

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**

**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.475 OF 2017**

DIST. :LATUR

Chandrakant Suryabhan Jadhav,  
Age. 53 years, Occu. : Service,  
R/o Laxmi Colony, Latur,  
Tq. & Dist. Latur.

-- APPLICANT

**V E R S U S**

1. The State of Maharashtra,  
Through its Chief Secretary,  
Home Department, Mantralaya,  
Mumbai - 32.

(Copy to be served on P.O.,  
M.A.T. Aurangabad)

2. The Director General of Police,  
Shahid Bhagatsing Road, Colaba,  
Mumbai.
3. The Additional Director General  
Of Police, Training & Special Units,  
Shahid Bhagatsing Road, Colaba,  
Mumbai.
4. The Principal,  
Police Training Centre, Babhalgaon,  
Tq. & Dist. Latur.

-- RESPONDENTS

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APPEARANCE :- Shri K.G. Salunke, learned Advocate  
holding for Shri P.P. More, learned  
Advocate for the applicant.

: Shri D.R. Patil, learned Presenting Officer  
for the respondents.

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**CORAM** : **Hon'ble Shri B.P. Patil, Member (J)**  
**DATE** : **12.3.2018**  
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### **ORDER**

1. The applicant has challenged the transfer order dtd. 12.7.2017 issued by the res. no. 3 by which he has been transferred from Police Training Centre, Babhalgaon, Dist. Latur to S.P. Office, Aurangabad (Rural) and prayed to quash and set aside the said order.

2. The applicant was initially appointed as a Jr. Clerk with Police Department in the year 1983 and thereafter he has been promoted from time to time. The entire service of the applicant was blotless and without any stigma. By order dtd. 11.9.2015 he came to be promoted to the post of Head Clerk from the post of Sr. Clerk and he was posted in the office of S.P., Aurangabad Rural. The applicant is suffering from throat cancer and also suffered a mild attack and therefore he refused the promotion and requested to post him at Police Training Centre, Babhalgaon or S.P. Office, Latur by filing representation on 28.12.2015 to the res. no. 2 through res. no. 4. Considering his health problems, the res. no. 4 recommended his request to the res. no. 2. Thereafter he again requested to res. no. 2 for modification of earlier order and

requested to give him posting on the post, which will become vacant on 31.8.2016 due to superannuation of one person. The res. no. 4 has also recommended the name of the applicant for the said posting. The applicant has requested the res. no. 2 for giving him posting at Latur considering his illness. Considering the health problems of the applicant, the res. no. 2 passed order dtd. 17.2.2016 by which it is specially stated that the applicant's request is under consideration and therefore he is to be allowed to work on the same post as a Sr. Clerk at Police Training Centre, Babhalgaon, Latur. Thereafter the res. no. 2 conducted a video conferencing interviews in respect of general transfers for the year 2016 and called the persons, who made a request for transfer. The applicant has submitted request and thereafter he appeared for interview on 13.5.2016 through video conferencing and stated his ground of illness. Considering the request of the applicant, the res. no. 3 vide order dtd. 21.10.2016 modified the promotion order of the applicant dtd. 11.9.2015 and posted the applicant on the post of Head Clerk at Police Training Centre, Babhalgaon, Latur and accordingly the applicant joined on the said post on 15.11.2016 and since then he is serving there.

3. All of a sudden, the res. no. 2 issued order on 12.7.2017 and transferred the applicant and posted him at S.P. Office,

Aurangabad (Rural) on administrative ground without recording any special reasons. It is contention of the applicant that the said order is not a general transfer order and it is a midterm transfer order. He worked on the post of Head Clerk at Police Training Centre, Babhalgaon for near about 8 months only and the impugned order is in violation of the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005). It is his contention that the impugned transfer order has not been issued by the competent transferring authority and prior approval of the next higher authority has not been obtained for his transfer. It is his contention the impugned order is illegal and therefore he approached this Tribunal by filing the present O.A. and prayed to quash and set aside the impugned order.

4. The res. no. 2 filed his affidavit in reply and additional affidavit in reply and resisted the contentions of the applicant. It is his contention that the applicant has been selected as a Jr. Grade Clerk in the office of S.P. Latur on 26.12.1983. It is his contention that Latur is home district of the applicant. He came to be promoted to the post of Sr. Clerk from 21.3.2006 and to the post of Head Clerk from 21.10.2016. The applicant rendered his

entire service in the Latur district since joining the service. He has been transferred by the impugned order, but he has not joined his new posting though he has been relieved from Police Training Centre, Babhalgaon, Dist. Latur on 13.7.2017.

5. It is contention of res. no. 2 that the Additional Director of Police, Training & Special Units, M.S., Mumbai vide reports dtd. 29.3.2017 & 8.5.2017 communicated him that one Ms. Lobha Ganesh Kamble, Jr. Clerk at Police Training Centre, Babhalgaon where the applicant was serving has alleged that she has danger to her life and her service from the applicant. After receipt of said application from Ms. Kamble, the Principal, Police Training Centre, Latur made enquiry through P.I. Shri Tidke. P.I. Shri Tidke made enquiry in the allegations made by Ms. Kamble against the applicant and submitted his report stating that, if the complainant Ms. Kamble and the applicant were kept in the same office, it will be detrimental for the working of the office and it will lead to occurring of any untoward incident and therefore it was recommended to res. no. 3 that both should be kept out of Police Training Centre, Babhalgaon. The Additional Director General of Police, Training & Special Units, Mumbai has also informed to the res. no. 2 that Jr. Clerk Ms. Kamble made attempt to commit suicide and therefore a crime has been registered against her vide

C.R. no. 149/2017 u/s 309 if IPC with Vivekanand Chowk Police Station. Not only this, on the basis of the complaint filed by Ms. Kamble, a crime bearing no. 158/2017 u/s 354 (A) of IPC r/w sec. 3 (1) R(S), 3 (1) (W) (11) of the S.C. & S.T. Act, 1989 has been registered against the applicant.

6. It is contention of the res. no. 2 that the applicant is serving in Latur since 1983 i.e. for more than 33 years, 8 months and he has completed more than 2 full tenures at Latur and therefore the Additional Director General of Police, Training & Special Units, has sent a proposal for transfer of the applicant. The proposal was placed before the Civil Services Board and it was approved and the applicant has been transferred on the recommendations of the Civil Services Board. It is contention of respondents that the Additional Director General of Police, Training & Special Units, Mumbai as a Head of Department made recommendation to transfer the applicant purely on exceptional circumstances and special reasons. On 11.7.2017 complainant Ms. Kamble met the Additional Director General of Police (Administration) in her office and put her grievance. Taking cognizance of her grievance, the proposal of transfer of the applicant has been placed before the Civil Services Board and thereafter the applicant has been transferred by the impugned order. It is contention of res. no. 2

that there is no illegality in the impugned order and there is no mala-fides in it. Therefore, the res. no. 2 prayed to reject the O.A.

7. The applicant filed rejoinder to the affidavit in reply of res. no. 2 and contended that he has completed only 8 months on the promotional post and he has not completed normal tenure on that post and therefore he has challenged the impugned transfer order by filing the present O.A.

8. Heard Shri K.G. Salunke, learned Advocate holding for Shri P.P. More, learned Advocate for the applicant and Shri D.R. Patil, learned Presenting Officer for the respondents.

9. Admittedly the applicant was appointed as a Jr. Grade Clerk in the office of S.P., Latur on 26.12.1983. He came to be promoted to the post of Sr. Clerk on 21.3.2006 and again promoted as a Head Clerk on 21.10.2016. Admittedly he worked as a Jr. Clerk in the office of S.P., Latur from 26.12.1983 to 20.3.2006. Thereafter he was promoted as a Sr. Clerk and worked at Police Training Centre, Babhalgaon, Latur during 21.3.2006 to 28.6.2011. Thereafter he was transferred in the S.P. Office, Latur and he worked there from 29.6.2011 to 4.8.2014. Thereafter he was again transferred at Police Training Centre, Babhalgaon and he worked there from 5.8.2014 till 20.10.2016. Thereafter he was

promoted as a Head Clerk and posted at Police Training Centre, Babhalgaon from 21.10.2016 till the impugned order i.e. 12.7.2017. It means that the applicant is working at Latur from the year 1983. Admittedly, the impugned order has been issued on 12.7.2017 and it is a midterm transfer order. Admittedly the Additional Director General of Police, Training & Special Units, Mumbai is Head of Department and competent transferring authority as provided in sec. 6 of the Transfer Act, 2005 in view of the notification issued by the Govt. of Maharashtra dtd. 29.3.2011, for the transfers of Group – B & C employees and all non gazetted employees.

10. The learned Advocate for the applicant has submitted that the applicant was promoted to the post of Head Clerk by the order dtd. 11.9.2015 and transferred to S.P. office, Aurangabad Rural, but thereafter he made representation and requested to retain him at Latur on the ground of his illness. He has submitted that the respondents considered his requested and modified the order dtd. 11.9.2015 and posted him at Police Training Centre, Babhalgaon, Latur and accordingly he is working there on promotional post from 21.10.2015. He submitted that the applicant has not completed the normal tenure of his post of Head Clerk. He was not due for transfer but the respondent no. 3 abruptly issued the



impugned order dtd. 12.7.2017 and transferred him from Police Training Centre, Babhalgaon, Latur to S.P. Office, Aurangabad Rural. He has submitted that it is a midterm and mid tenure transfer order. The respondents have not followed the provisions of sec. 4 (4) (ii) & 4 (5) of the Transfer Act, 2005. The impugned order has been issued by the res. no. 3 on 12.7.2017 without recording reasons. He has submitted that there was no approval of Civil Services Board for the said transfer. He has submitted that the res. no. 2 is not the competent transferring authority to transfer the applicant as provided in the table given under sec. (6) of the Transfer Act, 2005. He has submitted that the Govt. has published a list of Head of Departments on 29.3.2011 in view of the provisions of sec. 7 of the Transfer Act, 2005 and notified the res. no. 3 as the authority competent to make transfer of employees working within his jurisdiction for the purpose of said rank. He has submitted that the res. no. 3 has not issued the impugned order making midterm transfer of the applicant in view of sec. 4 (4) of the Transfer Act, 2005. He has further submitted that no prior approval of the next higher authority under the Transfer Act, 2005 has been obtained for making the transfer of the applicant as provided in the proviso to sub sec. 4 of sec. 4 and therefore the impugned transfer order is illegal. He has submitted that the respondents neither complied the requirements of sec. 4

(4) nor followed the mandate of the provisions of sec. 4 (5) of the Transfer Act, 2005 while making the transfer of the applicant. He has submitted that the respondents has made violation of the strict provisions of the provisions of the Transfer Act, 2005 and therefore he prayed to quash the impugned transfer order.

11. The learned P.O. has submitted that one Ms. Lobha Ganesh Kamble is serving in the Police Training Centre, Babhalgaon, Latur along with the applicant. Ms. Kamble filed complaint against the applicant making serious allegations against him. The said complaint was enquired into by the Principal, Police Training Centre, Babhalgaon, Latur. He submitted his report to the Additional Director of Police, Training & Special Units and recommended the transfers of both i.e. the applicant and Ms. Kamble from Police Training Centre, Babhalgaon, Latur. The learned P.O. has further submitted that on the basis of the said report, the res. no. 3 the Additional Director General of Police, Mumbai by his letters dtd. 29.3.2017 & 8.5.2017 recommended the res. no. 2 the Director General of Police, Mumbai to make transfer of applicant as well as Ms. Kamble from Police Training Centre, Babhalgaon, Latur. He has submitted that on the basis of said report, a proposal for transfer of the applicant from that post is placed before the Civil Services Board comprising of Additional

Director General of Police (Administration) and other two members. Accordingly, they considered the proposal and decided to transfer the applicant in the office of S.P., Aurangabad Rural and accordingly impugned order has been issued by the Additional Director General of Police (Administration). He has submitted that the impugned order has been issued considering the serious allegations made against the applicant by his colleague Ms. Kamble in view of sec. 4 (4) & 4 (4) (ii) of the Transfer Act, 2005. He has submitted that exceptional circumstances and special reasons have been recorded for issuance of impugned transfer order by the Civil Services Board and therefore there is no illegality. Therefore he justified the impugned transfer order and prayed to reject the O.A.

12. On going through the documents on record, it is crystal clear that the res. no. 3 has been notified as Head of Department i.e. competent transferring authority to make transfers of the employees under his jurisdiction by the State Government by notification dtd. 29.3.2011 in view of provisions of sec. 7 of the Transfer Act, 2005. Therefore, the res. no. 3 is the competent transferring authority to make transfers of non-gazetted employees in Group B & C in view of sec. 6 of the Transfer Act, 2005. The applicant is Group 'C' employee and therefore the res.

no. 3 is the competent transferring authority to make his transfer. In the instant case the impugned order has been issued by the Additional Director of Police (Administration), Mumbai on the recommendation of Civil Services Board. Since the Additional Director General of Police (Administration) is not the competent transferring authority as provided under table given in sec. 6 of the Transfer Act, 2005 the impugned order issued by her cannot be said to be legal and in accordance with the provisions of the Transfer Act, 2005. In fact, in the present matter the res. no. 3 the Additional Director General of Police, Training & Special Units, Mumbai is the competent authority to make transfer of the applicant but he has not made the impugned order and instead of that he has forwarded the report to the res. no. 2 recommending the transfer of the applicant. Therefore, the impugned transfer order issued by the Additional Director General of Police (Administration) is not legal one.

13. It is material to note that the respondents produced the document to show that the proposal regarding transfer of the applicant has been placed before the Civil Services Board headed by the Additional Director General of Police, M.S., Mumbai and on the recommendation of the Civil Services Board, the impugned order has been issued, but there is nothing on record to show that

such Board has been constituted for making recommendations for transfers of the employees working under the jurisdiction of res. no. 3 and the said Civil Services Board is competent to make recommendations regarding transfers of the employees working under the res. no. 3. Not only this, but the respondents have not produced the minutes of the meeting of the Civil Services Board to show that meeting of the Civil Services Board was held and proposal regarding transfer of the present applicant has been considered by the said Board and it has recommended the transfer of the applicant. In absence of minutes of such meeting, it is difficult to accept the contentions of the respondents that such meeting has been held and the competent Civil Services Board took the decision to recommend the transfer of the applicant. Therefore, it is doubtful as to whether really such Board has been constituted and its meeting has been held for considering transfer of the applicant. In absence of evidence to that effect, the impugned order cannot be said to be legal.

14. It is material to note that the impugned transfer of the applicant is midterm transfer. Sec. 4 (4) (ii) of the Transfer Act, 2005 provides that such transfer can be effected in exceptional circumstances, for special reasons after recording special reasons in writing and with prior approval of the next higher authority. In

the instant case no such prior approval of the next higher authority as mentioned in Table attached to sec. 6 of the Transfer Act, 2005 i.e. Hon'ble Minister in-charge of the concerned department had been obtained while making transfer of the applicant. Not only this but no exceptional circumstances or special reasons have been recorded while making the transfer of the applicant vide the impugned order dtd. 12.7.2017.

15. In this regard the learned Advocate for the applicant has placed reliance on the judgment in the case of **Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance and Development Corporation, Mumbai [2013 (3) Mh. L.J. 463]**,

wherein it is observed as follows :-

“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 bye-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. The impugned order of the transfer in the absence of mention of special and exceptional reasons was passed obviously in breach of the statutory obligations and suffers from the vices as above. ....”

16. He has also placed reliance on the judgment in the case of **Ramakant Baburao Kendre Vs. State of Maharashtra and another [2012 (1) Mh. L.J. 951]**, wherein it is observed that transfer could have been made only if the concerned authority had pointed out exceptional circumstances or special reasons and the same have been recorded in writing.

17. I have gone through the above said decision relied on by the learned Advocate for the applicant. I have no dispute regarding the legal proposition laid down by the Hon’ble Supreme Court. In view of sec. 4 (4) (ii) of the Transfer Act, 2005 it is mandatory on the part of competent authority to record reasons and exceptional circumstances under which the transfer of the employee has been made, but in the instant case no such reasons have been recorded and no reasoned order has been passed by the respondents while making transfer of the applicant and therefore the Principles laid

down in the above decisions are appropriately applicable in the instant case. As no special reasons and no exceptional circumstances for transfer of the applicant are recorded while passing the impugned order, the same is liable to be quashed and set aside. The mandatory requirement of sec. 4 (4) had not been complied with by the respondents and therefore the impugned order is illegal.

18. It is material to note here that transfer of the applicant has been made midterm as provided under sec. 4 (4) (ii) of the Transfer Act, 2005. While making the transfer under sec. 4 (4) of the Transfer Act, it is mandatory to obtain prior approval of the next higher transferring authority but no such prior approval has been obtained by the respondents while effecting the transfer of the applicant. The respondents have contended in their affidavit in reply in para 2.6 that after issuing the impugned order, the res. no. 2 forwarded the report to Additional Chief Secretary, Home Department on 27.7.2017 for seeking ex-post facto sanction to the impugned transfer order and the order of Government in that regard is awaited, but the respondents have failed to explain the provision under which the ex-post facto approval to the impugned transfer order of the applicant is sought by the respondents. On the contrary, the provisions of sec. 4 (4) (ii) of the Transfer Act are



mandatory which require that prior approval of the next higher authority is essential for making midterm transfer due to exceptional circumstances or special reasons that too after recording the same in writing, but in the instant case the Additional Director General of Police (Administration) who passed the impugned transfer order of the applicant without authority, has ignored the said provision and passed the impugned order and thereafter moved the proposal to the Secretary for giving the ex-post facto sanction to the transfer order, which is not contemplated under sec. 4 (4) (ii) of the Transfer Act.

19. No doubt, the res. no. 3, who is competent transferring authority, has every right, to transfer the applicant who is serving at Latur from last 33 years on the ground of complaints of serious nature received against him, in view of the provisions of Transfer Act, provided that he should follow the strict and due procedure as laid down in the Transfer Act, 2005. He has to follow the provisions of sec. 4 (4) (ii) while making midterm transfer, but in the instant case the said provisions has not been followed and therefore the impugned order is liable to be quashed.

20. Considering the above discussion the impugned transfer order is not in accordance with the provisions of sec. 4 (4) of the Transfer Act as it has not been issued by the competent authority

to make the transfer i.e. res. no. 3, and no prior approval of the next higher authority as per sec. 6 of the Transfer Act has been obtained for the transfer. The said order has been issued without recording the reasons in writing mentioning the exceptional circumstances or special reasons for transfer and therefore it amounts violation of mandatory provisions of sec. 4 (4) of the Transfer Act, 2005. The impugned order is illegal and therefore the same is required to quashed and set aside by allowing the O.A. Hence, I pass following order :-

**ORDER**

- (i) The Original Application is allowed.
- (ii) The impugned order dtd. 12.7.2017 passed by the res. no. 3 transferring the applicant from Police Training Centre, Babhalgaon, Latur to the office of Superintendent of Police, Aurangabad Rural is hereby quashed and set aside.
- (iii) The respondents are directed to repost the applicant at his earlier posting i.e. at Police Training Centre, Babhalgaon, Latur immediately.

There shall be no order as to costs.

**MEMBER (J)**