

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.487/2019

DISTRICT: JALGAON

Jaywant s/o Bhimrao Salunkhe,
Age : 51 years, Occu. : Service
(as Assistant Engineer, Public Works
Sub Division Amalner)
R/o. Plot No.25, "Sudhai-Leela",
Gayatri Nagar, Dhekulwad, Amalner,
Dist. Jalgaon.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through: its Principal Secretary,
Public Works Department,
M.S., Mantralaya, Mumbai-32.
2. The Chief Engineer,
Public Works Regional Division,
Dhule.
3. The Superintending Engineer,
Public Works Circle,
Jalgaon.

...RESPONDENTS

APPEARANCE :Shri A.D.Sugdare, Advocate for the
Applicant.

:Smt. Priya Bharaswadkar, Presenting
Officer for the respondents.

CORAM : B. P. Patil, Acting Chairman

Reserved on : 07-01-2020

Pronounced on : 10-01-2020

J U D G M E N T

1. The applicant has challenged the order dated 07-06-2019 issued by the respondent no.2 transferring him from Amalner to Dhule by filing the present O.A.

2. The applicant has acquired Diploma in Civil Engineering & Degree in B.E. (Civil) in the year 1988 and 1992, respectively. Thereafter, he has been appointed as directly recruited Assistant Engineer in the year 1996 by the respondent no.1 and since then he is working on the said post. On 22-06-2015, he was transferred to Public Works Sub Division, Amalner in Jalgaon from Dhule. There was no vacant post at Amalner, therefore, he was given charge of said post at Amalner on 29-05-2017 and till then he was shown on deputation. It is his contention that he has not completed his normal tenure of posting since the year 2017. He was not due for transfer at the time of General Transfers of 2019.

3. It is further contention of the applicant that while on duty in the year 2017 he met with an accident and suffered 63% permanent disability. Entry in that regard has been taken in his service book. After recovery from the injury, he joined the post and worked to the best of his ability.

Therefore, he was awarded with the certificate of appreciation for his work in the year 2018. It is his contention that in the year 2004, Government issued a G.R. dated 15-12-2004 making provisions to accommodate the physically handicapped person near his residence at the time of transfer. It is his contention that on 02-02-2019 he was transferred in the midst of the term from Amalner to Nashik. Therefore, he approached this Tribunal by filing O.A.No.137/2019 challenging the said transfer order. This Tribunal was pleased to grant status quo on 15-02-2019. During the pendency of the O.A., respondent no.1 had cancelled the transfer order dated 02-02-2019 by order dated 22-04-2019. Therefore, the O.A.No.137/2019 came to be disposed of.

4. It is his contention that on 09-04-2018, Government issued the G.R. regarding procedure of counseling while effecting transfer of the Government employees. It is his contention that he was not due for transfer but he had given his options regarding places of his choice at the time General Transfers of 2019. Respondent no.2 without considering his options and provisions of G.R. dated 09-04-2018 issued the impugned transfer order dated

07-06-2019 and transferred him from Amalner to Dhule. It is his contention that the impugned transfer order is in violation of the provisions of G.Rs. dated 09-04-2018 and 15-12-2004. It is his contention that the impugned transfer is mid-term transfer and it is in violation of the provisions 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 ("Transfer Act" for short). It is his contention that respondent no.2 has not considered the disability caused to him while effecting his transfer. Therefore, he has approached this Tribunal and prayed to quash the impugned order by filing the present O.A.

5. Respondent nos.1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the facts regarding appointment of the applicant, his transfer to Amalner from Dhule by order dated 22-06-2015. It is their contention that in view of the said order dated 22-06-2015, the applicant joined the post at Public Works Sub Division, Amalner on 21-08-2015. At that time, the post was not available at Amalner. Therefore, due to technical difficulties, salary of the applicant was

drawn from the Road Project Division, Jalgaon and Public Works Sub-Division, Chopda with the approval of the concerned authorities. He never joined at Chopda or Road Project Division, Jalgaon. It is their contention that the applicant is working at Amalner since 21-08-2015. He has completed his normal tenure of posting at Amalner. He was due for transfer at the time of General Transfers of 2019. The choice of places where to be transferred has been called from the applicant. The applicant had given choice of places for transfer. The applicant has given choice for transfer at Dhule also. The Civil Services Board considered the proposal and the disability of the applicant and recommended to transfer the applicant to Dhule from Amalner as Dhule is at a distance of 30 km from applicant's residence. It is their contention that convenience of the applicant has been looked into while issuing the impugned transfer order. There was no illegality in the impugned order, and therefore, they supported the impugned transfer order. They have justified the impugned order and prayed to dismiss the O.A.

6. I have heard Shri A.D.Sugdare Advocate for the Applicant and Smt. Priya Bharaswadkar Presenting Officer

for the respondents. I have perused the documents placed on record by the parties.

7. Admittedly, the applicant was initially appointed as directly recruited Assistant Engineer Grade-II in the year 1996 and since then he is working on the said post. There is no dispute about the fact that on 22-06-2015, he was transferred from Dhule to Amalner, Dist. Jalgaon and accordingly, he joined the post at Amalner on 21-08-2015. Admittedly, the applicant had been transferred by order dated 02-02-2019 in the midst of the term from Amalner to Nashik. The applicant had challenged the said order by filing O.A.No.137/2019 before this Tribunal. This Tribunal was pleased to direct the parties to maintain status quo by its order dated 15-02-2019. During the pendency of the O.A., respondent no.1 cancelled the transfer order dated 02-02-2019 on 22-04-2019, and therefore, the O.A. came to be disposed of.

8. Admittedly, at the time of General Transfers of 2019 respondents called for options and places where to be transferred from the applicant and other employees who were due for transfer. Accordingly, applicant submitted 10 places of his choice. There is no dispute about the fact that

the applicant is physically disabled person. The applicant has been transferred by the impugned transfer order dated 07-06-2019 from Amalner to Dhule. Admittedly, distance between Amalner and Dhule is 30 km only.

9. Learned Advocate for the applicant has submitted that the applicant is actually working at Amalner since 29-05-2017. Previously there was no vacancy at Amalner, therefore, he was deputed at Chopda and Jalgaon. He has submitted that the applicant has not completed his normal tenure of 3 years at Amalner and he was not due for transfer but the respondents issued the impugned order and transferred him before completion of his normal tenure. Therefore, impugned order of transfer has been issued in the midst of term. It is a mid-term and mid-tenure transfer order. No reason has been recorded in writing while transferring the applicant as per Section 4(4) and 4(5) of the Transfer Act. Therefore, said impugned order is in violation of the provisions of the Transfer Act and hence it requires to be quashed and set aside.

10. Learned Advocate for the applicant has further submitted that the respondents had not followed the provisions of G.R. dated 15-12-2004 as well as G.R. dated

09-04-2018. They have not considered the guidelines given therein while making transfer of the applicant who is physically disabled person. Therefore, the impugned transfer order is in violation of the guidelines given in the abovesaid G.Rs. He has submitted that the Executive Engineer, Public Works Sub Division Amalner while sending the information to the competent transferring authority had specifically mentioned that the applicant was not due for transfer but the competent authority has not considered the said fact and transferred the applicant before completion of his normal tenure of posting. Therefore, he prayed to quash and set aside the impugned order by allowing the O.A.

11. In support of his submissions he has attracted my attention towards documents produced by the applicant at paper book page 57 to 59. Learned Advocate for the applicant has further submitted that the applicant has given several options for posting at Amalner but the respondent has not considered his options and flouted the guidelines given in G.Rs. dated 09-04-2018 and 15-12-2004. Therefore, he has prayed to quash the impugned order by allowing the O.A.

12. Learned P.O. has submitted that the applicant has been posted at Amalner by order dated 22-06-2015. He joined the post at Amalner on 21-08-2015. She has submitted that at that time there was no vacancy at Amalner but considering the convenience of the applicant, applicant has been accommodated there and he was permitted to work at Amalner but his salary has been drawn from the Road Project Division, Jalgaon and Public Works Sub-Division, Chopda with the approval of the higher authorities. In fact his posting has not been changed and he worked at Amalner since 21-08-2015. She has submitted that the applicant has completed his normal tenure at Amalner and he was due for transfer and therefore options were called from him regarding the places of his choice for transfer at the time of General Transfers of 2019. The applicant submitted 10 places of his choice at Amalner and Dhule. Considering his choice and disability, the Civil Services Board recommended transfer of the applicant at Dhule which is at a distance of 30 km from Amalner. The Civil Services Board considered the aspect of disability of the applicant and accordingly made recommendation to transfer the applicant at Dhule.

Accordingly the applicant has been transferred to Dhule by the competent transferring authority by the impugned order. He has submitted that provisions of G.Rs. dated 15-12-2004 and 09-04-2018 have been followed by the competent transferring authority while making transfer of the applicant and there was no illegality in the same. Therefore, she has justified the impugned transfer order. She has submitted that the applicant has been transferred to Dhule on account of administrative exigency and there was no illegality in the same. Therefore, she has prayed to reject the O.A.

13. Learned P.O. has further submitted that the applicant has suppressed material facts and also produced the document at paper book page 58 which is not authenticated and placed reliance on it. She has submitted that the said document has been obtained by the applicant illegally. On the basis of said document applicant has filed the present O.A. She has further submitted that the applicant is intending to work at Amalner by hook or crook and his conduct is not befitting to a public servant. She has submitted that on that ground also the O.A. deserves to be dismissed.

14. On perusal of documents on record, it reveals that the applicant has been transferred to Amalner by order dated 22-06-2015. Accordingly, he joined the post at Amalner on 21-08-2015. He has completed his normal tenure of posting at Amalner. He was due for transfer, therefore, options have been called from him regarding places of his choice where he preferred transfer. Accordingly, he submitted his options and he had given 10 options for transfer. He has prayed for posting at Amalner and Dhule on the ground of his disability. The record shows that the proposal regarding transfer of the applicant has been placed before the Civil Services Board in the meeting dated 03-06-2019. The Civil Services Board considered the request of the applicant and decided to transfer him at Dhule which is at a distance of 30 km from Amalner and accordingly recommended his transfer. On the basis of recommendations of the Civil Services Board, the competent transferring authority decided to transfer the applicant at Dhule and accordingly the impugned order has been issued by the respondent on 07-06-2019. Documents on record show that the provisions of Transfer Act have been followed by the competent transferring authority while

effecting transfer of the applicant. The applicant has been transferred in the General Transfers of 2019. Necessary information in that regard has been called by the competent transferring authority as per the provisions of Transfer Act before transfer. The provisions of G.R. dated 09-04-2018 as well as G.R. dated 14-12-2004 have been followed by the respondents while effecting transfer of the applicant. As the applicant is physically disabled person, his convenience has been considered and thereafter he has been transferred and posted at Dhule which is 30 km away from his residence. Therefore, in my view, there is no violation of the provisions of G.Rs. dated 14-12-2004 and 09-04-2018 as well as the provisions of Transfer Act while effecting transfer of the applicant. Therefore, I find no illegality in the impugned order. On the contrary, respondents have taken care of the physical disability of the applicant while effecting his transfer. They considered options given by the applicant. The applicant has given option for Dhule also, and therefore, they decided to transfer the applicant at Dhule. No inconvenience is caused to the applicant due to impugned order of transfer.

15. Learned Advocate for the applicant has strongly contended that the impugned order of transfer has been

issued on 07-06-2019 i.e. after 31-05-2019. Therefore, it amounts to mid-term transfer. He has submitted that the provisions of Section 4(4) and 4(5) have not been followed while issuing impugned order. Therefore, the impugned order of transfer is illegal and it requires to be quashed.

16. Learned P.O. has submitted that the process of transfer has been started before 31-05-2019. Matter was placed before the Civil Services Board on 03-06-2019 and the said Board recommended transfer of the applicant thereafter the impugned order is issued. She has submitted that there was only few days' delay in passing the transfer order. Therefore, it cannot be treated as mid-term transfer.

17. On perusal of record, it reveals that the process of General Transfer was commenced much before 31-05-2019. Meeting of the Civil Services Board has been held on 03-05-2019 and it was decided to recommend transfer of the applicant and accordingly the impugned order has been issued on 07-06-2019. No doubt there is some delay in issuing the impugned order of transfer which is a General Transfer order but merely on that ground it cannot be said that the transfer is mid-term transfer. Therefore, I do not

find force in the statements of the learned Advocate for the applicant in that regard.

18. On perusal of the pleadings of the applicant it is clear that the applicant has made vague pleadings regarding his posting at Amalner. He has suppressed the fact that he has been working at Amalner since 21-08-2015. No doubt on account of technical difficulty his pay has been drawn from the Road Project Division, Jalgaon and Public Works Sub-Division, Chopda with the approval of the concerned authorities but in fact he was working at Amalner and there was no change in posting but the applicant has made misleading statement in that regard stating that he has been working at Amalner since 29-05-2017. Not only this but the applicant has produced copy of the document i.e. information supplied by the Executive Engineer to his higher authority at paper book page 58. Said document is an official correspondence. The applicant has obtained it illegally from the concerned Clerk and this fact has been asserted in the affidavit filed by him on 18-06-2019 but the Executive Engineer Mangalsing Somsing Rajput by affidavits dated 18-11-2019 and 27-11-2019 has specifically stated that the said document was not issued

officially to the applicant and the applicant obtained it unauthorizdly and illegally from the concerned Clerk. It shows that the applicant has obtained the document at paper book page 58 unathorizedly to suit his purpose. This shows that the applicant has produced the said document to mislead the Tribunal. Therefore, the applicant is not entitled to claim relief as sought.

19. As discussed above, transfer of the applicant has been made as per the provisions of the Transfer Act. There is no violation of any provision of the Transfer Act as well as the G.Rs. dated 15-12-2004 and 09-04-2018. Considering the abovesaid facts and circumstances, in my view there is no illegality in the impugned order. Therefore, no interference is called for in the impugned order. There is no merit in the O.A. Consequently, it deserves to be dismissed.

20. In view of the discussion in the foregoing paragraphs, O.A. stands dismissed without any order as to costs.

(B. P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 10-01-2020.