

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.178 OF 2019**

**(Subject :- Transfer)**

**DISTRICT : LATUR**

**Swapnil s/o Vitthalrao Pawar,** )  
Age:32 years, Occu: Service as )  
Tahsildar (Food Grain Purchase )  
Officer), R/o Shashkiya Colony, )  
Barshi Road, Latur, Dist. Latur. )...**Applicant**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, )  
Revenue and Forest Department, )  
Mantralaya, Mumbai-32. )
2. **The Collector, Latur,** )  
Barshi Road, Latur. )...**Respondents**

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**APPEARANCE :- Shri Kiran G. Salunke, the learned Advocate for the Applicant.**

**Smt. Priya R. Bharaswadkar, the learned Presenting Officer for the Respondents.**

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

**RESERVED ON :- 07.03.2019.**

**PRONOUNCED ON :- 08.03.2019.**  
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**O R D E R**

1. Heard Shri Kiran G. Salunke, learned Advocate for the Applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the Respondents.

2. The Applicant has challenged the transfer order dated 25.02.2019. Facts and grounds of challenge to the order of transfer are summarized as follows:-

- (1) The Applicant was transferred to Mahur on 26.05.2017 and by modifying the said order he has posted at Loha by order dated 29.05.2017 and again posted by order dated 30.05.2017 at Latur, where he is serving.
- (2) By impugned order he is transferred from Latur to Kaij.
- (3) The transfer is in violation of Section 4(4) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short 'ROT Act, 2005') because special reasons and exceptional circumstances for transferring him are not in existence nor are recorded.
- (4) Applicant's transfer does not fall in the category of transfer liable to be effected to comply with the directions of Election Commission.

3. Learned P.O. for the Respondents was called upon to produce the proposal sent by Divisional Commissioner, Aurangabad, proposing transfer of officers who were due for transfer and also the copy of minutes of Civil Services Board.

4. Learned P.O. for the Respondents has produced the copies of documents called for, and this Tribunal has perused those.
5. The proposal sent by the Divisional Commissioner, Aurangabad reveals that one Smt. Ashwini Damare was on leave and it was proposed that she may be posted as Tahsildar, Khultabad which post was to fall vacant due to transfer of Shri Rahul Gaikwad.
6. In the said proposal sent by Divisional Commissioner, Aurangabad, Applicant's transfer was not proposed.
7. At the Mantralaya, Civil services Board considered various proposals for transfer. Though the Applicant was not due for transfer, his transfer was proposed before Civil Services Board on the ground that vacancy relating to assignment of election duty at Kaij was required to be filled in.
8. The proposal as approved/recommended by Civil Services Board was approved by Hon'ble Minister and by Hon'ble Chief Minister.
9. Learned P.O. for the Respondents has addressed to justify that mid-term transfer for filling in the vacancy at Kaij to cater to election duty could be filled in by taking recourse to first proviso of Sub Section 4 of section 4 of ROT Act, 2005.
10. This Tribunal has examined the merit of impugned transfer in the light of record before the Civil Services Board and list of officers whose transfers were proposed by Divisional Commissioner, Aurangabad.

11. What emerges from record is as follows:-
- (a) The vacancy at Kaij has arisen because of cancellation of transfer of Smt. Ashwini Damare, who apparently declined to join and was on leave.
  - (b) Transfer can be made even there being exceptional circumstances as prescribed in clause (i) of provision of Sub Section 4 of Section 4 in the circumstances mentioned therein which are as follows:-

*“(4) The transfer of Government servants shall ordinarily be made only one 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;*

*(quoted from Text of ROT Act, 2005)*

12. Now this Tribunal has to see as to whether occurrence of a vacancy which has occurred due to failure/declinment of a Government servant to join on transfer/ on a particular post, would constitute a vacancy as is contemplated by clause (i) of proviso of Section 4(4) which is quoted in foregoing paragraph no.11.

13. On plain reading of clause (i) of proviso, it is seen that for filling the post which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave, the mid-term transfer is permissible.

14. In the present case, the transfer is being done because a candidate who was transferred did not join. This type of vacancy would not *ipso-facto* fall in the category of proviso (i) supra. This would not mean that said vacancy can never be filled in by transfer. It is obvious that each and every vacancy is to be filled in by transfer. However, clause (i) of said proviso is not available for using it as an absolute right. Whenever, filling of the vacancy does not fall in the proviso, all that is required is to record the reasons to conform to the mandatory requirement under section 4(4) and 4(5) of ROT Act as against an officer who is chosen to fill in such vacancy.

15. Transfer in a post on account of filling of vacancy which may arise due to transfer of Government servant, which is necessitated due to compliance of directives of Election Commission, may constitute adequate reasons but not essentially and every time and in an unqualified manner. Therefore, every vacancy arising on the eve of election would not and does not *ipso-facto* constitute an exceptional circumstances. Whenever an officer is to be transferred mid-term to occupy a vacancy which has arisen due to transfer of another officer would depend upon facts of the officer who is being transferred mid-term.

16. In the present, officers almost 47 in number (only from Marathwada region) were to be transferred as proposed by Divisional Commissioner, Aurangabad. When proposal for transfer of about 47 officers were being considered, recording of reasons and existence of exceptional

circumstances were definitely needed for choosing the Applicant who was not due for transfer and other officers due for transfer were available.

17. Had it been the case that the list of 47 candidates due for transfer was not in existence, the State Government could have chosen anyone including the Applicant for posting and no questions could have been raised, however on facts situation is otherwise.

18. In the background that the recommendation of list of 47 candidates, due for transfer was on record, exceptional circumstances or special reasons which had led to mid-term or mid tenure transfer of Applicant were bound to be recorded, have not been recorded.

19. Selecting the Applicant though not due for transfer though as much as 47 candidates are available for transfer would essentially amount to colorable excessive of power to transfer.

20. In the result, the impugned order turns out to be conclusively passed without recording the reasons and existence of special reasons and exceptional circumstances.

21. Hence impugned order is found to have been issued in utter violation of Section 4(4) and 4(5) of ROT Act, 2005.

22. Hence, Original Applicant succeeds. Impugned order is quashed and set aside.

23. The Applicant be permitted to report on the post earlier held by him forthwith.

24. In the facts and circumstances, the parties are directed to bear own costs.

**(A.H. JOSHI,J.)**  
**CHAIRMAN**

**Place:- Aurangabad**

**Date :- 08.03.2019**

SAS. O.A.No.178/2019.Transfer