

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 614/2019 (S.B.)**

Mr. Ranjot Singh S/o Nirmal Singh Sokhi,  
Aged about 27 years, Occ. Junior Geologist,  
Geology and Mining Department,  
r/o Behind Chatrban Flat Jaganath Baba Nagar,  
Datle Road, Chandrapur.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through Secretary, General Administration Department  
Mantralaya, Mumbai-32.
- 2) State of Maharashtra,  
through Industries, Energy and Labour Department,  
Mantralaya, Mumbai.
- 3) Directorate of Geology and Mining,  
Government of Maharashtra, through  
its Director, 27 Khanij Bhavan, Cement Road,  
Shivaji Nagar, Nagpur.

**Respondents.**

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**Shri M.M., A.M. and Ms. A.M. Sudame, Advocates for the applicant.**

**Shri M.I. Khan, P.O. for the respondents.**

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**WITH****ORIGINAL APPLICATION No. 597/2019****With CIVIL APPLICATION Nos. 307/19 & 325/19 (S.B.)**

Mrs. Meena Shamrao Nikhare,  
Aged about 50 years, Occ. Deputy Director  
Geology and Mining Department,  
r/o Plot No.19 Malabar Colony, Seminary Hills,  
Nagpur

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through Secretary, General Administration Department  
Mantralaya, Mumbai-32.
- 2) State of Maharashtra,  
through Industries, Energy and Labour Department,  
Mantralaya, Mumbai.
- 3) Directorate of Geology and Mining,  
Government of Maharashtra, through  
its Director, 27 Khanij Bhavan, Cement Road,  
Shivaji Nagar, Nagpur.

**Respondents.**


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**S/Shri M.M., A.M. Sudame, Advocates for the applicant.  
Shri M.I. Khan, P.O. for the respondents  
Shri P.S. & Mrs. K.P. Wathore, Advocates for Intervener.  
S/Shri Bharat Kulkarni, S. Pande, Advocates for Intervener (R/4).**

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**WITH**  
**ORIGINAL APPLICATION No. 617/2019**

**With CIVIL APPLICATION NO.326/2019 (S.B.)**

Suresh S/o Shriram Naitam,  
Aged 37 years, Occ. Service,  
R/o C/o Shekhar Joglekar,  
New Friends Colony, Khat Road,  
Bhandara, Tq. & Dist. Bhandara.

**Applicant.****Versus**

- 1) State of Maharashtra,  
General Administration Department  
Mantralaya, Mumbai-32  
through Secretary.
- 2) State of Maharashtra,  
in the Department of Industries,  
Energy and Labour,  
Mantralaya, Mumbai.  
through its Secretary.

3) Directorate of Geology and Mining,  
Government of Maharashtra, through  
its Director, 27 Khanij Bhavan, Cement Road,  
Shivaji Nagar, Nagpur  
through its Director.

**Respondents.**

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**V.S. and R.V. Kukday, Advocates for the applicant.**

**Shri M.I. Khan, P.O. for the respondents.**

**Shri P.S. Wathore, Advocate for Intervener.**

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**Coram :- Hon'ble Shri Anand Karanjkar,  
Member (J).**

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**Date of Reserving for Judgment : 14<sup>th</sup> October, 2019.**

**Date of Pronouncement of Judgment : 22<sup>nd</sup> October, 2019**

**COMMON JUDGMENT**

**(Delivered on this 22<sup>nd</sup> day of October,2019)**

Heard Shri A.M. Sudame, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents (in O.A.614/2019), Shri A.M. Sudame, Id. counsel for the applicant, Shri M.I. Khan, Id. P.O. for the respondents and Shri P.S. Wathore, Id. counsel for Intervener and Shri Bharat Kulkari, Id. counsel for Intervener (R/4) (in O.A.597/2019) and Shri V.S. Kukday, Id. counsel for the applicant, Shri M.I. Khan, Id. P.O. for the respondents and Shri P.S. Wathore, learned counsel for Intervener (in O.A.617/2019).

2. All the applicants are transferred by the common transfer order dated 31/07/2019 and as the questions involved in all applications are identical, therefore, all applications are decided by this common order.

3. In O.A.597/2019 it is contention of the applicant that in 1996 she was appointed as Junior Geologist, Grade-B at Chandrapur. On 17/4/2014 the applicant was promoted as Deputy Director, Geology and Mining and she was working at the Head Office, Nagpur. Thereafter on 26/6/2018 the applicant was transferred from the Head Office to the office of Regional Director, Geology and Mining, Nagpur.

4. It is grievance of the applicant that vide order dated 31/07/2019 all of a sudden before completion of the normal tenure she is transferred from Nagpur to Chandrapur and therefore, the transfer is in violation of Section 4 (4) & (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short "Transfers Act,2005"). It is submission of the learned counsel for the applicant that in the transfer order no reason is mentioned why the applicant was transferred before completion of the normal tenure in the office of Regional Director, Geology and Mining, Nagpur. The order is totally silent and without disclosing any reason the applicant is transferred, therefore, the impugned order of transfer is illegal. The learned

counsel for the applicant has placed reliance on the Judgment in case of **Shri S.B. Bhagwat Vs. State of Maharashtra & Ors.,2012 (3) Mh.L.J.,197, Kishor Shridharrao Mahaske Vs. Maharashtra OBC Finance & Development Corporation, Mumbai & Ors., 2013 (3) Mh.L.J.,463**, order in O.A. 702/2019 decided on 09/10/2010 by Single Bench, M.A.T., Mumbai, Bench at Nagpur and order in O.A. 527/2018, decided on 19/11/2018 by the Single Bench of M.A.T., Mumbai. It is contention of the applicant that her transfer is before completion of normal tenure and mid-term transfer, therefore, it was duty of the Transferring Authority and the Superior Authority to record special reasons to show administrative exigency for the transfer and for this reliance is placed on the Judgment in case of **State of Maharashtra & Ors. Vs. Dr. (Ms.) Padmashri Shriram Bainade & Ors., 2015 (2) Mh.L.J.,679**.

5. This application is opposed by the respondents vide reply which is at page no.31. It is contention of the respondent nos.2&3 that being a Government servant the applicant was under obligation to resume the duty as per the transfer order. The applicant has disobeyed the transfer order and for this reason the application is liable to be dismissed. The second contention is that Shri S.P. Awale is transferred from Aurangabad to Nagpur on the post held by the applicant, therefore, he is necessary party and as he is not joined,

therefore, the application is liable to be dismissed. It is contention of the respondent nos.2&3 that correct information was not placed before the Hon'ble Minister for the approval of the transfers and therefore the Hon'ble Minister after taking the Note of the fact, passed the transfer orders considering the Station seniority of the Government Officers who had completed the normal tenure at one Station. The application is mainly attacked on the ground that the applicant was transferred to Nagpur on 8/8/2013 and since then she is working at Nagpur. It is contended that though the applicant was posted in Regional Office at Nagpur, but in strict sense the applicant had already completed the period of three years at Nagpur in the Head Office and since 1/8/2018 the applicant is working in the Regional Office. It is submitted that the Hon'ble Minister has taken a Note of the fact that detailed information was not given by the concerned officers to the Government and therefore, after examining the facts the applicant is transferred by the Hon'ble Minister and there is no illegality in it.

6. The application is also attacked on the ground that the change of posting of the applicant from the Head Office, Nagpur to Regional Office, Nagpur is not transfer in the eyes of law and therefore, there is no illegality in the impugned order of transfer. The learned P.O. has placed reliance on the Judgment in case of **Anil Marotrao Khobragade Vs. State of Maharashtra & Ors., 2010 (2)**

**Mh.L.J.,319** and the Judgment in Writ Petition No.4368/2014 in case of **Chandrakant S/o Umajirao Mehetre Vs. State of Maharashtra**, decided on 20/01/2015. It is submission of the learned P.O. that if entire period during which the applicant enjoyed posting at Nagpur is considered, then that period is about six years, therefore, there is no illegality in the transfer.

7. In this case Shri S.P. Awale who is transferred on the post of the applicant, has submitted application for joining him as Intervener in the matter and he has also attacked the transfer of the applicant on the same grounds raised by the respondents no.2 & 3.

8. In O.A.No. 614/2019 the facts are that on 1/8/2016 the applicant was appointed as Junior Geologist, Grade-B and he was posted at Nanded, on 11/5/2018 he was transferred to Chandrapur Regional Office. The applicant resumed duty on 16/05/2018 and joined at Chandrapur. It is grievance of the applicant that vide order dated 31/7/2019 all of a sudden the applicant is transferred from Chandrapur to Gadchiroli before completion of the normal tenure and without disclosing any reason. It is submitted that the applicant had merely completed period of 8 months, therefore, there was no reason to transfer the applicant, consequently the impugned order of transfer is illegal. The application is opposed by the respondents on the ground that the Hon'ble Minister has examined all the facts and

circumstances and thereafter taken decision to transfer the applicant. In para-7 of the reply, it is contended that there were several complaints received against the applicant after his posting at Chandrapur. The applicant was placed under suspension from 28/11/2017 to 25/04/2018. Thereafter suspension was revoked and the applicant resumed duty on 16/05/2019. It is contended by the respondents that the applicant suppressed these material facts, therefore, there is no violation of the provisions under Section 4 (4) & (5) of the Transfers Act, 2005 and there is no illegality in the order.

9. In O.A.617/2019 the material facts are that the applicant was appointed as Junior Geologist, Group-B on 11/06/2011 and posted at Buldhana. In 2014 the applicant was appointed as Assistant Geologist in the office of Director of GSDA, Pune. On 8/10/2015 the applicant was appointed as Geologist in the office of Director, Geology and Mining, Nagpur and on 16/05/2016 the applicant was transferred to Bhandara as District Mining Officer. On 31/07/2019 by the impugned order, the applicant is transferred to Nagpur from Bhandara. In this case it is contention of the applicant that his transfer is in violation of the G.R. dated 14/09/2015 and therefore his transfer be cancelled. The application is opposed by the respondent nos. 2&3 vide reply which is at page no.35. It is contended that the Officer who is posted in place of the applicant was necessary party and in his



absence the application is not tenable. The second submission is that the respondent nos. 2&3 have complied the procedure under Section 4 of the Transfers Act, 2005. The applicant was transferred after completion of three years on the post which was available. It is submitted that there is no illegality in the transfer order. It is submission of the respondent nos. 2&3 that family difficulties of the applicant cannot override the need of the administration, when the applicant joined the service he was aware that he was bound to serve in the interest of the administration. It is submitted that there is no illegality committed by the respondent nos.2&3 in transferring the applicant. Shri R. L. Gajbhiye who is posted in place of applicant has filed C.A. as Intervener. It is his contention that the applicant has completed the normal tenure and therefore there is no illegality in the transfer order.

10. In O.A. Nos.597/2019 and 614/2019 the main attack of the applicants is that the impugned transfer order is premature and it is in mid-term and reasons are not recorded in the transfer orders. I have gone through the Judgments on which reliance is placed by the applicant. So far as the applicant in O.A.597/2019 is concerned, there is no dispute about the fact that she is working at Nagpur since 08/08/2013 till today. It seems that this applicant has completed (now) the period more than six years at Nagpur. As per Section-3 of the

Transfers Act,2005 the normal tenure of the Government servant is three years. The proviso to Section 3 (1) of the Transfers Act,2005 says that the employee who has completed two normal tenures on the post shall be transferred on completion of two full tenures.

11. Under Section 4 (4) & (5) of the Transfers Act,2005, the power is conferred on the Transferring Authority to transfer the Government servant before completion of the normal tenure or even transfer a Government servant in a mid-term in the circumstances mentioned therein, after following the procedure laid down. In view of this statutory provision, I would like to point out that as per the provision, the Competent Authority and the Superior Authority are bound to record the reasons for transferring a Government servant before completion of the normal tenure or in case of premature transfer. In the Judgments also on which reliance is placed by the applicant, the same legal position is explained that if the reasons are not explained to show the administrative exigency, then the transfer order is illegal.

12. The learned P.O. has invited my attention to the Note sheet which was placed before the Hon'ble Minister on 25/06/2019. It is observed in para-2 of the Note sheet that while making recommendation for the transfers of Group-A and Group-B Officers in the year 2019, particulars of Officers due for transfer and the need of

the administration was not shown. Similarly there was no information regarding integrity, character and performance of the officers and specific recommendation by Civil Services Board. It is also observed that after examining the Minutes of the Meeting of the Civil Services Board, it transpires that there was no mention as to whose transfers were necessary and essential for the smooth administration of the Department. In para-3 of the Note sheet following observations are made –

^ HkfoKku o [kfudeZ I pkyuky; ] ukxi jP; k vkLFkki usjhy xV v vkf.k xV c I oxkzh vy vf/kdk&; kR; k I u 2019 e/khy iz kkl dh; @ fu; rdkyhd@fourh cnY; kckcr I pkyd] HkfoKku o [kfudeZ I pkyuky; ] ukxi j ; kah I knj dsyyk i Lrko] ukxjh I ok eMGkus dsyY; k f'kQkj 'kh] I pkyuky; kP; k vf/kuLFk vf/kdk&; kah fofo/k dkj .kkLro I knj dsyys fourh vt] iz kkl dh; vko'; drk] jkT; 'kkl ukpscny; kckcrps/kkj .k] egl ny o/nh b- I ozckchpk I kdY; kusfopkj d#u I pkyuky; kP; k vf/kuLFk vf/kdk&; kR; k cnY; kckcr i qhyi æk.kk vknk fuxfer dj.; kr ; kor- rI p ukxjh I ok eMGkus cnyhi k= vf/kdk&; kR; k I pL/h] pkfj=; ] i kekf.kdi .kk o iwhz dkedkt dsyys fBdk.kso vutko b- I mHkz dskgrgh vfHki k; u uknfoY; keGsmi yC/k ekfgrhP; k vk/kj scny; k i Lrkfor dj.; kr ; s vkgr-\*

13. For these reasons the Hon'ble Minister decided to transfer all the applicants. Now material question is whether reasons recorded in the Note sheet are sufficient for transferring all the applicants.

14. In O.A.No. 617/2019 the Intervener has filed the letter received by the all Divisional Commissioners and the Collectors dated

06/07/2019. After reading the letter, it transpires that question was raised in the Assembly on 21/12/2017 that some Government Officers in the Minor Mining Department were stationed since 8 years in violation of the Transfers Act,2005 and at that time the Hon'ble Minister (Revenue) gave assurance that this situation would be examined and no Officer would be retained after expiry of three years. In view of this the Deputy Secretary, Revenue and Forest Department, Government of Maharashtra informed all the Divisional Commissioners and the Collectors that no Government servant who has completed three years, shall be retained in Minor Mining Department. After reading this letter, it seems that the issue before the Government was giving extension to some Government Officers even after completion of normal tenure at one Station and this was causing annoyance to other Government Officers. It seems that keeping in view this position, the Hon'ble Minister *Suo-Motu* exercised the powers specifically observing that the Civil Services Board did not make any comment recording integrity, character, experience of the Officers who were due for transfer and therefore, decision was taken to transfer all the applicants. If above situation is examined keeping in view the tendency of the Controlling Officers and Civil Services Board to show favour to some of the Officers, then it is not possible to accept

that the transfers of the applicants are motivated and there was no administrative exigency.

15. So far as the applicant in O.A.No. 614/2019 is concerned, it is specifically contended by the respondent nos. 2&3 in para-7 of the reply that he was placed under suspension from 28/11/2017 to 25/04/2018 and on 16/05/2019 he resumed duty. As a matter of fact as per the Circular dated 20/04/2013 the Government was empowered to take while giving posting after revocation of suspension. In para-3 of the Circular, it is mentioned as under –

^ v- jkT; Lrjh; I oxkzhy vf/kdkjh@depkjh; kuk R; kpk eG egl w/h foHkkx o T; k i nkoj dk; j r  
 vl rnk fuyfcr dsysrksegl w/h foHkkx oxGu vU; = vdk; Zdkjh i nkoj fu; Drh dj.; kr ; koh-  
 c- foHkkxh; I oxkzhy depk&; kuk i u%L Fkkfir djrkuk R; kpk eG ftYgk o T; k ftYg; kr dk; j r  
 vl rnk fuyfcr dsysrksftYgk oxGu vU; ftYg; kr vdk; Zdkjh i nkoj fu; Drh dj.; kr ; koh-\*

16. After perusal of this Circular, it seems that guidelines are issued by the Government that after revocation of the suspension, the Government servant shall be posted outside the Revenue Division on non-executive post. In the present case in O.A.614/2019 the applicant is transferred from Chandrapur to Gadchiroli, therefore, considering his fresh revocation of suspension and his posting at Gadchiroli cannot be said to be illegal. It must be remembered that as the applicant in O.A.No. 614/2019 was placed under suspension for a period about 5 months, it implies that there was some strong material

against him. In this situation, it can be inferred that such material was not reported to the Government, therefore, the Government could not post the applicant outside the Revenue Division while giving him posting after revocation of suspension. The legal position is settled that the Government has right to transfer the Government servant in contemplation of disciplinary inquiry. The suspension of this applicant in fact is sufficient to draw the inference that there was reasonable cause to transfer him before completion of the normal tenure, therefore, I do not see any merit in O.A.614/2019.

17. So far as O.A.617/2019 is concerned, this applicant was due for transfer. The applicant is challenging the transfer on the ground that his daughters have taken admission in the school and academic session is commenced, but in my opinion this cannot be a strong reason to cancel the transfer order. As a matter of fact this applicant was aware that he was due for transfer, therefore, he gave options on 05/02/2019, five places were selected by this applicant, one of which was Nagpur and the applicant is transferred to Nagpur. As one of the option of this applicant is considered, therefore, it is not possible to accept that there is illegality in the transfer order, therefore I do not see any merit in O.A.617/2019.

18. So far as the O.A.597/2019 is concerned, it is undisputed that since August,2013 the applicant is working at Nagpur till today.

The applicant is working in the Regional Office since 01/08/2018, but fact remains that today the applicant has completed two normal tenures at Nagpur. Similar situation was examined by the Hon'ble Division Bench of the Bombay High Court in case of **Anil Marotrao Khobragade Vs. State of Maharashtra & Ors.** In that case the Petitioner was Lecturer and he was working in the College since 2002. In 2007, he was promoted as Senior Lecturer and his posting was not disturbed, lateron he was transferred. It was contended that the tenure shall be considered from the date of promotion, but this argument was turned down by the Hon'ble High Court. In para-4 the Hon'ble High Court observed that :

"In the present case the seat of duty, must be read as a place of posting to which the Petitioner was assigned, such as College at Nagpur in this case. In these circumstances, we find no error of law in the impugned order of the Tribunal which is based on the specific finding that after going through the entire of the record of the case that though impugned order has been issued in the middle the year, the procedure laid down by law has been followed by the Authorities."

19. In Writ Petition No.4368/2014 in case of **Chandrakant S/o Umajirao Mehetre Vs. State of Maharashtra**, decided on 20/01/2015. In para-4 following observations are made -

*“ (4) In an affidavit in reply filed on behalf of the State, a map showing the location of various offices in the Public Works Department has been placed on record. Perusal of the said map would reveal that the respondent no.5 has been posted in the same premises. However, it appears that the room, in which he is now required to work, is at the distance of 47.5 meters from the room in which he has earlier working. In that view, we find that the learned Tribunal has grossly erred in interfering with the transfer order impugned before it.”*

20. In that case the respondent no.5 was transferred from the Public Works Department, Sub Division No.1 to Public Works Department, Sub Division No.2, Yavatmal. It seems that the Hon'ble High Court turned down the argument that the transfer was illegal.

21. The legal position is laid down in case of **V.B. Gadekar Vs. Maharashtra Housing and Area Development Authority & An., 2008 (2) Mh.L.J.,640.** It is laid down that the provisions of the Transfers Act, 2005 are regulatory and not prohibitory in their applications. The discretion is vested in the authorities to make an exception to the normal tenure of three years of posting wherever special circumstances exist. The expressions “exceptional circumstances” or “special circumstances” in the proviso must be read ejusdem generis, the special circumstances to be understood in the concept of service jurisprudence and not in its literal sense.

22. I have already observed that it came to the notice of the Hon'ble Minister that details of the Government servant were not



placed before him by the Civil Services Board and considering this, the Hon'ble Minister *suo-motu* took decision to issue the transfer orders. So far as this applicant is concerned, she is working at Nagpur since August,2013. This period was more than 5 years when the Hon'ble Minister issued direction for her transfer from Nagpur. The Hon'ble Minister has taken into account the total stay of the applicant at Nagpur. It is contention of the applicant that as she was transferred from Head Office to Regional Office in the year 2018, therefore, she had right to serve there till completion of normal tenure. If this contention of the applicant is examined in view of the law which is discussed above, then in my opinion there would be out cry in the society. The influential Government Officers would adjust their postings from one Branch to another Branch of the office or from one room to another room changing their official designations and they would remain at one station since the joining of the service till retirement. This situation is not contemplated by Transfer Act 2005 as it is laid down in case of **V.B. Gadekar Vs. Maharashtra Housing and Area Development Authority & Ano., 2008 (2) Mh.L.J.,640** and in the cases of **Anil Marotrao Khobragade Vs. State of Maharashtra & Ors., 2010 (2) Mh.L.J.,319** and **Chandrakant S/o Umajirao Mehetre Vs. State of Maharashtra.**

23. The applicant has placed reliance on the Judgment in O.A.702/2019, decided on 09/10/2019. In that case the facts were altogether different, after promotion the applicant and the respondent no.3 were posted as Divisional Forest Officer, Social Forestry, Yavatmal and the Divisional Forest Officer (Vigilance), Yavatmal respectively. As both the departments were totally different Departments and the impugned transfer order was issued within a period of less than 15 days, therefore, it was held that it was not mere change in posting as the applicant had already resumed the duty as Divisional Forest Officer, Social Forestry, Yavatmal. In consideration of the legal position the applicant cannot take benefit of the view taken in that matter. After considering all the facts and circumstances and long stay of applicant at Nagpur, I do not see any merit in her contention that the transfer order is illegal.

24. It appears from the facts and circumstances of the case that as the Hon'ble Minister was not satisfied with the working of the Civil Services Board and its reporting, therefore, there was a delay in issuing general transfer orders in year 2019.

25. In view of these all facts, it is not possible to accept that all the above transfers are illegal or actuated with malice. In the result, I hold that all the applications are devoid of merit and hence the O.As.

stand disposed of. Accordingly, all the C.As. are also disposed of. No order as to costs.

**Dated** :- 22/10/2019.

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**(A.D. Karanjkar)**  
**Member (J).**

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 22/10/2019.

Uploaded on : 23/10/2019.