

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.342/2017

DISTRICT: - JALNA

Jitendrakumar s/o Khanderao Kundile,
Age : 42 years, Occu. : Service,
R/o. Government Polytechnic College,
Ambad, Tq. Ambad, District. Jalna.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through Principal Secretary,
Higher & Technical Education,
Mantralaya, Mumbai-32.
- 2) The Director,
Higher & Technical Education,
Mumbai.
- 3) Joint Director,
Technical Divisional Office,
Aurangabad.
- 4) The Principal,
Government Polytechnic,
Ambad, Tq. Ambad, District Jalna.
- 5) The Principal,
Government Residential Woman's
Polytechnic College, Latur.

...RESPONDENTS

APPEARANCE :Shri Sachin G. Joshi Advocate for the
Applicant.

:Shri M.P.Gude Presenting Officer for the
respondents.

CORAM : B. P. Patil, Member (J)

DATE : 19th December, 2017

J U D G M E N T
[Delivered on 19th day of December, 2017]

The applicant has challenged impugned order dated 31-05-2017 passed by the respondent no.3 by which he has been transferred to Government Residential Woman's Polytechnic College, Latur from Government Polytechnic, Ambad, Dist. Jalna by filing the present O.A.

2. The applicant was appointed as Junior Clerk in Government Engineering College, Aurangabad on 19-04-1994. Thereafter, he has been transferred after completion of 3 years' of service. On 17-05-2015, he was promoted as Senior Clerk and posted in Government Residential Woman's Polytechnic College, Latur. Thereafter, he was transferred from Latur to Government Polytechnic College, Ambad by order dated 09-06-2016. Accordingly, he joined the Government Polytechnic College, Ambad on 10-06-2016. He has not completed his normal tenure of posting at Ambad but the respondent no.3 without assigning any reason transferred him from Ambad to Latur by order dated 31-05-2017. It is his contention that the impugned order is in violation of the provisions of Section 4 of The Maharashtra Government Servants

Regulation of Transfers and Prevention of Delay in Discharge of Official Duties, Act, 2005 (hereinafter referred to as "Transfer Act" for short), and therefore, it is illegal. It is his contention that his children are taking education at Ambad and his parents are old-aged and they require medical treatment at Aurangabad regularly. Ambad is convenient to him than Latur for giving medical treatment to his old parents. It is his contention that the impugned order has been issued by the respondent no.3 without any request of the applicant, and therefore, also it is illegal. On these grounds, he has challenged the impugned order dated 31-07-2017 and prayed to quash and set aside the same by filing present O.A.

3. Respondents have filed their affidavit in reply and resisted contentions of the applicant. They have not disputed the fact that the applicant was appointed as Junior Clerk on 19-04-1994, and thereafter, he has been promoted on the post of Senior Clerk on 17-05-2015 and posted at Government residential College, Latur. It is their contention that on the request of applicant, he has been transferred to Ambad on 09-06-2016 from Latur. While working in Government Polytechnic, Ambad, the applicant was not following instructions and orders of the higher

authorities. Due to his harsh way of communication and mischievous behavior, administrative environment of the institute was polluted. The Government Polytechnic, Ambad is newly established institution in the year 2009, however, supervisory posts are not sanctioned for the said institute. Therefore, the applicant, who was working as Senior Clerk, was placed to supervise and co-ordinate administrative work of the office but several complaints were received against him. On the basis of complaints received from gazetted and non-gazetted staff, respondent no.3 withdrew additional charge of post of Registrar given to the applicant by order dated 06-05-2017. It is their contention that the respondent no.3 received letter from Police Inspector, Ambad informing him that a crime has been registered against the applicant u/s.506 of the Indian Penal Code and also suggesting to transfer the applicant from Ambad. Therefore, respondents have submitted proposal for transfer of the applicant in view of the provisions of Transfer Act. Considering the nature of the complaint and allegations against the applicant, transferring authority considered the proposal and transferred the applicant by issuing the impugned order by following provisions of Transfer Act. There is no illegality in

the impugned transfer order, and therefore, they prayed to reject the O.A.

4. The applicant has filed affidavit in rejoinder and submitted that the impugned order is in contravention of the provisions of Transfer Act. It is a mid-term and mid-term transfer. No special reasons have been recorded while effecting transfer of the applicant. No prior approval of the competent authority has been obtained for the said transfer, and therefore, it is illegal.

5. I have heard Shri Sachin G. Joshi learned Advocate for the applicant and Shri M.P.Gude learned Presenting Officer for the respondents. Perused documents placed on record by the parties.

6. There is no dispute about the fact that the applicant was appointed as Junior Clerk initially on 19-04-1994 and he was promoted as Senior Clerk on 17-05-2015 and posted in the Government Residential Woman's Polytechnic College, Latur. Admittedly, the applicant has been transferred from Latur to Ambad by order dated 09-06-2016 on his request, and accordingly, he joined Government Polytechnic College, Ambad on 10-06-2016. Admittedly, the applicant has not completed his normal

tenure of posting at Ambad and he has been transferred by the impugned order dated 31-05-2017 from Ambad and posted at Government Residential Woman's Polytechnic College, Latur.

7. Learned Advocate of the applicant has submitted that the impugned order does not specify the grounds or exceptional circumstances for transfer of the applicant. He has argued that the impugned order has been issued on 31-05-2017 but it is a mid-tenure transfer. He has submitted that the respondents have contended that the said transfer order had been issued in view of the provisions of S.4(4) and 4(5) of the Transfer Act but no special reasons or exceptional circumstances are mentioned while issuing the transfer order. He has submitted that the said transfer order has been issued by the respondent no.3 Joint Director, Technical Education, Regional Office, Aurangabad without recommendation of the Civil Services Board and without prior approval of the next higher competent transferring authority, and therefore, it is in violation of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act.

8. He has further submitted that no reasons have been recorded for transferring the applicant as required u/s.4(5) of the Act. In support of his contention, he has placed reliance on the judgment in the case of **Shriprakash Maruti Waghmare V/s. State of Maharashtra** reported in [2010 (1) ALL MR 176], wherein it is observed as under:

*"12. There is an occasion to the Division Bench of this Court in the matter of **State of Maharashtra versus Ashok Ramchandra Kore and another**, reported in [2009(4)Mh.L.J.163] wherein it is observed in paragraph no.31 and 32 by the Division Bench that in the matter of transfer u/s. 4(5) of The Act of 2005, in the matter of midterm transfer of exceptional cases recording of reasons is a mandate. As we have already observed that on perusal of the disputed transfer order dated 27/07/2009 as well as the file made available to us, we do not find that any reasons are recorded to effect the transfer of the petitioner which is under challenge. According to us, the transfer order is not in compliance with the provisions u/s. 4(5) of the Act of 2005 and this aspect is totally overlooked by the Tribunal while dismissing the Original Application filed by the petitioner."*

He has further placed reliance on the judgment in the case of **Kishor Shridharrao Mhaske V/s. Maharashtra OBC Finance and Development Corporation, Mumbai** reported in [2013 (3) Mh.L.J. 463], wherein it is observed as under:

"7. ... The mid-term or pre-mature special transfer has to be strictly according to law, by a reasoned order in writing and after the due and prior approval from the competent transferring authority concerned for effecting such special transfer under the Act. The exercise of exceptional statutory power has to be transparent, reasonable and rational to serve objectives of the Act, as far as possible, in public interest. Mandatory requirements of the provision under Section 4(5) of the Act cannot be ignored or by-passed. The exceptional reasons for the special mid-term or premature transfer ought to have been stated in writing. Vague, hazy and meager expression such as "on administrative ground" cannot be a compliance to be considered apt and judicious enough in the face of mandatory statutory requirements. ..."

He has also placed reliance on the judgment in the case of **S.B.Bhagwat V/s. State of Maharashtra & Ors.**

reported in [2012 (3) Mh.L.J.197] wherein it is observed as under:

"8....Ordinarily, a government servant cannot be transferred unless he has completed the tenure of posting. An employee who has not completed his normal tenure of three years may yet be subjected to transfer, as provided in Subsection (5) of Section 4. Subsection (5) of Section 4 begins with an overriding nonobstante provision, but requires that reasons have to be recorded in writing in a special case for transferring an employee even prior to the completion of tenure. Merely calling a case a special case does not constitute a sufficient reason. The rationale why the legislature has required that reasons be recorded in writing for transferring an employee even before completing his tenure is to bring objectivity and transparency to the process of transfers. Indeed, the matter of transfers has been brought within a regulatory framework laid down in the statute enacted by the State legislature. Section 4(5) permits as an exceptional situation, a transfer to be carried out, notwithstanding anything contained in Section 3 or in Section 4. The exceptional power must be exercised strictly in

accordance with Subsection (5) of Section 4. It is a settled position in law that when a statutory power is conferred upon an authority to do a particular thing, that exercise has to be carried out in the manner prescribed by the statute."

9. Learned Advocate for the applicant has submitted that respondents have contended that there were complaints against the applicant and on the basis of those complaints, the applicant has been transferred. He has submitted that the applicant cannot be transferred on the ground that some complaints were filed against him by his colleagues and employees working in the office. He has submitted that at the most on the basis of said complaint, departmental enquiry can be initiated against the applicant and it is not a ground for transferring him. He has submitted that unless respondents establish that there is administrative exigency for transfer, they cannot transfer the applicant. He has submitted that, the respondents have with *mala fide* intention transferred him without initiating departmental enquiry against him for the alleged complaints filed against him, and therefore, his transfer order is not legal and maintainable.

10. In support of his submission, he has placed reliance on the judgment in the case of **State of Maharashtra & Ors. V/s. Dr. (Ms.) Padmashri Shriram Bainade & Ors.** reported in [2015 (2) Mh.L.J. 679] wherein it is observed as under:

"19. In Manohar s/o Manikrao Anchule v. State of Maharashtra, 20 the Supreme Court observed as under :

"19. In Kranti Associates (P) Ltd v. Masood Ahmed Khan, (2010) 9 SCC 496, the Court dealt with the question of demarcation between the administrative orders and quasi-judicial orders and the requirement of adherence to natural justice. The Court held as under : (SCC pp. 510-12, para 47)

"47 Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasijudicial authority must record reasons in support of its conclusions.

(c)

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) to (o)"

20. The Apex Court dealing with the power including administrative of any Authority, including of quasi-judicial authority, referred that the basic principle of natural justice required to be followed by all the concerned. It is not the case that the State initiated action immediately after recording the misconduct and/or dereliction of duties. The initiation for such action so started in the month of June ultimately culminated into the confused order dated 30 August 2014, even after the written submissions and the explanations by the employee. Therefore, in this background, the order in question, in our view, ought to have been with reasons which is apparently missing in the present case.

21. It is essential for the delinquent/employee to know the special reason or circumstance for such order so also for the Court/Tribunal. The State's submission is that, there is no specific provision to provide reasons and/ or even to issue any show cause notice. There is no procedure for making any representation. The immediate effect was given to the order of transfer. The Tribunal/Court, as directed, for the first time the Appellant/State placed on record the materials to justify their unreasoned "midterm transfer" and/or "repatriation" order. The Court/Tribunal, has no choice but to go into those factual background and

circumstances and came to the conclusion as reflected in the impugned order, as the Executive/State did not provide reasons in support of the same. This procedure has caused further delay in deciding the matter, to note the background circumstances by going through the files in the Court. In the meantime the transfer order attracted interim order, pending the final decision. This frustrate the whole object of such transfer also. This, in no way, to be read and refer, to mean that in an extraordinary circumstances and for a special reason, reflected on record, the State cannot pass transfer order. The special privilege and/or claim can be made and/or right may be reserved to show the reason exclusively to the Court and/or the Tribunal. This is not even a "special" and/or "extraordinary circumstances" case in view of the submission so made and the explanation given without initiating any disciplinary action as contemplated under the Act."

He has also placed reliance on the judgment in the case of **Somesh Tiwari V/s. Union of India and Ors.** reported in [(2009) 2 SCC 592] wherein it is observed as under:

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice in law.

20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

11. He has submitted that in the instant case, respondents have not recorded special reasons which is mandatory in view of the S.4(4) and S.4(5) of the Transfer Act. Respondent no.3 has issued transfer order on the basis of alleged complaints filed by the employees working in the office of the applicant without initiating departmental action against him, and therefore, the impugned transfer order requires to be quashed and set aside by allowing the present O.A.

12. Learned P.O. has submitted that behavior of the applicant is not befitted to a Government servant. An enquiry had been initiated against him and he was

punished in the departmental enquiry in the year 2014. He has attracted my attention towards communication dated 11-03-2014 filed at paper book page 25. He has submitted that the behavior of the applicant was not proper. He used to interfere in the confidential work of other employees, and therefore, additional charge of the Registrar kept with him was withdrawn by order dated 06-05-2017 (paper book page 26). He has argued that the employees working in the Government Polytechnic, Ambad have filed complaint on 27-04-2011 to the Joint Director, Technical Education, Divisional Office, Aurangabad. Not only this, but they filed complaint with the Police Station, Ambad and the Police Inspector, Ambad Police Station informed respondent no.3 to transfer him in order to maintain peace and law and order. He has submitted that on the basis of said complaints, proposal to transfer the applicant had been sent and it was placed before Civil Services Board and the Civil Services Board in its meeting dated 25-05-2017 approved the transfer of the applicant on administrative ground. Thereafter, respondent no.3 sent proposal of transfer of the applicant alongwith others and it was approved by the Director of Technical Education, and accordingly, he informed respondents to issue transfer

order by his communication dated 25-05-2017, and thereafter, the impugned order has been issued by respondent no.3. He has submitted that respondent no.3 is the competent authority to transfer Group-C employees and notification has been issued accordingly on 28-05-2015. He has submitted that the Director, Technical Education, is the next higher authority to the Regional Joint Director, and therefore, Director gave prior approval to the transfer of the applicant, and accordingly, respondent no.3 has issued the impugned order. He has submitted that special reasons have been mentioned while making transfer. On administrative exigency, the applicant has been transferred from Ambad to Latur, and therefore, he supported the impugned order of transfer.

13. Before entering in the merits of the case, it is necessary to consider the provisions of S.6 of the Transfer Act which provides for the Competent Transferring Authority. Admittedly, applicant belongs to Group-C category. In view of table given in S.6 Head of the Department is the competent authority for all non-gazetted employees in Group B and Group C posts. Rule 6 of the Transfer Act is reproduced as under:

"6. Transferring Authority. The Government servants specified in column (1) of the table hereunder may be transferred by the Transferring Authority specified against such Government servants in column (2) of the table.

	<i>Groups of Government servants</i>	<i>Competent Transferring Authority</i>
	<i>(1)</i>	<i>(2)</i>
<i>(a)</i>	---	---
<i>(b)</i>	---	---
<i>(c)</i>	<i>All [non-Gazetted employees in Group "B" and "C"]</i>	<i>Head of Departments</i>
<i>(d)</i>	---	---

"

14. Section 7 of the Transfer Act provides that every administrative department of Mantralaya shall prepare and publish the list of heads of department and Regional Heads of departments within that jurisdiction for the purpose of this Act and notify the same. Said provision is reproduced as follows:

"7. Publication of list of competent authority.

Every Administrative Department of Mantralaya shall for the purpose of this Act prepare and publish a list of the Heads of Departments and Regional Heads of Departments within their jurisdiction and notify the authorities competent to make

transfers within their jurisdiction for the purpose of this Act."

15. In view of the said provision, the Government issued notification dated 28-05-2015 and published a list of Heads of the Departments and Regional Heads of the Departments working under Higher Education and Technical Education Department. Accordingly, the Regional Joint Director, Technical Education is notified as Head of the Department for Group-C employees for the purpose of the Act. Therefore, respondent no.3 is the Competent Transferring Authority for the transfer of the applicant in view of the sections of the Transfer Act.

16. Respondents have come up with a case that transfer of the applicant has been made before completion of tenure because of administrative exigency u/s.4(4) and 4(5) of the Act. While exercising powers u/s.4(4)(ii) and 4(5) of the Act, the competent authority shall have to record exceptional circumstances and reasons in writing for transfer and obtain prior approval of the immediate superior transferring authority mentioned in the table of Section 6 of the Transfer Act.

17. In the instant case, respondents have contended that behavior of the applicant was not proper with his colleagues and there were several complaints regarding his misbehavior from the employees working in the office. A report was received to the respondent no.3 from Police Inspector of Police Station Ambad about filing criminal case against the applicant. Therefore, he has been transferred in view of the provisions of S.4(4) proviso (ii) and 4(5) of the Act.

18. In these circumstances, I have to verify whether necessary compliance as required u/s.4(4) proviso (ii) and 4(5) of the Transfer Act has been made by the respondents while effecting transfer of the applicant. Documents on record show that proposal has been sent by respondent no.3 for transfer of the applicant and the same was placed before Civil Services Board constituted on 25-05-2015 of which Director, Technical Education was Chairman. It shows that meeting was called on 25-05-2017 and it had recommended transfer of as many as 251 employees working in the department including the applicant. Minutes of the meeting have not been produced on record. There is nothing on the record to show whether Civil Services Board had considered proposal sent by the

respondent no.3 for transfer of the applicant on the basis of complaint received to him. It has vaguely and cryptically approved the proposal sent by the respondent no.3 and recommended transfer of the applicant along with other employees. No details regarding documents placed before the Civil Services Board have been produced on record. On the basis of said recommendation of the Civil Services Board, the Director, Technical Education, approved recommendation by communication dated 25-05-2017 and directed respondent no.3 to issue transfer orders accordingly. Director, Technical Education had treated himself as immediate superior transferring authority or next higher authority as provided u/s.4(4)(ii) and 4(5) of the Transfer Act. But as per the table provided u/s.6 of the Act next higher or immediate higher/superior transferring authority is the Minister in charge of the concerned department. The respondent no.3 is the Head of the Department, to transfer the Group-C employees in view of the notification dated 28-05-2015 issued u/s.7 of the Transfer Act. But the proposal of respondent no.3 to transfer the applicant from Ambad to Latur along with recommendations of the Civil Services Board has not been placed before the Minister in charge of the concerned

department, who is the next higher transferring authority or immediate superior transferring authority for approval of the transfer made u/s. 4(4) and 4(5) of the Act. The impugned order has been issued by the respondent no.3 without prior approval of the next higher/superior Competent Transferring Authority to the transfer of the applicant as provided u/s.4(4) and 4(5) of the Transfer Act. Therefore, the impugned transfer order is not legal and in accordance with the provisions of S.4(4)(ii) and 4(5) of the Act.

19. Not only this but on perusing the impugned order, it reveals that no special reasons have been recorded in writing while making transfer of the applicant. Not only this but no special circumstances for transfer of the applicant had been mentioned in the transfer order. It is mandatory as per of S.4(4)(ii) and 4(5) of the Act to record reasons but no such reasons have been recorded by the respondent no.3. Therefore, the impugned transfer order is not legal and proper being not in compliance with the provisions of S.4(4)(ii) and 4(5) of the Act, and therefore, it requires to be quashed and set aside. In this regard, principles laid down by the Hon'ble High Court and Hon'ble the Supreme Court relied on by the learned Advocate for

the applicant in the cases of **Shriprakash Maruti Waghmare V/s. State of Maharashtra** reported in [2010 (1) ALL MR 176], **Kishor Shridharrao Mhaske V/s. Maharashtra OBC Finance and Development Corporation, Mumbai** reported in [2013 (3) Mh.L.J. 463], and **S.B.Bhagwat V/s. State of Maharashtra & Ors.** reported in [2012 (3) Mh.L.J.197] are most appropriately applicable in this case. Since the respondents have not followed the provisions of S. 4(4) and 4(5) of the Act and issued impugned order in contravention of the same, the impugned order required to be quashed and set aside.

20. It is also material to note here that respondents effected transfer of the applicant on the sole ground that his behavior is not befitting to the Government servants and it amounts misconduct and a criminal case is pending against the applicant but no departmental enquiry has been initiated against him for his misconduct. Without taking necessary action under the Service Rules, the respondents transferred the applicant by way of punishment. It amounts *mala fide* exercise of power. Without initiating departmental enquiry and without recording reasons for transfer of the applicant, the impugned order has been issued. This amounts violation of

the principles of natural justice. The principles laid down by the Hon'ble High Court and Hon'ble Supreme Court in the case of **State of Maharashtra & Ors. V/s. Dr. (Ms.) Padmashri Shriram Bainade & Ors.** reported in [2015 (2) Mh.L.J. 679] and **Somesh Tiwari V/s. Union of India and Ors.** reported in [(2009) 2 SCC 592] are most appropriately applicable in the instant case. Therefore, on that ground also the impugned order requires to be quashed and set aside.

21. Considering the abovesaid discussion, it is crystal clear that the impugned order is in violation of S.4(4) proviso (ii) and 4(5) of the Transfer Act. It has been issued with mala fide intention and it amounts *mala fide* exercise of power. Prior approval of the next higher Transferring Authority as provided u/s.6 of the Act has not been obtained while making the impugned mid-tenure transfer of the applicant. Respondents have not followed the mandate of the provisions of S.4(4) proviso (ii) and 4(5) of the Transfer Act, and therefore, the impugned requires to be quashed and set aside by allowing the O.A.

22. In view of the abovesaid discussion, O.A. is allowed. Impugned order dated 31-05-2017 transferring the

applicant from Ambad to Latur is hereby quashed and set aside. Respondent no.3 is directed to repost the applicant at Ambad forthwith. There shall be no order as to costs.

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 19-12-2017.

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