

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 990 OF 2018

(Subject – Transfer)

DISTRICT : LATUR

Shri Gaurishankaar S/o Prabhuling Swami,)

Age : 47 years, Occu. : Govt. Service,)

R/o Swami Niwas, Maharashtra Housing)

Society, Behind Water Tank, Barshi Road,)

Tq. and Dist. Latur.)

.. **APPLICANT**

V E R S U S

1) **The State of Maharashtra,**)
Through its Principal Secretary,)
Public Works Department,)
Mantralaya, Mumbai.)

2) **The Superintending Engineer,**)
National Highway Circle,)
Bandhkam Bhavan, Aurangabad.)

3) **The Chief Engineer,**)
National Highway (Public Works),)
Regional Department, Konkan Bhavan,)
Navi Mumbai.)

.. **RESPONDENTS**

APPEARANCE : Shri S.D. Joshi, Advocate for the Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer for
the Respondents.

CORAM : B.P. PATIL, MEMBER (J).

DATE : 04.04.2019.

ORDER

1. The applicant has challenged the impugned order dated 26.12.2018 issued by the respondent No. 1 transferring him from the post of Assistant Engineer Grade-I, National Highway, Sub Division Latur to the post of Deputy Executive Engineer, Zilla Parisshad, Latur by filing the present Original Application.

2. The applicant has passed B.E. Civil from Government Engineering College and M.Tech. from I.I.T. New Delhi with excellent academic career. He joined the Government service as Assistant Engineer Grade-I on 01.04.2002. Thereafter, he worked on various posts under the National Highway Division Nanded. On 19.07.2017, he was transferred as Assistant Engineer Grade-I, National Highway, Sub Division Latur and since then, he was working there. He has efficiently handled the additional charge of Executive Engineer and successfully completed the work of various National Highways under the Division of Latur. He was Honoured with a certificate of Appreciation by Ministry of Road Transport and Highways, Government of India in the month of April 2018 for his dedication, acumen, painstaking ability and efforts done in the capacity of Executive Engineer of

National Highway Division Latur. He was not due for transfer, as he has not completed his normal tenure of posting at Latur. But on 26.12.2018, the respondent No. 1 arbitrarily and without any substantial reason passed the impugned order and thereby transferred him from the post of Assistant Engineer Grade-I, National Highway, Sub Division Latur to the post of Deputy Executive Engineer, Zilla Parisshad, Latur.

3. It is contention of the applicant that before passing the impugned order dated 26.12.2018, the respondent No. 2 by its letter informed the respondent No. 3 that he had received telephonic call from Shri Shrinivas Jadhav, Personal Assistant to Hon'ble Chief Minister, informing that the transfer order of the applicant is about to pass and directed to take necessary action of relieving the applicant. The respondent No. 2 also requested the respondent No. 3 to make recommendation for the transfer of the applicant out of National Highway (Public Works), Regional Department. It is his contention that all these communications and orders have been abruptly and hurriedly passed within a period of three hours on the same day. It is his contention that the impugned transfer order has been issued in contraventions of the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official

Duties Act, 2005 (in short “the Transfer Act 2005”). He has hardly completed one year and three months on the present post i.e. at Latur. It is his contention that the impugned order of transfer has been issued under political influence. Therefore, he approached this Tribunal and challenged the impugned order dated 26.12.2018 issued by the respondent No. 1, by which he has transferred from the post of Assistant Engineer Grade-I, National Highway, Sub Division Latur to the post of Deputy Executive Engineer, Zilla Parishad, Latur by filing the present Original Application.

4. The respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the applicant was initially appointed as Assistant Engineer Grade –I in the year 2002 and posted at National Highway Sub Division, Latur by the order dated 19.07.2017. They have not disputed the fact that the applicant has not completed his normal tenure of posting on the present posting. It is their contention that the Government in Public Works Department decided to transfer the applicant on the vacant post in the office of Deputy Executive Engineer Zilha Parishad (Works), Latur on account of administrative exigencies with the prior approval of the higher competent transferring

authority. It is their contention that headquarter of the applicant has been maintained at Latur and therefore, no prejudice will be caused to the applicant. It is their contention that there were various complaints against the applicant and therefore, he has been transferred by the impugned order. It is their contention that the employer is empowered to make transfer of the employee even prior to completion of tenure in view of the provisions of Transfer Act 2005 and accordingly, the transfer of the applicant has been effected after complying the mandatory requirements of provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005. It is their contention that the transfer from one place to another is an incident of service of the Government servant and the transfer from one place to another is necessary in the public interest and for efficiency in the public administration. It is their contention that various important projects pertaining to development of National Highway are going on and therefore, the applicant has been transferred on account of administrative exigencies in view of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005. It is their contention that there is no illegality in the impugned order issued by the respondents and therefore, they supported the impugned order. On these grounds, they have prayed for dismissal of the present Original Application.

5. The applicant has filed rejoinder affidavit and raised the similar contentions to that of the contentions raised in the Original Application. It is his contention that the impugned order is mid-term and mid-tenure order and it is in violation of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005. It is his contention that the applicant worked hard and got sanctioned proposals regarding various roads in Sub Division Latur and Latur Division and completed the works. He handled projects efficiently and expeditiously. He had been kept in-charge of the post of Executive Engineer because of his performance and he discharged the duty accordingly. It is his contention that the transfer of the Government servant cannot be made on complaint in the form of punishment. It is his contention that no reasons have been recorded by the respondents while making his transfer and no exceptional case has been made out for his transfer. Mere using words "on administrative ground" cannot be said to be the compliance of the provisions of the Transfer Act 2005. It is his contention that the impugned transfer order has been issued by the respondents mala-fidely, arbitrarily and in contraventions of the provisions of the Transfer Act 2005 and therefore, he prayed to quash and set aside the same. It is his contention that the impugned order has been issued without approval of the next

higher competent transferring authority and therefore, it is in violation of the provisions of the Transfer Act 2005. Therefore, he prayed to allow the present Original Application and to quash the impugned order dated 26.12.2018.

6. I have heard Shri S.D. Joshi, learned Advocate for the applicant and Shri M.S. Mahajan, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

7. Admittedly, the applicant has passed B.E. and M.E. The applicant joined the Government service as Assistant Engineer Grade-I on 01.04.2002. He worked on various posts under the authority of National Highway Division Nanded. On 19.07.2017, he was transferred as Assistant Engineer Grade -I, National Highway, Sub-Division, Latur and since then, he was working there till the issuance of the impugned transfer order. Admittedly, the applicant has not completed his normal tenure of posting at Latur. The impugned transfer order is mid-term and mid-tenure transfer order. The transfer of the applicant has been made on account of administrative exigencies.

8. Learned Advocate for the applicant has submitted that the applicant has not completed his normal tenure of

posting in National Highway, Sub Division, Latur. He has hardly completed tenure of one year and three months on the said post. He was not due for transfer, but the respondents issued the impugned order abruptly without justifiable reasons and therefore, the same is illegal and it is in violation of the mandatory requirements of provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005. He has submitted that no special case has been made out for transfer of the applicant and no special reasons have been recorded for effecting the transfer of the applicant. He has submitted that no exceptional circumstances have been made out for the transfer of the applicant. He has argued that the transfer of the applicant is politically motivated and the same is in violations of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005. He has submitted that there was no recommendation of Civil Services Board for the transfer of the applicant. He has submitted that the Hon'ble Chief Minister is the competent transferring authority for making transfer of the applicant, who is Group-A officer. But the impugned order has been issued by the Minister In-Charge of the concerned department that too without approval of the next higher competent transferring authority i.e. the Hon'ble Chief Minister

and therefore, it is in violation of provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005.

9. Learned Advocate for the applicant has submitted that the documents produced on record shows that the Superintending Engineer, National Highway Circle, Aurangabad received telephonic message at 02.05 p.m. from Shri Shrinivas Jadhav, Personal Assistant to the Hon'ble Chief Minister informing that several complaints were received against the applicant and the Government is likely to issue the transfer order of the applicant and therefore, the applicant requires to be relieved immediately. The Superintending Engineer, National Highway Circle, Aurangabad informed the said fact to the Chief Engineer, National Highway (Public Works), Regional Department, Konkan Bhavan, New Mumbai by the letter dated 26.12.2018. Thereafter, he sent another letter addressed to the Chief Secretary, P.W.D. and requested to transfer the applicant elsewhere, as there were complaints against him. He has submitted that on the basis of the said communication, the department prepared proposal of transfer of the applicant, but the said proposal was not placed before the Civil Services Board and the concerned Minister, who is the competent transferring authority, has passed the impugned order and transferred the

applicant. He has submitted that the impugned order has been issued on 26.12.2018 and it was digitally signed by the Desk Officer, Maharashtra State at 05.21.57 p.m. He has submitted that it means after receiving the proposal from the Chief Engineer, National Highway (Public Works), Regional Department, Konkan Bhavan, New Mumbai, the competent transferring authority has taken a decision within an hour or two hours. This shows that the impugned order has been issued in haste, mala-fidely and arbitrarily by the respondents. He has submitted that the alleged complaints have not been placed before the competent transferring authority before issuance of the impugned order. He has submitted that even if it is assumed that there were complaints against the applicant, then without making any enquiry in it the respondents issued the impugned order and they punished him. He has submitted that such type of action is not permissible. He has submitted that the said action on the part of the respondents is not in view of the provisions of the guidelines given in the Circular dated 11.02.2015. He has submitted that the impugned transfer order has been issued on the basis of complaints filed against the applicant and on the message of Personal Assistant to Hon'ble Chief Minister. He has submitted that the transfers cannot be

influenced by the political persons. He has submitted that the Government of Maharashtra had given undertaking before the Hon'ble High Court of Judicature at Bombay in that regard in case of **Balasaheb Vitthalrao Tidke Vs. the State of Maharashtra and Anr.** in **W.P. No. 8787/2018**. He has submitted that in view of the undertaking given by the Chief Secretary of the Government of Maharashtra, the Hon'ble High Court disposed of the said W.P. on 12.12.2018 with the following directions:-

“(i) The writ petition is disposed of as withdrawn;

(ii) The statements made in paras-1 and 2 of Affidavit of Mr. Dinesh Kumar Jain, Chief Secretary of the State Government dated 12th December, 2018 are accepted as statements made on behalf of the State Government and the undertakings given by the State Government;

(iii) We hope and trust that the statements made in the Affidavit of Mr. Dinesh Kumar Jain are made known to all concerned authorities exercising powers under the said Act of 2005 to avoid any attempt of political influence in the process of transfer;

(iv) Though the Petition is disposed of, the protection granted to Shri. Shripat Shinde under Clause-11 of the order dated 2nd November, 2018 stands;

(v) There shall be no order as to costs.”

(Quoted from page No. 27 of paper book of O.A.)

He has submitted that in view of the undertaking given by the Hon'ble Chief Minister in the above cited decision, the impugned order requires to be quashed and set aside.

10. Learned Advocate for the applicant has further submitted that the impugned order is in contraventions of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005 and this Tribunal in various cases of the similarly situated persons quashed the said orders. In support of his submissions, he has placed reliance on the judgment delivered by the principal seat of this Tribunal at Mumbai in **O.A. Nos. 444 & 446 of 2017** in case of **Mr. Harishchandra L. Jadhav and Anr. Vs. The State of Maharashtra and Ors.** decided on 28.07.2017.

11. Learned Advocate for the applicant has further placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **Somesh Tiwari Vs. Union of India and Ors.** reported in **2007 (3) MPLJ 162**, wherein it has been observed as follows:-

“19. 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.”

12. Learned Advocate for the applicant has also placed reliance on the judgment delivered by the principal seat of this Tribunal at Mumbai in **O.A. No. 527/2018** in case of **Dr. Ravindranath B. Chavan Vs. the State of Maharashtra and Anr.** decided on 19.11.2018, when it is observed as follows:-

“30. At this juncture, it would be appropriate to refer Circular dated 11.02.2015. In paragraph 8 of the said Circular guidelines / directions have been issued to deal with such situation. As per these instructions employee cannot be transferred mid-term only on receipt of the complaint. In case of complaint, the Competent Authority is required to ascertain the veracity to the allegations made in

the complaint and if necessary the report can be called to take further suitable steps. In case, the substance found in the complaint then in that event the Disciplinary Authority is required to take disciplinary action against employee keeping on same post or in suitable or deserving case, the 13 Competent Authority can recommend the transfer after recording his reason in this regard. However, in the present case, the Respondent No.1 ignored its own Circular and there is no compliance of the instructions contain in the Circular.

*31. In this context, it would useful to refer the judgment of the Hon'ble Bombay High Court **2015(2) Mh. L. J 679 State of Maharashtra & Others V/s Dr.(Ms.) Padmashri Shriram Bainade & Others**. In that case, the midterm transfer was made in view of the allegations of mis-conduct of the concerned employee. The employee was repatriated without verifying the veracity of allegation and was transferred mid-term. The Hon'ble Bombay High Court held that there is violation of principles of natural justice and maintained the judgment of Tribunal quashing the order of Tribunal. Paragraph Nos.22 and 23 of the judgment which is useful in this purpose :-*

“22. The decision so taken, in the background, in breach of principle of statutory provisions and the principle of natural justice is bad in law, as this amounts to punishment/punitive action based upon unproved alleged misconduct and dereliction of duty. The transfer order refers to the repatriation action also, but the State has invoked the State Act. This also reflects the non- application of mind, confusion and any

concrete foundation or motive. The process followed to take such decision was wrong and arbitrary.

23. The transfer is a part of service contract and/or the service jurisprudence. "Transfer is an incidence of service" - "Reason to be recorded" - cannot read to mean, no reason should not be communicated at any circumstances, specially when it is obligatory on the part of the State to act fairly, transparently and reasonably. The decision needs to be actuated by consideration based on law and the record and certainly not an extraneous consideration. Unreasoned order is always vulnerable to challenge and stated to be mala fide. The State/Authority needs to act bona fide. Therefore, cannot be restricted to meant for and/or with the private record/department. It must be reflected before taking any action/order. Perversity or irrationality, bonafide, legality of reasons difficult to test, if not disclosed at the time of order/action itself. It is normally the unreasoned mid-term order or such orders are vulnerable to challenge. An executive order on undisclosed or unreasoned foundation of alleged misconduct and dereliction of duty is also vulnerable to challenge on the ground of malice in law. Such undisclosed burdened mid-term order of transfer affects the status of the employee, it violates the service conditions thus illegal, though it is administrative order. It has civil consequences. The principle of natural justice is applicable. The State Act and not any guidelines govern such State Government transfer order, such transfer order is arbitrary, irrational and violates Article 14 of the Constitution of India."

13. Learned Advocate for the applicant has also placed reliance on the judgment delivered by this Tribunal in case of **Smt. Sangita Rohit Jagtap Vs. The State of Maharashtra and Ors.** in **O.A. No. 927/2018** decided on 25.01.2019, wherein it is observed as follows :-

“28. It is a settled principle that shifting an officer from one place to another, change in assignment or job to be performed, would well amount to a transfer and may require interference if same has been done arbitrarily, malafide and frequently. Keeping in view, the settled legal principles laid down in the decisions referred by both the parties, I have to determine whether the impugned order has been issued by the respondents arbitrarily, malafidey and frequently. The record shows that there was no special reasons and exceptional circumstances for the transfer of the applicant from her present post, but her transfer has been made with a view to accommodate the respondent No. 3 only. This shows that the respondents decided to transfer the applicant to favour the respondent No. 3 and therefore, this amounts arbitrarily exercise of the powers by the respondents. The impugned order has been issued in violation of the provisions of the Section 4(4) and 4(5) of the Transfer Act 2005. There is nothing on record to justify the impugned order. There is no just ground to hold that the transfer of the applicant has been made as a special case and in exceptional circumstances. It has made in violation of the provisions of Transfer Act 2005. Therefore, it is colorable exercise of power by the respondents. It has been made with mala-fide intention. Therefore, it requires to be quashed and set aside.

30. No doubt, it is prerogative of the employer where, when and at what point of time the public servant shall be transferred from his present

posting. But has to justify the transfer and order should not be arbitrary and mala-fide. In the instant case, there is no justifiable reason for transfer of the applicant from one post to another at the same place. The impugned order has been issued arbitrarily, mala-fidely and in contraventions of the provisions of the Transfer Act, 2005 and therefore, it requires to be quashed and set aside by allowed the present Original Application.”

14. He has also placed reliance on the judgment delivered by the principal seat of this Tribunal at Mumbai in case of **Shri Prashant Suresh Pisal Vs. the Principal Secretary and Anr.** in **O.A. No. 900 of 2018** decided on 20.12.2018, when it is observed as follows:-

“35. Record shows that at Pages 67 or 79 or any other document does not even barely contain reasons even in one word so as to express alleged “administrative reasons”, much less special reasons and exceptional circumstances on record. Though there is a view of Hon’ble High Court proclaimed in other judgments of Hon’ble High Court, namely where “recording of reasons”, which is mandatory would suffice by saying that transfer is ordered for administrative reasons.”

15. Learned Advocate for the applicant has also placed reliance on the judgment delivered by the principal seat of this Tribunal at Mumbai in case of **Shri Amol Vilas Gaikwad Vs.**

the State of Maharashtra and Anr. in O.A. No. 983/2018

decided on 10.01.2019, when it is observed as follows:-

“16.....
.....

In Transfer Act, 2005 also, the normal tenure is provided and in special case, after recording the reasons in writing with the permission of competent authority, the transfer is permissible. The Hon'ble Bombay High Court held that, mere use of word “administrative ground” cannot be said compliance of the law. As such, the ratio of the authority is that the reasons for the transfer are need to be recorded to satisfy the Court whether it is in compliance of the provisions of law. This ratio is also attracted in the present case, as there is absolutely no whisper that the transfer of the Applicant was necessitated for the reasons to be mentioned and it is exceptional case and public interest as well as administrative exigency warrants the same.”

16. Learned Advocate for the applicant has submitted that the case of the applicant is also covered by the above cited decisions rendered by the Hon'ble Supreme Court, as well as, by this Tribunal. He has submitted that facts and circumstances on record are sufficient to show that the respondents have issued the impugned order with malice, arbitrarily and without following the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005

and therefore, he prayed to quash and set aside the impugned order by allowing the present Original Application.

17. Learned Chief Presenting Officer has submitted that there were several complaints against the applicant regarding his work. Therefore, proposal regarding transfer of the applicant from Sub Division, Latur has been prepared by the department and it was placed before the Civil Services Board by circulation on 26.12.2018. Members of the Civil Services Board recommended transfer of the applicant. Therefore, said proposal along with recommendation was placed before the Hon'ble Minister concerned, who is the competent transferring authority to effect the transfer of the applicant in view of the provisions of Section 6 of the Transfer Act, 2005. The Hon'ble Minister concerned after considering the recommendation of the Civil Services Board decided to transfer the applicant from Sub Division Latur and accordingly, he has been posted at the same place i.e. at Latur by the impugned transfer order. He has submitted that as per Section 6 of the Transfer Act 2005, the Hon'ble Chief Minister, is the competent transferring authority to make transfers of the officers of State Services in Group-A like the applicant. But the Hon'ble Chief Minister delegated the said powers to the concerned Minister by the G.R. dated 15.01.2015. By the G.R.

dated 27.05.2016, the Hon'ble Chief Minister delegated the powers to make transfers of said officers under Group-A in view of the provisions of Section 4(4) and 4(5) of the Transfer Act 2005 to the concerned Minister. He has submitted that in view of the said provisions, the Hon'ble Minister of the concerned department is the competent transferring authority as mentioned in Clause (a) of the Table attached to the Section 6 of the Transfer Act 2005. He has submitted that the Hon'ble Minister, who is the competent transferring authority in view of the provisions of Section 6 of the Transfer Act 2005 effected the transfer of the applicant and therefore, it can be said that the transfer of the applicant has been made in view of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005. He has submitted that as the Hon'ble Minister concerned was the highest competent transferring authority in view of the delegation of the powers, no approval of the Hon'ble Chief Minister is needed and therefore, he supported the impugned transfer order. He has submitted that the necessary requirements as provided under Section 4(4)(ii) and 4(5) of the Transfer Act 2005 had been followed while effecting the transfer of the applicant and therefore, there is no illegality on the part of the respondents. He has submitted that the transfer of the applicant has been made

as a special case by recording reasons, on account of administrative exigencies and therefore, the impugned order is legal one. On these grounds, he prayed to dismiss the present Original Application.

18. I have gone through the decisions referred by the learned Advocate for the applicant. I have no dispute regarding the settled legal principles laid down therein. Keeping in mind the above said settled principles I have to decide the present Original Application. In view of the provisions of the Transfer Act 2005, the Government servant cannot be transferred unless he has completed his normal tenure of posting. However, the competent authority may make his transfer before completion of his normal tenure in view of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005 by recording reasons in a special case. It is settled legal position that merely calling as a special case does not constitute sufficient reason. The provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005 provides that the reasons must be recorded in writing for transferring the employees even before completion of his normal tenure to bring objectively and transparency in the process of transfer. Exceptional powers given to the competent authority under the said provisions must be followed strictly and merely mentioning that the transfer has

been made on account of “administrative exigencies” does not amount sufficient compliance of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005.

19. No doubt, it is prerogative of the employer where, when and at what point of time the public servant shall be transferred from the present posting, but the order cannot be said to be arbitrary and mala-fide. Keeping in mind in above settled legal principles, I have to consider the instant case and to determine whether the impugned transfer order of the applicant is in accordance with the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005.

20. Learned Chief Presenting Officer has submitted at bar that for the transfers of the employees under Public Works Department, the Civil Services Board headed by the Principal Secretary of P.W.D. has been constituted. The Secretary Construction, Secretary Road and Deputy Secretary of Tribal are the other Members of the committee. The proposal regarding the transfer of the applicant has been placed before the Civil Services Board on 26.12.2018 by way of circulation. The respondents have produced the original record regarding the transfer of the applicant.

21. On perusal of the record produced by the respondents, it reveals that the concerned department prepared the proposal regarding the transfer of the applicant on 26.12.2016. It has been mentioned therein that the said proposal was placed before the Civil Services Board constituted by the Chief Secretary of the department. But no record including the agenda and minutes of the meeting showing that the matter has been placed before the Civil Services Board and recommendation of Civil Services Board has been obtained by way of circulation has been produced on record. In the absence of documents in that regard, it is difficult to accept the contentions of the respondents that the proposal regarding transfer of the applicant has been placed before the Civil Services Board and the Civil Services Board recommended transfer of the applicant.

22. On going through the proposal prepared by the department, it reveals that transfer of the applicant has been proposed on account of complaints against the applicant and on the basis of letter received from the concerned Hon'ble Minister, P.W.D. The documents produced on record show that the special officer on duty attached to the Hon'ble Minister, Public Works Department issued the letter to the Principal Secretary of the

P.W.D. to prepare proposal regarding transfer of the applicant on the basis of the complaints received (Page No. 20 of paper book of O.A.). Accordingly, the said proposal has been prepared but the respondents have not produced the complaints before this Tribunal. There is not a single document on record to show that there were complaints against the applicant and work of the applicant was not satisfactory. It seems that no complaints of serious nature were filed against the applicant. Therefore, contention of the respondents that the applicant has been transferred because of serious nature complaints is not acceptable.

23. It is material to note here that the documents produced on record by the respondents show that the Superintending Engineer, National Highway Circle, Aurangabad by communication dated 26.12.2018 informed the Chief Engineer, National Highway (Public Works), Regional Department, Konkan Bhavan, New Mumbai that he received telephonic message from Shri Shrinivas Jadhav, Personal Assistant of Hon'ble Chief Minister at 02.05 p.m. informing that transfer of the applicant was under consideration and therefore, he was asked to take steps for relieving the applicant immediately. The said letter bears outward no. 1/1799 dated

26.12.2018 (Page No. 20 of paper book of O.A.). On the basis of the said information, Assistant Chief Engineer, National Highway (Public Works), Regional Department, Konkan Bhavan, New Mumbai wrote a letter to the Chief Secretary on the very day and requested to transfer the applicant (Page No. 21 of paper book of O.A.). The proposal shows that transfer was made on the basis of letter sent by the officer on special duty attached to the Hon'ble Minister Public Works. All these facts show that the transfer of the applicant has been proposed on the basis of alleged complaints filed against the applicant. The transfer of the applicant is influenced by political person. No special reasons have been recorded by the competent transferring authority while making transfer of the applicant. No special circumstances have been made out while making transfer of the applicant. Not only this but there is nothing on record to show that the transfer of the applicant has been made on account of administrative exigencies. These facts are sufficient to show that the impugned transfer order of the applicant has been issued in contravention of the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005. Not a single circumstance has been brought on record to show that the transfer of the applicant was on account of administrative exigencies. The facts and circumstances on

record show that the transfer of the applicant has been made on the basis of letter sent by the Hon'ble Minister. Entire process has been conducted on the basis of said letter. Therefore, in my view, the impugned order was politically motivated and it was made arbitrarily with malice. Therefore, it requires to be quashed and set aside.

24. It is also material to note that after receiving telephonic message from Shri Shrinivas Jadhav, Personal Assistant to Hon'ble Chief Minister, the Superintending Engineer, National Highway Circle, Aurangabad sent communication bearing outward No. 1/1799 dated 26.12.2018 to the Chief Engineer, National Highway (Public Works), Regional Department, Konkan Bhavan, New Mumbai after 02.05 p.m. On receiving the said communication, the Chief Engineer, National Highway (Public Works), Regional Department, Konkan Bhavan, New Mumbai sent a letter addressed to the Chief Secretary and definitely some time might have been consumed in this process. Thereafter, proposal regarding transfer of the applicant might have been prepared and the impugned order has been issued by making digital signature. The transfer order shows that it has been digitally signed at 05:21:57 p.m. It means that entire matter has been dealt and decided within a period of three hours. There

is nothing on record to show that for any special reason or exceptional circumstances said transfer of the applicant has been made expeditiously. The transfer of the applicant has been made in extraordinary speed on priority basis. Therefore, it creates doubt regarding intention of the respondents in effecting transfer of the applicant. The applicant has been transferred from the post of Assistant Engineer Grade-I, National Highway, Sub Division Latur to the post of Deputy Executive Engineer, Zilla Parisshad, Latur within a period of one year and three months and before completion of his normal tenure of posting by the respondents without complying the mandatory requirements of provisions of Section 4(4)(ii) and 4(5) of the Transfer Act 2005. The impugned order has been issued arbitrarily with malice and therefore, it requires to be quashed and set aside by allowing the present Original Application. In view of these above facts, the O.A. deserves to be allowed.

25. In view of the discussion in the foregoing paragraphs, the Original Application is allowed. The impugned transfer order dated 26.12.2018 transferring the applicant from the post of Assistant Engineer Grade-I, National Highway, Sub Division Latur to the post of Deputy Executive Engineer, Zilla Parisshad, Latur is hereby quashed and set aside. The respondents are

directed to repost the applicant at his earlier place of posting within 15 days from the date of this order. There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 04.04.2019.

(B.P. PATIL)
MEMBER (J)

KPB S.B. O.A. No. 990 of 2018 BPP 2019 Transfer