;

(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”.

Sub-section 5 provides that, “*notwithstanding anything contained in section 3 of this section, the competent authority may, in special cases, after recording reasons in writing and with the prior 1 [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.*”

14. In light of the provisions as aforesaid, it has to be scrutinized whether the orders of transfer impugned in the present O.A. can be sustained. After having perused the impugned orders of transfer, in fact, it is difficult to record any concrete conclusion as to which of the order is issued first and which is issued subsequently. However, from the contents of the order of transfer pertaining to respondent no.3, it can be gathered that the decision to shift the applicant was taken first and thereafter the transfer order pertaining to respondent no.3 has been issued. However, when I perused the documents and the notings which are

produced on record by the learned P.O., it is revealed that the file pertaining to the request made by respondent no.3 for giving him posting in place of the applicant on the post of Superintending Engineer, Public Works Circle, Aurangabad, perhaps, was moved first and in the said file the remarks came to be noted for transfer of the applicant on the post of Superintending Engineer, PMGSY, Aurangabad. Thus, the vacancy was created for posting respondent no.3 on the said post held by the applicant.

15. Documents on record reveal that respondent no.3 had written a request letter to the Government requesting to give him posting as Superintending Engineer, P.W. Circle, Aurangabad. The said file also contains the letter dated 15-07-2022 written by Shri Abdul Sattar and Shri Sandipan Bhumare, who are presently cabinet ministers. The letter is addressed to Hon'ble the Chief Minister wherein both the Hon'ble Ministers have sought transfer of the applicant alleging that in his regime the development works are stopped and further that the applicant does not remain at the headquarter, his manner of working is arbitrary and there is discontentment amongst the representatives of

people and the contractors in respect of working style of the applicant. In the said letter itself the name of respondent no.3 has been proposed by the Hon'ble Ministers for to be posted in place of the applicant as the Superintending Engineer stating that in the past he has worked on the post of Executive Engineer successfully and has completed many pending projects and further that he has good control over the administration.

16. I deem it appropriate to reproduce hereinbelow the proposal which was processed by way of circulation and eventually was approved by all the authorities concerned including the Hon'ble Chief Minister, which reads thus:

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17. On 18-07-2022 the aforesaid proposal was moved. While approving the said proposal the Hon'ble Chief Minister has recorded the following directions also:

“श्री बडे यांची बदली प्रधानमंत्री ग्राम सडक योजना औरंगाबाद या रिक्त पदावर करण्यात यावी.”

18. Now, it would be useful to see the notings in the file pertaining to the transfer of the applicant. The opening paragraph of the said noting reveal that the said proposal was moved in pursuance of the request received from Shri Dinesh N. Nandanwar, Superintending Engineer, P.W. Circle, Akola and Shri Babasaheb N. Thorat, Superintending Engineer, National Highways Circle, Aurangabad. The aforesaid proposal though was moved through Circulation seeking necessary directions from authorities concerned in respect of requests received from Shri Dinesh Nandanwar and Shri Babasaheb Thorat while proposing transfers and postings of said Shri

Nandanwar and Shri Thorat, transfer of the applicant has also been proposed from his existing post to the post of Superintending Engineer, PMGSY, Aurangabad. I deem it appropriate to reproduce hereinbelow the proposal as was moved for approval of the competent authority. It reads thus:

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19. Aforesaid proposal has been approved by the Hon'ble Chief Minister. From the aforesaid information which is revealed from the documents produced by the respondents, it is clearly and unambiguously revealed

that since it was resolved to post respondent no.3 as Superintending Engineer, P.W. Circle, Aurangabad, the applicant was shifted from the said post and was given posting on the vacant post of the Superintending Engineer, PMGSY, Aurangabad. Thus, there remains no doubt that midterm and mid-tenure transfer of the applicant is made only with an object to accommodate respondent no.3 on the said post. In the transfer orders of both the applicants and respondent no.3, though it has been mentioned that the transfers are being made in public interest and on the administrative grounds, the real reason for transferring the applicant is as mentioned hereinabove to accommodate respondent no.3 on his post.

20. The question arises whether the aforesaid reason would fall within the contours of administrative exigency so as to invoke provisions under section 4(4)(i) and 4(5) of the Transfer Act. The Hon'ble Bombay High Court way back in the year 1984 in the case of **Sheshrao Nagarao Umap V/s. State of Maharashtra [1984 (2) SLR 328 (Bom.)]**, has held the transfer of the petitioner therein which was made to accommodate the respondent no.4

therein, as wholly mala fide. Hon'ble Division Bench of the High Court has observed in the aforesaid judgment 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 utilise the services of its employees. However, this power must be exercised honestly, bonafide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, that is to accommodate another person for undisclosed reasons.”

21. In the instant matter also though in both the orders of transfer words have been used as, “in public interest and on the administrative grounds”, neither any public interest is revealed nor any administrative ground is made out by the respondents in their affidavit in reply or is noticed in the proposals which were moved for making such transfers.

22. It has been vehemently argued by the learned P.O. that the Civil Services Board which is competent statutory body has recommended transfers of applicant as well as respondent no.3 and the Government has thus followed the guidelines laid down by the Hon'ble Apex Court in the case of **T.R.S. Subramanian V/s. Union of India [2014 (1) SLR 1 (SC)]**. Learned P.O., however, could not bring to my notice the reasons, if any, assigned by the Civil Services Board for recommending the transfers of the applicant and respondent no.3.

23. In case of **T.R.S. Subramanian V/s. Union of India**, cited supra, the Hon'ble Apex Court thought it necessary to direct the State Governments to set up Civil Services Board (CSB) with an object that the civil servants must get stability of tenure and are not frequently transferred at the whims and fancies of the executive head for political and other considerations and not in the public interest. The Hon'ble Apex Court directed to set up Civil Services Board consisting of high ranking in service officers who are expert in their respective fields to guide and advise the State Government on all service matters especially of transfers,

postings and disciplinary actions etc. The Hon'ble Apex Court has observed that, though the views and advice given by the Civil Services Board also could be overruled by the political executives, but by recording reasons, which would ensure good governance, transparency and accountability in governmental functions. The Hon'ble Apex Court has also observed that the Civil Services Board consisting of high ranking in service officers and the experts in various fields like administration, management, science, technology, could bring in more professionalism, expertise and efficiency in governmental functioning. Accordingly, it is a matter of record that in the State of Maharashtra also the Civil Services Board has been constituted. The object and purpose behind the establishment of such Civil Services Board whether is accomplished in true sense however can be a matter of debate.

24. It is not the case that the Government itself thought it necessary to bring respondent no.3 on the post held by the applicant. In their affidavit in reply also State authorities have not taken any such plea that there was any special reason behind making mid-term transfer of

respondent no.3 or that respondent no.3 was having some sort of expertise necessary for the post of Superintending Engineer, PWD which the applicant does not have and hence out of that necessity a decision was taken by the State to bring respondent no.3 on the post of the applicant.

25. It was contended by Shri J.B.Choudhary, learned Counsel appearing for respondent no.3 that respondent no.3 had done excellent work when he was Executive Engineer, PWD, Aurangabad and hence the Hon'ble Ministers, namely, Shri Abdul Sattar and Shri Sandipan Bhumare, both, vide their letter dated 15-07-2022 written to the Hon'ble Chief Minister have recommended for posting of respondent no.3 as Superintending Engineer, P.W. Circle, Aurangabad. Learned Counsel further submitted that the Hon'ble Ministers have also stated in their aforesaid letter that the applicant is not a fit person on the post of Superintending Engineer and because of his working style, the projects in the PWD Circle, Aurangabad are hampered.

26. It is true that, two Hon'ble Ministers have written letter to the Hon'ble Chief Minister on 15-07-2022 having

contents as aforesaid; yet, it does not appear that the aforesaid is the reason for transferring respondent no.3 on the post held by the applicant.

27. I have reproduced hereinabove the entire text of the proposal in respect of transfer of respondent no.3 which has been ultimately approved by all the authorities concerned including the Hon'ble Chief Minister. In the said proposal, it is nowhere contended that the Hon'ble Ministers have recommended for transfer of respondent no.3 on the post of Superintending Engineer, PW Circle, Aurangabad. In the entire said proposal, letter dated 15-07-2022 written by the Hon'ble Ministers has not been even referred to. The proposal so moved unambiguously reveals that it was moved as per the request letter dated 12-05-2022 of the applicant. In the second paragraph of the proposal, it is stated that since respondent no.3 had made a request vide his letter dated 12-05-2022, pursuant to that the proposal is submitted for consideration of the Civil Services Board for its onward submission to the competent authority. It is significant to note that even in the order dated 21-07-2022, it has been specifically mentioned that the transfer of the

applicant is being made on his request. It has to be further noted that the aforesaid fact has been re-affirmed as respondent no.3 is not held entitled for any transfer allowance since it was a request transfer.

28. Considering the circumstances discussed hereinabove, there remains no doubt that though the order of transfer is shown to have made in public interest and for administrative reasons, the request made by the applicant vide his letter dated 12-05-2022 is the only and real reason behind transferring respondent no.3 on the post of the applicant.

29. Now, it would be appropriate to see and understand the proposal which was circulated for the transfer of the applicant. I have reproduced the entire text of the same hereinabove. In the entire said proposal, it is nowhere mentioned or explained why the applicant is being shifted from his existing post of Superintending Engineer, PW Circle, Aurangabad. The reason for transfer of the applicant from his existing post is provided in column 2 of the proposal submitted in the tabular format which reveals that since it has been resolved to post respondent no.3 on the post of the

applicant, it has become necessary to post the applicant on some different post and in the last column of the tabular format, the recommendation of the Civil Services Board is recorded that the applicant is recommended to be posted on the vacant post in PMGSY, Aurangabad. It is thus evident that the only reason for shifting the applicant from his existing post is that respondent no.3 is to be accommodated on his post. It is not the case that the applicant is unfit to be continued on the said post or that in his regime the ongoing projects in PW Circle, Aurangabad are hampered or that the applicant does not have a good rapport with the representatives of people i.e. with the MPs, MLAs and Hon'ble Ministers. Thus, though in the order of transfer pertaining to the applicant also it has been mentioned that it is being made in public interest and on administrative grounds, in fact, the real reason behind shifting applicant from his existing post is to accommodate respondent no.3 in his place.

30. The question arises whether the transfers either of the applicant or of respondent no.3 can be held to have been made in public interest or on administrative ground. From the facts and circumstances which have

come on record and which I have discussed hereinabove, I reiterate that the only reason for transferring the applicant is to accommodate respondent no.3 in his place. The transfer made on the aforesaid ground in no case can be said to have been made in public interest. Similarly, the transfers made on such ground would also not fall in the category of transfer made on administrative ground or for administrative need.

31. The power of the administrative authorities to give the request posting cannot be disputed. However, while considering the request of one Government officer to give him choice posting, it shall not be detrimental to the interest of other Government officer. The Government has to give equal treatment to applicant and respondent no.3. In the present matter, it is obvious that the Government has unduly favoured respondent no.3. The respondents could not have transferred the applicant when he has not completed his normal tenure of 3 years on the existing post. A Government servant, though, can be transferred even before completing his ordinary term, for effecting such transfer, there must be valid reasons or else such transfer would amount to arbitrary exercise of

power by the Government. The transfer made of the applicant only for accommodating respondent no.3 in his place cannot be held a valid ground for transfer and in no case can fall within the ambit of Section 4(4) and 4(5) of the Transfer Act. When the Transfer Act contains a specific provision that ordinarily no transfer will be made within 3 years of posting of an employee at any place then the said restriction will operate as a bar on the exercise of power by the respondents before expiry of the specified term of the applicant on the existing post. No doubt, the power of ordering transfers can be exercised even before expiry of the specified term in the exigencies of the administration. However, as has been elaborately discussed by me hereinabove, the respondents have failed in establishing that the transfer made of the applicant is in the public interest or for administrative reasons. In the circumstances, the order of transferring the applicant is certainly an arbitrary exercise of power by the respondents. It is well settled that a transfer order which is made to accommodate any employee is not a bona fide exercise of power. As held by the Hon'ble Division Bench of the Bombay High Court in case of **Sheshrao Nagarao Umap V/s. State of Maharashtra,**

cited supra, the midterm transfer effected only to accommodate any employee will be mala fide. Such an order cannot be sustained and deserves to be quashed and set aside.

32. In the affidavit in reply, respondents have referred to the judgment of the Hon'ble Apex Court in the case of **T.R.S. Subramanian V/s. Union of India [2014 (1) SLR (SC)]**. If the entire text of the said judgment is perused, the ground on which and the manner in which the applicant has been transferred is disapproved by the Hon'ble Apex Court. The entire said judgment focuses on the issue that if the transfers are made on the whims and fancies of the executive heads for political and other considerations and not in public interest, there is a need of an independent body and hence the directions came to be issued in the said judgment for constitution of Civil Services Board in every State. It has to be further stated that such transfers which are made to accommodate a government servant in the good books of the authorities in power, violates the constitutional rights under Article 14 and 16 of the Constitution of India of the other persons who suffer transfer. It amounts to giving unequal treatment to the officers who are equal to each other. Had it

been the case that respondent no.3 is possessing some extra qualification and/or expertise which is required for an officer to be posted as Superintending Engineer, P.W. Circle and which the applicant does not possess and on that ground if his transfer would have been made, it could have been certainly said that it is in public interest. However, as I have noted earlier, no such ground is made out in the order of transfer as well as in the affidavit in reply submitted on behalf of the State authorities. Similarly, no reasons are assigned for shifting the applicant mid-term and mid-tenure on the basis of which it could have been said that it has been done in public interest or as an administrative exigency.

33. In the judgment in the case of **T.R.S. Subramanian**, cited supra, while emphasizing the need for minimum tenure, the Hon'ble Supreme Court has observed that, it would not only enable civil servants to achieve their professional targets but also help them to perform their functions as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency.

34. Proviso to Section 4(4) of the Transfer Act provides that the transfer may be made any time in the year to the newly created post or to the vacant post. According to the learned P.O. and learned Counsel for respondent no.3 Shri Choudhary, the respondents were within their right and authority to transfer the applicant to a vacant post of Superintending Engineer in PMGSY, Aurangabad. It was their further contention that in the circumstances, the applicant cannot challenge his transfer on the ground that it is a mid-term transfer. In support of their contention respondents have relied upon the judgment of this Tribunal in case of **Smt. Swati Madhav Sathe V/s. Government of Maharashtra in O.A.No.274/2020** delivered on 22-12-2020. As against it, learned Counsel for the applicant has cited the judgment of the Hon'ble Division Bench of the Bombay High Court in the case of **Purushottam Govindrao Bhagwat V/s. State of Maharashtra & Ors. [2012 (3) Bom. C.R. 442]**. I have gone through both the aforesaid judgments. This Tribunal in O.A.No.274/2020 has rightly relied upon the provisions under section 4(4)(i) of the Transfer Act while rejecting the application of the applicant therein, however, the respondents have failed in appreciating that

in the said matter, the applicant therein, as observed by the Tribunal had worked for more than 8 years in the same region and thereafter she was transferred to a post which was lying vacant. The Hon'ble Division Bench of the Bombay High Court has interpreted the said provision in paragraph 13 of its judgment. Hon'ble Division Bench of the Bombay High Court has observed that clause (i) of the proviso to Sub Section (4) of Section 4 which permits the transfer to be made any time on the ground of eventualities mentioned therein will have to be read in a manner that the transfer on the grounds mentioned in clause (i) of proviso to Sub Section (4) of Section 4 would be permissible at any time of the year and not necessarily in April or May when a Government servant has completed his tenure of posting. Hon'ble Division Bench has further observed that if it is not read in that manner, the very purpose of the protection which is granted in sub section (i) of Section 4(4) would become redundant and nugatory. Hon'ble Division Bench has interpreted clause (i) of the proviso to sub section (4) stating that if transfer is necessitated on account of any eventualities stated in clause (i) as to proviso to sub section (4) it can be made at any time in the year and not

necessarily in April or May, however, “only on completion of tenure of the Government servant.” It is thus evident that the said proviso would not apply in a case where the Governemnt servant had not completed his ordinary tenure on his existing post. It is thus evident that the said provision cannot be applied in the instant matter.

35. Another judgment was also referred delivered by this Tribunal in O.A.No.1001/2022 in case of Dr. Kanchan Narayan Wanere V/s. State of Maharashtra & Ors. decided on 28-11-2022. It has to be stated that facts in the said matter are quite distinguishable with the facts existing in the present matter. In the said matter, as has been noted in the said order all necessary details were provided justifying the transfer of the applicant therein and one more reason was there that it was not the applicant in that matter alone but another 15 officers of the same rank were also transferred along with the said applicant and the said decision, as observed by the Tribunal, was in real public interest and on administrative ground. In the present matter, no such ground has been made out.

36. After having considered the entire facts and circumstances existing in the present matter, I have reached

to the conclusion that the applicant has been transferred vide the impugned order only to accommodate respondent no.3 and as such the transfer so directed cannot be said to have been made in public interest or out of administrative exigency. It's an arbitrary exercise of power by the respondents. For the reasons elaborated hereinabove, both the orders impugned in the present O.A. deserve to be quashed and set aside and are accordingly set aside. There shall be no order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 16.03.2023.