

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.843/2022

DISTRICT:- OSMANABAD

Krishna s/o. Eknathrao Ghuge,
Age : 32 years, Occ : Service
(as Executive Engineer, Krushna Marathwada
Construction Division No.1, Osmanabad),
R/o. Quarter No.4, Govt. Colony,
Anand Nagar, Sinchan Bhavan Parisar,
Osmanabad.

..APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Addl. Chief Secretary
(Water Resources),
Water Resources Department,
Madam Cama Road,
Hutatma Rajguru Chowk,
Mantralaya, Mumbai-32.
- 2) The Chief Engineer
(Irrigation Department),
CADA Bhawan, Garkheda Road,
Near Gajanan Maharaj Mandir,
Aurangabad.
- 3) The Superintending Engineer,
Osmanabad Irrigation Circle,
Datta Nagar, Osmanabad.
- 4) Mr. Annarao Arjun Kamble,
Executive Engineer,
Zilla Parishad, Pune.

..RESPONDENTS

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

: Shri B.S.Deokar, Presenting Officer
for respondent no.1.

: Shri S.B.Mene, Counsel for
Respondent nos.2 and 3,

: Shri S.D.Joshi, Counsel for
respondent no.4.

CORAM : **HON'BLE SHRI JUSTICE P.R.BORA,**
VICE CHAIRMAN

DECIDED ON : 24-01-2023

ORAL ORDER

Heard Shri A.S.Deshmukh, learned Counsel for the applicant, Shri B.S.Deokar, learned Presenting Officer for respondent no.1, Shri S.B.Mene, learned Counsel for respondent nos.2 and 3 and Shri S.D.Joshi, learned Counsel for respondent no.4.

2. Applicant has approached this Tribunal by filing the present O.A. claiming the following reliefs:

“A) This Original Application may kindly be allowed thereby quashing and setting aside the impugned order dated 20/09/2022 (Annex. A-5) issued by Resp. No.1 posting Resp. No.4 in applicant’s place resulting in the applicant’s mid-term transfer out of the post of Executive Engineer, Krushna Marathwada Construction Division No.1 at Osmanabad.

B) This Original Application may kindly be allowed thereby directing the Respondents to permit the

applicant to continue to discharge duties attached to the post of Executive Engineer, Krushna Marathwada Construction Division No.1 under the Resp. Nos.2 and 3.”

3. On 21-09-2022, the present matter was heard for the first time. The applicant had prayed for grant of interim relief thereby staying the execution and implementation of the impugned order. The request so made was opposed by the learned CPO stating that he would ascertain whether transfer order of the applicant is issued or not and for making submission in that regard, time was sought. While granting time to the learned CPO, Tribunal deemed it appropriate to pass the interim order to the effect that “till then charge of the post of Executive Engineer, Krushna Marathwada Construction Division No.4 to remain with the applicant.” The aforesaid order has been thereafter continued from time to time.

4. Hearing of the present matter was time to time adjourned on request of the learned CPO in view of the statement made by him on instructions of the respondent nos.1 to 3 that the applicant’s order of posting is under process and is likely to be issued soon. However, till today since nothing has been communicated by the said

authorities, the O.A. has been finally heard and is being decided.

5. According to the applicant, the impugned order issued by respondent no.1 posting respondent no.4 at Osmanabad resulting in applicant's mid-term transfer from the existing post is illegal, arbitrary, high-handed and has been passed without application of mind and in colorable exercise of powers. It is the further contention of the applicant that the impugned order has been passed with the only object of accommodating respondent no.4. It is further contended that it was quite open for respondent no.1 to give posting to respondent no.4 at any vacant post in the State. It is the further contention of the applicant that he is constrained to approach this Tribunal for the reason that the respondent no.4 is insisting him for giving charge of the said post to him in pursuance of the order dated 20-09-2022. On the aforesaid grounds the impugned order is sought to be quashed.

6. The contentions raised in the O.A. and prayers made therein are opposed by the respondents. Respondent nos.1 to 3 have filed their joint affidavit in reply contending therein that the respondent no.4 has been given posting by

following due procedure therefor and the order of transfer pertaining to the applicant will be issued in due course. The respondent nos.1 to 3 in such circumstances have prayed for dismissal of the O.A. being without any substance.

7. Respondent no.4 in his affidavit in reply has contended that after having suffered a long compulsory waiting period, applicant has been given posting at Osmanabad as Executive Engineer of the Krushna Marathwada Construction Division No.1 in place of the applicant. It is further contended that the order of his appointment mandates that he has to resume charge of the said post with immediate effect; in the circumstances, he had been to the said office for taking charge of the transferred post. The contention raised on behalf of the applicant that the impugned order amounts to his mid-term transfer is disputed by respondent no.4. It is further contended that the applicant has already completed the normal tenure and even extension of one year thereafter, and as such, the ground of mid-term transfer cannot be pressed by the applicant. Respondent no.4 has also raised an objection that the applicant cannot seek cancellation of

his order of transfer and only on that ground the O.A. deserves to be dismissed. Respondent no.4 therefore had prayed for dismissal of the O.A.

8. Perusal of the impugned order reveals that posting to respondent no.4 has been given after due deliberations in the Civil Services Board and with approval of the competent authority on administrative grounds. It is true that, in the said order, it is mentioned that respondent no.4 is transferred to the post which may become vacant after the transfer of the applicant. It is further averred in the said order that the posting order of the applicant will be separately issued. It has been contended by Shri Deshmukh, learned Counsel for the applicant that the impugned order cannot be given effect unless the posting order of the applicant is issued and the post held by him becomes vacant. As such, according to the learned Counsel insistence and haste of respondent no.4 to take charge of the said post does not sound good. Shri Deshmukh further submitted that the applicant is having every right and authority to challenge the impugned order for the reason that it has the effect of ousting the applicant from the said post in the midst of his term. The learned

Counsel further argued that unless the provision under Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. ("the Transfer Act" for short), more particularly, under Section 4(4) of the said Act are complied with, the applicant cannot be transferred. In the circumstances, the applicant has prayed for setting aside the impugned order.

9. Opposing the submissions advanced on behalf of the applicant, learned P.O. has submitted that in the impugned order itself when it has been amply clarified that the order in regard to the transfer of the applicant would be separately issued, the applicant cannot assail the impugned order whereby the respondent no.4 has been transferred. Learned P.O. further submitted that State authorities have brought to notice of the Tribunal that proposal for giving further posting to the applicant is under process and is presently pending for approval of the Hon'ble Chief Minister. It is also contended that the respondent no.4 has been given posting by following due process. It is further argued that posting to respondent no.4 has been given after due deliberations in the Civil Services Board and after approval from the competent

authority. Learned P.O. further submitted that no such ground has been made out by the applicant so as to cause interference in the impugned order passed by the respondent authorities. Learned P.O. in the circumstances has prayed for dismissal of the O.A.

10. Shri S.D.Joshi, learned Counsel appearing for respondent no.4 has brought to the notice of the Tribunal as about the previous postings of the said respondent and the fact that he is without posting since 13-09-2021. Learned Counsel submitted that the applicant cannot misread the order by showing that it can be given effect only after the posting is given to the applicant. Learned Counsel submitted that the impugned order will have to be read as a whole and will have to be given a constructive meaning. Learned Counsel submitted that when it has been expressly mentioned in clause 2 of the impugned order that separate order will be issued in respect of posting to be given to the applicant, no other meaning can be attached to the impugned order than that the applicant shall immediately vacate the said post and deliver the charge of the said post to respondent no.4. Learned Counsel submitted that though period of more than 3

months has already lapsed, respondent no.4 could not resume charge of his transferred post because of interim order passed in favour of the present applicant. Learned Counsel further submitted that having spent more than 4 years on the existing post, the applicant has otherwise also become due for transfer from the said post. Learned Counsel further submitted that only because the applicant is not given further posting, the respondent no.4 cannot be deprived from taking of charge of the said post. Learned Counsel, in the circumstances, prayed for dismissal of the O.A.

11. I have duly considered the submissions advanced by the learned Counsel appearing for the parties. In so far as the objection raised to the present Original Application that the applicant cannot challenge the order of transfer of respondent no.4 is concerned, it cannot be entertained for the reason that, the impugned order if executed would result in ousting the applicant from the said post. Applicant has therefore reason to challenge the said order. The applicant has challenged the said order mainly on the ground that it would amount to his mid-term transfer and according to him no such reasons exist for his mid-term

transfer. Another ground is that the order itself speaks that the respondent no.4 is transferred to the post which would become vacant due to transfer of the applicant. It is, therefore, argued that unless the applicant is given posting, the impugned order cannot be given effect and as such the insistence of respondent no.4 to resume the charge of the said post is unjust and improper.

12. The submission so made on behalf of the applicant, however, cannot be accepted. As has been submitted on behalf of respondent no.4, the impugned order has to be read as a whole. Clause 2 of the impugned order expressly provides that the posting order of the applicant will be separately issued. In their affidavit in reply respondent nos.1 to 3 have made a concrete submission that the proposal in respect of the transfer of the applicant is under process. During course of the hearing on previous dates the learned Chief Presenting Officer (CPO) had reiterated the stand taken by the respondents in their affidavit in reply. It was also informed by learned CPO and the statement in that regard was made by him on instructions of respondent officers that the concerned proposal/file is pending in the office of the Hon'ble Chief Minister for

approval. In the communication dated 22-09-2022 received to the office of Chief Presenting Officer from the Under Secretary, State of Maharashtra, it is stated that the process of giving posting to the applicant is in progress and the order in that regard will be issued soon with the approval of the competent authority. In the said letter, it is further clarified that the intervening period will be treated as the compulsory waiting period for the applicant.

13. From the contents of the affidavit in reply filed on behalf of the respondent nos.1 to 3 and the statement made by learned CPO at bar on the previous dates which are duly recorded in the Tribunal's proceedings as well as the communication dated 22-09-2022, with the office of Chief Presenting Officer by the State Government, it is explicitly revealed that State authorities have decided to shift the applicant from his existing post and to post respondent no.4 in his place. The impugned order, therefore, cannot be interpreted to mean that until the posting order is issued in favour of the applicant he shall remain in charge of his existing post. On the contrary, the impugned order read as a whole means that the applicant is under an obligation to hand over charge of his existing

post to respondent no.4 and shall wait for his order of posting. Respondent nos.1 to 3 have taken such stand in their affidavit in reply. It seems to be usual practice of the Government to transfer "A" in place of "B" without simultaneously issuing the posting order of "B" requiring him to wait for his transfer orders, in other words to suffer the compulsory waiting period. However, it would be difficult to set aside the order passed in favour of "A" on the only ground that simultaneously no posting order is issued in regard to "B". In the present matter also on the ground that the applicant has not been given posting, the impugned order issued in favour of respondent no.4 cannot be set aside. I, therefore, see no substance in the prayer so made by the applicant.

14. Another objection raised by the applicant that the impugned order amounts to his mid-term transfer and there are no grounds in existence for his such transfer has also not much impressed me. As has come on record, the applicant has already completed his normal tenure. It is also the matter of record that after completing the normal tenure, further extension was granted to the applicant and the applicant has been working on the existing post on

extension for the period of more than one year. In the circumstances, it cannot be said as to what extent such ground would be of any help to the applicant. Moreover, in challenge to the transfer order of respondent no.4, applicant cannot be permitted to raise all such grounds.

15. It was also sought to be contended on behalf of the applicant that the impugned order is politically influenced and has been passed on insistence of one Hon'ble Minister, I do not see substance in the objection so raised. It is true that, the documents which are placed on record pertaining to the transfer of respondent no.4 reveal that the impugned order has been passed on recommendation of Hon'ble Minister. Documents on record, however, do not reveal that the present applicant was instrumental in making such recommendation by the Minister. The documents, on the contrary, show that the respondent no.4 had prayed for posting at Sangamner and the Civil Services Board was in favour of posting him at the said place, however, the competent authority i.e. the Hon'ble Chief Minister preferred to give weightage to the recommendation of the Minister, and accordingly, the respondent no.4 has been posted at Osmnabad vide the impugned order. However, it

is not the case of the applicant that the respondents were bent upon to anyhow oust the applicant from his existing post and have therefore posted the respondent no.4 in his place.

16. After having considered the entire facts and circumstances in the matter, it does not appear to me that any case is made out for setting aside the impugned order. The documents on record reveal that the prescribed process for transfer of respondent no.4 has been duly followed before passing the impugned order. The respondent no.4 was without posting from 13-09-2021 and was thus required to be given posting with all priority. Accordingly, he has been transferred to the post held by the applicant. I see no irregularity or illegality in the order so passed. The applicant has failed in making out any just ground for causing interference in the said order. O.A., thus, deserves to be dismissed. It is accordingly dismissed without any order as to costs.

17. Before concluding the order, I deem it necessary to make certain observations as about the practice being followed in the matters of transfer which paves way for litigation. It appears to me that unless there are

exceptional circumstances, no officer shall be kept without posting and require to suffer compulsory waiting period. In the present matter, though the impugned order has been passed on 20-09-2022, till this date the posting order of applicant has not been issued. It has come on record that out of 342 sanctioned posts of Executive Engineer (Civil), 47 posts are vacant. In the letter dated 22-09-2022 received to the office of Chief Presenting Officer from the State Government, the further particulars are provided as about the vacancies. It is not understood as to why the Government is taking so much time in giving posting to the applicant when it has posted respondent no.4 on the post held by the applicant. In the circumstances, while dismissing the present O.A. I deem it appropriate to direct the State Government to pass the necessary orders as per Clause 2 of the impugned order in regard to the posting of the present applicant within 2 weeks from the date of this order. It would be of-course open for the applicant to challenge the said order if he has any grievance about it.

VICE CHAIRMAN

LATER ON :

18. At this juncture, learned Counsel for the applicant has prayed for continuation of the interim order for next

two weeks so as to facilitate the applicant to challenge the order passed by this Tribunal before the Hon'ble High Court. The request is opposed by the learned P.O. as well as the learned Counsel for other respondent nos.2 and 3 and learned Counsel for respondent no.4.

19. The request so made cannot be accepted for the reason that already sufficient period has been consumed. I have observed in the body of the order that the impugned order cannot be interpreted to mean that the respondent no.4 shall wait till the applicant is given posting and the present post becomes vacant. In the order itself it has been communicated that the posting orders of the applicant will be separately issued. In the circumstances, I am not inclined to accept the request of the applicant for continuation of the interim order. The request, therefore, stands rejected.

VICE CHAIRMAN

Place : Aurangabad
Date : 24.01.2023.