

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.406 OF 2023**

**DISTRICT: THANE  
SUBJECT : TRANSFER**

Shri Sunil Madhavrao Patil, )  
Aged 50 yrs, Working as Executive Engineer, )  
Public Works Department, Thane-1, )  
R/o. Gulmohar Bunglow No.7/1, Kopri, )  
Thane (E). )... **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
Through The Additional Chief Secretary, )  
Public Works Department, Having Office at )  
Mantralaya, Mumbai-400 032. )
- 2) Sandip R. Chavan, )  
Aged Adult, Working as Executive Engineer )  
Zilla Parishad, P.W., Thane. )... **Respondents**

**Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.**

**Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondent No.1.**

**Shri Dinesh. B. Khaire, learned Advocate for the Respondent No.2.**

**CORAM : DEBASHISH CHAKRABARTY, MEMBER (A)**

**DATE : 15.12.2023.**

**JUDGMENT**

1. The Applicant Shri Sunil Madhavrao Patil has invoked the provisions of Section 19 of The Administrative Tribunal Act, 1985 to challenge the Transfer Order of PWD dated 13.04.2023 by which he has been transferred from the post of Executive Engineer, P.W. Division No.1, Thane to the post of Executive Engineer, (PWD) Zilla Parishad, Thane and

Respondent No.2 has been posted from the post of Executive Engineer (PWD) Zilla Parishad, Thane to post of Executive Engineer, P. W. Division No.1, Thane.

2. The Applicant was represented by Shri Arvind V. Bandiwadekar, learned Advocate, while Respondent No. 2 was represented by Shri Dinesh. B. Khaire, learned Advocate. The Respondent No.1 was represented by Smt. Kranti S. Gaikwad, learned Presenting Officer.

3. The learned Advocate for the Applicant stated that he was transferred to post of Executive Engineer, P.W. Division No.1, Thane on 18.08.2021 and had joined on 21.10.2021.

4. The learned Advocate for Applicant stated that Applicant had served on the post of Executive Engineer, P.W. Division No.1 Thane for just about One & Half year as against Normal Tenure of Three years when Transfer Order of PWD dated 13.04.2023 came to be issued and Applicant was abruptly transferred to the post of 'Executive Engineer, (PWD) Zilla Parishad, Thane in place of Respondent No.2. Hence, it was a 'Mid-Tenure' and 'Mid-Term' transfer effected without judiciously observing provisions of Section 4(4)(ii) and Section 4(5) of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' as there were no 'Special Reasons' or 'Exceptional Circumstances'. The Transfer Order of PWD dated 13.04.2023 mentions that it was issued for 'Administrative Reasons' in 'Public Interest'.

5. The learned Advocate for Applicant further stated that Respondent No.2 was also not due for transfer either as he had been recently promoted and had joined on the post of Executive Engineer (PWD), Zilla Parishad, Thane on 02.05.2022.

6. The learned Advocate for Applicant contended that the Transfer Order of PWD dated 13.04.2023 was issued without due consideration being given by the CSB of PWD to the fact that both Applicant and

Respondent No.2 had not completed their 'Normal Tenure' of 3 years under Section 3(1) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'. The learned Advocate for Applicant further contended that the Transfer Order of PWD dated 13.04.2023 came to be issued only due to political pressure exerted by Respondent No.2 as few senior politicians had written letters of recommendation in favour of Respondent No.2 to post him as Executive Engineer, PW Division No.1 Thane and these came to be considered by the Competent Transferring Authority and the next Superior Transferring Authority.

7. The learned Advocate for Applicant highlighted that Respondent No.2 came to be posted in his place as Executive Engineer, P.W. Division No.1, Thane by Transfer Order of PWD dated 13.04.2023 not as part of 'General Transfer 2023' but lateral exchange of posts was done between the Applicant serving as Executive Engineer, P.W. Division No.1, Thane and Respondent No.2 working as Executive Engineer, (PWD) Zilla Parishad, Thane by invoking provisions of Section 4(4)(ii) and Section 4(5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.

8. The learned Advocate for Applicant then stated that the Overall Performance of Applicant while serving on post of Executive Engineer, P.W. Division No.1, Thane was good and were no complaints against his functioning as is also borne out by the fact that no 'Memo' or 'Show Cause Notice' etc. were issued to him while serving on the post of Executive Engineer, P.W. Division No.1, Thane.

9. The learned Advocate for Applicant then referred to the Affidavit-in-Rejoinder filed on 26.06.2023 and stated that an adverse report came to be submitted against Applicant by the Superintending Engineer, Thane Circle on 27.03.2023 directly to the Additional Chief Secretary, PWD. The conduct of the Superintending Engineer, (PWD) Circle, Thane was highly objectionable as no such report about the Applicant had been called for

by Additional Chief Secretary, PWD and any such report should have invariably been submitted through the Chief Engineer, PWD, Konkan Region to the Additional Chief Secretary, PWD. So it is evident that it was only to favour Respondent No. 2 for extraneous reason and to save himself from transfer that the Superintending Engineer, (PWD) Circle, Thane made false allegations against the Applicant and submitted the adverse report to Additional Chief Secretary, PWD on 27.03.2023. The Superintending Engineer, (PWD) Circle, Thane has not cited any specific instances with regard to alleged absence of the Applicant from important meetings or about the underperformance at work by Applicant. Learned Advocate for Applicant then stated if these facts were indeed true then the Applicant should have been issued with 'Memo' or 'Show Cause Notice' long back by Superintending Engineer, PWD Circle Thane and should have called for the explanation from Applicant and attached them in support of the report submitted by him on 27.03.2023. The Superintending Engineer, PWD Circle Thane deliberately avoided to do so as to support and encourage the Respondent No. 2 to try and secure posting as Executive Engineer, PW Division No.1, Thane. The Transfer Order of PWD dated 13.04.2023 is therefore an outcome of the political pressure exerted by the Respondent No. 2 through few senior politicians who had written recommendations letters on 02.03.2023, 06.03.2023 and 13.03.2023 specifically mentioning his name for transfer to post of Executive Engineer, P.W. Division No.1, Thane. The learned Advocate for Applicant has averred all such details in the Affidavit-in-Rejoinder, dated 26.06.2023 filed by Applicant.

10. The learned Advocate for the Applicant then referred to the Affidavit of Applicant dated 18.09.2023 to highlight the contents of the Annual Performance Appraisal Report: 2022-2023 to emphasize that the Superintendent Engineer, PWD Circle Thane has directly acted under political pressure as it was evident from the fact that as Reporting Officer, he had given 9 out of 10 in 'Overall Gradation' to Applicant for his work when serving on post Executive Engineer, P.W.Division No.1,

Thane and this Overall Gradation of 9 out of 10 was concurred to by the Chief Engineer, PWD Konkan Region who is Reviewing Officer of the Applicant. Hence, the adverse report of Superintendent Engineer, PWD Circle, Thane dated 27.03.2023 about the Applicant was thus self-contradictory because detailed assessment of the work of the Applicant was made in Annual Performance Appraisal Report : 2022-2023 while he was serving on post of Executive Engineer, P.W. Division No.1, Thane. Learned Advocate for Applicant drew attention to the fact that the Annual Performance Appraisal Report: 2022-2023 of the Applicant was recorded by Superintending Engineer, PWD Circle, Thane as Reporting Officer on 10.07.2023 and confirmed by Chief Engineer, P.W.D. Konkan Region as Reviewing Officer on 17.08.2023 which is much after the adverse report came to be submitted directly by Superintending Engineer, PWD Circle, Thane to Additional Chief Secretary PWD on 27.03.2023.

11. The learned Advocate for the Applicant lastly stated that though the Superintending Engineer, PWD Circle, Thane had submitted an adverse report against the Applicant on 27.03.2022 recommending his transfer from the post of Executive Engineer, P.W.D. No.1, Thane; it was for CSB to scrutinize it on merit and strictly observe the guidelines in G.A.D. Circular dated 11.02.2015 so as to ascertain the role of the Respondent No.2 and the veracity of the adverse report submitted directly by Superintendent Engineer, (PW) Circle Thane about the Applicant dated 27.03.2023 including why it had been in such haste directly not through Chief Engineer, PWD, Konkan Region.

12. Learned Advocate for Applicant during his argument referred to following Judgments of the Hon'ble High Court at Bombay :-

- 1) ***Writ Petition No.9844 of 2018 (Santosh Machhindra Thite V/s State of Maharashtra & Ors.)***
- 2) ***Writ Petition No.7977 of 2012 (Purshottam Ramkrishna Pandare & Anr. V/s State of Maharashtra & Anr.)***

- 3) ***Writ Petition No.722 of 2014 (A. P.Kamble V/s State of Maharashtra & Anr.)***
- 4) ***Writ Petition No.8447 of 2009 (Dadabhau N. Kale V/s The State of Maharashtra & Ors.)***
- 5) ***Writ Petition No.9781 of 2014 (Padmashri Shriram Bainade V/s State of Maharashtra & Ors.)***
- 6) ***Writ Petition No.8987 of 2018 (Balasaheb Vitthalrao Tidke V/s State of Maharashtra & Anr.)***

13. The learned P.O. relied on the contents of the Affidavit-in-Reply of the filed on 09.06.2023 on behalf of the Additional Chief Secretary, P.W.D. to justify the Transfer Order of PWD dated 13.04.2023 by which Applicant was posted from the post of Executive Engineer, P.W. Division No.1, Thane to the post of Executive Engineer, (PWD) Zilla Parishad, Thane and Respondent No.2 has been posted as Executive Engineer (PWD) Zilla Parishad, Thane in the Applicant's place to the post of Executive Engineer, PW Division No.1 Thane.

14. The learned P.O. then stated that the basis for the transfer of Applicant from post of Executive Engineer, P.W.D. No.1, Thane to post of Executive Engineer, (P.W.D.) Zilla Parishad, Thane is the adverse report of the Superintendent Engineer, P.W. Thane Circle, Thane dated 27.03.2023 submitted to Additional Chief Secretary, P.W.D. wherein he had reported about the under performance of the Applicant as Executive Engineer, P.W. Division No.1, Thane and requested that other competent officer be posted in place of Applicant as many important Public Projects were being implemented in the jurisdiction of the Executive Engineer, P.W. Division No.1, Thane.

15. The learned P.O. then relying on the contents of the Affidavit-in-Reply dated 09.06.2023 cited specific instances where the Applicant did not work with efficiency and failed to display competence at work. She cited some specific examples to state that there were huge problems of

Traffic Congestion in Thane District but Applicant was neglecting the maintenance and repair of important Ghodbunder Road, Kasheli Road, Chinchoti-Kaman-Mankoli Road and Manor-Wada-Bhinwadi Road. The Hon'ble Chief Minister of Maharashtra State or Hon. Minister in Charge of Public Works Department whenever on visits to Thane District take important review meetings but Applicant does not remain present and after left headquarters without any prior permission. The instructions given by Hon'ble Chief Minister and Hon'ble Minister in Charge of Public Works Department regarding maintenance and repair of arterial Ghodbunder Road and Important Roads of Thane District to keep them free of potholes were not implemented with diligence by Applicant. Hon'ble Minister in Charge of Public Work Department and Hon. Chief Minister of Maharashtra State had often expressed displeasure about the underperformance of the Applicant while serving of the post of Executive Engineer, P.W. Division No.1, Thane.

16. The learned P.O. thereafter stated that for these reasons which are mentioned in the adverse report of Superintending Engineer, PW Thane Circle, Thane dated 27.03.2023 along with contents of letter submitted by Respondent No.2 dated 03.03.2023 to Additional Chief Secretary PWD requesting that he be transferred to the post of Executive Engineer, PW Division No.1, Thane were considered by the CSB of PWD in the meeting held on 28.03.2023. The CSB of PWD accordingly recommended the transfer of Applicant to the post of Executive Engineer, PWD Zilla Parishad, Thane and Respondent No.2 in his place as Executive Engineer, P.W. Division No.1, Thane. Learned P.O. further affirmed that CSB of PWD in its meeting on 28.03.2023 had recorded all these facts while recommending transfer of the Applicant as they constituted 'Special Reasons' and 'Exceptional Circumstances'. The recommendations of CSB of PWD which were thus made in 'Public Interest' were submitted to the Competent Transferring Authority who is Hon'ble Minister-in-Charge, Public Works Department and subsequently after prior approval of next Superior Transferring Authority who is Hon'ble Chief Minister of

Maharashtra. State; the Transfer Order of Applicant & Respondent No.2 came to be issued on 13.04.2023.

17. The learned P.O. stated that the Transfer Order of PWD dated 13.04.2023 of the Applicant who was serving on post Executive Engineer, P.W.D. No.1, Thane and the Respondent No.2 who was working as Executive Engineer, P.W.D. Zilla Parishad, Thane did not cause any inconvenience to the Applicant as they were interchanged positions without any change in headquarters of Applicant and Respondent No.2.

18. The learned P.O. concluded her argument by relying on the Affidavit-in-Reply dated 09.06.2023 and specifically to its 'Annexures' which includes (I) Superintendent Engineer, P.W. Circle, Thane's report dated 27.03.2023 to the Additional Chief Secretary P.W.D. (II) Letter of Respondent No.2 dated 03.03.2023 addressed to Additional Chief Secretary, P.W.D. (III) Minutes of Meeting of CSB of P.W.D. held on 28.03.2023 (IV) File Notings dated 28.03.2023.

19. The learned Advocate for Respondent No.2 stated that the Affidavit-in-Reply of dated 24.07.2023 filed by Respondent No.2 mentions that he had desired to work on the post of Executive Engineer P.W. Division 1, Thane as the nature of work of this post was challenging and Respondent No.2 desired to take up challenging jobs and complete it with sincerity. Hence, the Respondent No.2 addressed a letter on 03.03.2023 to Additional Chief Secretary, PWD requesting to transfer him on post of Executive Engineer, P.W. Division No.1, Thane.

20. The learned Advocate for Respondent No.2 then stated that CSB of PWD had applied its mind to the proposal for transfer of the Applicant and after getting satisfied that it was fit case for 'Mid Term' and 'Mid Tenure' transfer of the Applicant, the CSB of PWD recommended transfer of the Respondent No.2 as he was a competent officer in place of Applicant. Further, the learned Advocate for Respondent No.2 submitted that the Applicant had not been transferred out of Thane District. The head-quarter of Executive Engineer, P.W. Division No.1, Thane and

Executive Engineer, (PWD) Zilla Parishad, Thane were both in Thane City and there is no change in headquarters of the Applicant. The CSB of PWD has specifically mentioned in its Minutes of Meeting held on 28.03.2023, the onerous duties and responsibilities of the post Executive Engineer, P.W. Division No.1, Thane and therefore competent officer was required to be posted on that post after transferring out the Applicant.

21. The learned Advocate of the Respondent No.2 harped on the point that the CSB of PWD had specifically recorded based on the adverse report of Superintending Engineer, PWD Circle Thane dated 27.03.2023 as to how the Applicant was not competent and careless towards his duties and responsibilities and how higher authorities find the Respondent No.2 to be competent for occupying the post of Executive Engineer, P.W.Division No.1, Thane which requires high degree of competence being a challenging job. The Respondent No.2 aspires to always undertake challenging assignments and hence, he made an application for transfer to the post of Executive Engineer, P.W. Division No.1, Thane. The Superintending Engineer, PWD, Thane Circle Thane in his adverse report dated 27/03/2023 had highlighted his dissatisfaction about the underperformance of Applicant. The Superintending Engineer, PWD, Circle Thane had mentioned about complaints about the working of Applicant and that the higher authorities were also not satisfied with the overall performance of Applicant. Therefore, Superintending Engineer, PWD Circle Thane specifically recommended the transfer of the Applicant from the post of Executive Engineer, (PW) Division No.1, Thane. Accordingly, meeting of the CSB of PWD was held on 28.03.2023 and it recommended that Applicant be transferred to post of Respondent No.2 who was serving as Executive Engineer (PWD) Zilla Parishad, Thane and Respondent No.2 was recommended for transfer to his post of Executive Engineer, P.W. Division No.1, Thane.

22. The learned Advocate for the Respondent No.2 then stated that performance of Executive Engineer, PW Division No.1, Thane is of crucial importance because, Thane District has the constituency of Hon'ble Chief

Minister of Maharashtra State. Many dignitaries happen to visit Thane, therefore, the officer working on the post of Executive Engineer, P.W. Division No.1, Thane is required to display utmost competency and efficiency. Unfortunately, the Applicant had failed in proving his efficiency and competency. Hence, appropriate decision was required to be taken by the CSB of PWD on 28.03.2023 to recommend the Applicant to be moved out and posted as Executive Engineer (PWD) Zilla Parishad, Thane. At the same time, the CSB of PWD found the Respondent No.2 to be competent officer for handling responsibilities of the post of Executive Engineer, PW Division No.1, Thane.

23. The learned Advocate for Respondent No.2 contended that transfer of the Applicant has not been made on account of any political pressure but was made on account of his inefficiency and incompetency to handle important projects under jurisdiction of Executive Engineer PWD, Division No.1, Thane. The CSB of PWD in its meeting on 28.03.2023 has rightly recommended the transfer of the Applicant. The desire expressed by Respondent No.2 to work as Executive Engineer, PW Division No.1, Thane is not the reason for initiation of process to transfer out the Applicant, but the conduct of the Applicant in itself was the reason for his transfer to post of Executive Engineer (PWD) Zilla Parishad, Thane. The transfer of the Applicant, therefore, was not issued arbitrarily with any malafide or due to political pressure. The Applicant's allegation that his Transfer Order dated 13.04.2023 was issued on the basis of political pressure deserves to be discarded unless and until the Applicant submits a strict proof thereof. The learned Advocate for Respondent No.2 further stated that there was no change in headquarter of the Applicant which is Thane City. Therefore, as it is settled position of law that, if, there is no change in headquarters, then the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 will not be attracted. The Applicant has also admitted that the offices of Executive Engineer, P.W. Division No.1, Thane and Executive Engineer, (PWD) Zilla Parishad, Thane were located

in same office campus. Thus, there was no hardship caused to the Applicant by way of his transfer to the post of Executive Engineer (PWD) Zilla Parishad, Thane.

24. Learned Advocate for Respondent No.2 during his argument relied on the following Judgment of the Hon'ble High Court at Bombay :

- 1. Writ Petition No.1026 of 2023 (Varsha Mahesh Ghugari Vs State of Maharashtra and Ors.)**
- 2. Writ Petition No.8116 of 2008 (Ashok Kore and Anr. V/s State of Maharashtra)**
- 3. Writ Petition No.8898 of 2010 (Rajendra Shankar Kalal Vs State of Maharashtra and Ors.)**
- 4. Writ Petition No. 2585 of 2019 (Saudamini Chaudhari Vs. State of Maharashtra and Ors.)**

25. The Applicant has been undoubtedly been subjected to Mid Term and Mid Tenure transfer from the post of Executive Engineer, P.W. Division No.1, Thane District to the post of Executive Engineer (PW) Zilla Parishad Thane by invoking provisions of Section 4(4) (ii) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. Therefore, the Applicants case has to be examined from the perspective of what were the 'Special Reasons' and 'Exceptional Circumstances' which were taken into consideration by the CSB of PWD which based its recommendations only on the report of Superintending Engineer PW Circle Thane, dated 27.03.2023.

26. The report of Superintending Engineer PW Thane Circle dated 27.03.2023 submitted to Additional Chief Secretary PWD mentions that the jurisdiction of the Executive Engineer, PW Division 1 Thane covers Thane City, Kalyan Tahsil and Bhiwandi Tahsil in which several important public projects have been sanctioned but the Applicant has failed to expedite them considering that these are monitored regularly by both Hon'ble Chief Minister of Maharashtra State and Hon'ble Minister-

in-Charge of P.W.D. The report of Superintendent Engineer PWD. Thane Circle dated 21.05.2023 also mentions that the Applicant did not attend important official meetings and after left headquarters without prior permission, and failed to coordinate work of the Sub Divisions under him and neglected directions given by superior officers. The report of Superintendent Engineer, PWD Thane Circle dated 27.03.2023 mentions that the important projects which included (i) Constructions and Repairs of Important Roads and (ii) Constructions of New Government Buildings have been delayed on account of inefficiency and underperformance of the Applicant while serving on the post of Executive Engineer PW Division No.1 Thane.

27. The meeting of CSB of P.W.D. was held on 28.03.2023 the very next day after report of Superintendent Engineer PWD Circle, Thane dated 27.03.2023 was submitted directly to the Additional Chief Secretary PWD. The contents of Minutes of Meeting of CSB of PWD held on 28.03.2023 establishes the fact that there was undue haste to immediately recommend the transfer of the Applicant from the post of Executive Engineer PW Division 1 Thane and just based on the report of Superintendent Engineer PWD Circle Thane submitted a day earlier on 27.03.2023. The Additional Chief Secretary, PWD had not endorsed it to the Joint Secretary, Deputy Secretary concerned and not given any instructions that meeting be convened of the CSB of PWD, so it appears to have been presented directly for consideration of the CSB of PWD during its meeting held on 28.03.2023. The report of the Superintending Engineer PWD Thane Circle, dated 27.03.2023 appears to have been prepared hastily as it has patchy details which was not taken note of y CSB of PWD. No compelling reasons are recorded in Minutes of Meeting of CSB of PWD held on 28.03.2023 why it could not have been convened on later date after examining the report of Superintending Engineer, PWD, Thane Circle dated 27.03.2023 and after obtaining confirmatory factual report from Chief Engineer PWD Konkan Region. Further for reasons that remain in the realm of unknown; the Superintendent

Engineer PWD Circle Thane choose to directly submit his report to the Additional Chief Secretary, PWD on 27.03.2023 bypassing his immediate superior, the Chief Engineer PWD Konkan Region. In fact even the copy of the report was not endorsed to the Chief Engineer PWD Konkan Region.

28. The Minutes of Meeting of CSB of PWD held on 26.03.2023 further indicates that the report of Superintendent Engineer PWD Thane Circle dated 27.03.2023 which was considered was without any detail evaluation of the overall performance of the Applicant. No mention is made of the exact status of implementation of the important public projects which were of (i) Constructions of New Government Building and (ii) Construction and Repairs of Important Roads as such information must have been readily available with the Superintending Engineer, PWD Thane Circle. The CSB of PWD held its meeting on 28.03.2023 notably against the backdrop of application submitted on 03.03.2023 by Respondent No.2 to Additional Chief Secretary PWD seeking to be posted on the occupied post of Executive Engineer, (PW) Division 1, Thane a claim which was supported by letters of recommendations from some politicians of Thane District.

29. The application submitted by Respondent No.2 on 03.03.2023 to Additional Chief Secretary, PWD was not only out of turn but as if to assert his unfettered claim to be necessarily posted as Executive Engineer PWD No.1 Thane in place of the Applicant. The CSB of PWD was expected to diligently act against the backdrop of such claim by Respondent No.2 and vetted this against the specific guidelines of GAD Circular dated 11.02.2015 regarding 'Mid Term' and 'Mid Tenure' transfer of Government Servants. However, these were completely overlooked by CSB of PWD which met on 28.03.2023 and it only considered the report of Superintendent Engineer PWD Thane dated 27.03.2023 and the Application of Respondent No.2 dated 03.03.2023. The G.A.D. Circular dated 11.02.2015 is issued on the background of judicial orders about procedures which are therefore to be mandatorily observed by CSBs' of

all Administrative Departments while making recommendations and then by Competent Transferring Authority and next Superior Transferring Authority while exercising Statuary Powers' under Section 4(4)(ii) and Section 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. Thus, it is necessary to reproduce below few salient guidelines of GAD Circular dated 11.02.2025 :-

१. “बदली अधिनियमातील नियम ४ (१) मध्ये नमूद केल्यानुसार नेमणूकीचा पदावधी (३ वर्षांचा कालावधी) पूर्ण केल्याखेरीज बदली प्राधिका-याने संबंधील शासकीय अधिकारी/कर्मचा-यांची बदली प्रस्तावित करू नये.”

४. “एखादया अधिकारी/कर्मचा-याने एखादया विशिष्ट पदाची मागणी केल्यास वा सदरहू अधिकारी/कर्मचा-याने मा.लोकप्रतिनिधी मार्फत एखादया विशिष्ट पदाची मागणी केल्यास व सदरहू विशिष्ट पदावर ३ वर्षापेक्षा कमी कालावधी असलेला अधिकारी/कर्मचारी कार्यरत असल्यास संबंधीत अधिकारी/कर्मचा-यांची बदली न करता मागणी करणा-या अधिकारी/कर्मचा-यांची पदस्थापना अन्य पदावर करण्याची दक्षता बदली प्राधिका-याने घ्यावी.”

५. “ज्या प्रकरणात एखादा अधिकारी/कर्मचारी मा.लोकप्रतिनिधीमार्फत एखादया विशिष्ट पदाची मागणी करीत असल्यास संबंधीत अधिकारी/कर्मचा-याचे लेखी निवेदन मा.लोकप्रतिनिधीच्या पत्रासोबत जोडले आहे का याची तपासणी बदली प्राधिका-याने करावी. त्याप्रमाणे लेखी निवेदन नसल्यास संबंधीत अधिकारी/कर्मचारी यांनी मा.लोकप्रतिनिधीच्या पत्रात नमूद केल्यानुसार विशिष्ट पदाची मागणी केली किंवा कसे ही बाब बदली प्राधिका-याने तपासून घ्यावी.”

६. “मनासे (वर्तणूक) नियम, १९७९ मधील नियम २३ नुसार कोणताही शासकीय कर्मचारी, त्याच्या शासकीय सेवेसंबंधीच्या कोणत्याही बाबीच्या संबंधात कोणत्याही वरिष्ठ प्राधिका-यावर कोणताही राजकीय किंवा इतर बाह्य दबाव आणणार नाही किंवा तसा प्रयत्न करणार नाही, अशी तरतूद करण्यात आलेली आहे. ज्या प्रकरणात एखादा अधिकारी/कर्मचारी मा.लोकप्रतिनिधीमार्फत एखादया विशिष्ट पदाच्या मागणीकरीता बदली प्राधिका-यावर दबाव टाकत असल्यास सदरची तरतूद संबंधीत शासकीय अधिकारी/कर्मचा-याच्या निदर्शनास आणून द्यावी व आवश्यक असल्यास संबंधीत अधिकारी/कर्मचा-याविरोधात शिस्तभंगाची कारवाई सुरु करण्यात यावी.”

७. “तीन वर्षापेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचा-याच्या पदावर एखादया अधिकारी/कर्मचा-याने मागणी केल्यास वा सदरहू अधिकारी/कर्मचा-याने मा.लोकप्रतिनिधीमार्फत मागणी केल्यास, ३ वर्षापेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचा-याची मध्यावधी बदली करण्यात येऊ नये. सदरहू ३ वर्षापेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचा-याची माहे एप्रिल किंवा मे महिन्यातील सामान्य बदल्यांच्या कालावधीत देखील बदली करण्यात येऊ नये. तसेच ३ वर्षापेक्षा अधिक कालावधी झालेल्या अधिकारी / कर्मचा-याची बदली, माहे एप्रिल किंवा मे महिन्यांव्यतिरिक्त अन्य महिन्यामध्ये विशिष्ट कारण व लगतच्या सक्षम

प्राधिकार्याची मान्यता घेतल्याखेरीज करू नये. केवळ ३ वर्षांपेक्षा अधिक कालावधी झाला आहे या कारणास्तव माहे एप्रिल किंवा मे महिन्यांव्यतिरिक्त अन्य महिन्यामध्ये बदली करून नये.’’

The G.A.D. Circular dated 11.02.2015 emphatically mentions that Competent Transferring Authorities and next Superior Transferring Authorities must observe these guidelines while exercising their ‘Statutory Powers’ under Section 4(4) (ii) and Section 4(5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.

30. The CSB of PWD was expected to implement in both in letter and spirit the landmark judgment of the Hon’ble Supreme Court of India in ***T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732, dated 31<sup>st</sup> October, 2013*** which highlighted in particular the vulnerability of Government Servants under State Governments to frequent transfers. The Hon’ble Supreme Court of India had observed that :

“The CSB, consisting of high ranking in service officers, who are experts in their respective fields, with the Cabinet Secretary at the Centre and Chief Secretary at the State level, could be a better alternative (till the Parliament enacts a law), to guide and advice the State Government on all service matters, especially on transfers, postings and disciplinary action, etc., though their views also could be overruled by the political executive, but by recording reasons, which would ensure good governance, transparency and accountability in governmental functions.

We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of the society.”

31. The Hon’ble Supreme Court of India in the case of ***East Coast Railway & Another Vs. Mahadev Appa Rao & Ors. (2010) 7 SCC 678*** which has unequivocally emphasized on the application of mind and

recording of reasons by Public Authority so that there is no scope of arbitrariness in taking decisions. The Hon'ble Supreme Court of India has observed the following :-

“There is no precise statutory or other definition of the term “arbitrary”. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making an order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable.”

32. The Hon'ble High Court of Bombay in ***W.P. (L) No. 1940 of 2011 decided on January 24, 2012 (Shri S.B. Bhagwat V/s. State of Maharashtra & Ors.)*** has elaborated about the provisions of law relating to Mid Term Transfers by observing that :-

“An employee who has not completed his normal tenure of three years may yet be subjected to transfer, as provided in sub-section (5) of section 4. Sub-section (5) of section 4 begins with an overriding non-obstante 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 sub-section (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.”

33. The Hon'ble High Court of Bombay in ***Writ Petition No.5465/ 2012 decided on March 07, 2013 (Shri Krishor Shridharrao Mhaske Vs. Maharashtra OBC, Finance & Development Corporation & Ors.*** has explained the role of Competent Transferring Authority with respect to Mid-Term transfers by observing that:-

“Section 4(5) which begins with the non-obstante clause obligate the Competent authority to seek prior approval of the competent transferring authority as indicated in Section 6 of the Act and also to record reasons in writing in special case of the mid-term or pre-mature transfer of any Government servant who has not completed three years of normal tenure on particular post. Section 6 of the Act lays down the categories of the Government servants in column no (1) of the table who may be transferred by the competent transferring authorities as mentioned in column (2) of the table.”

“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 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 pre-mature 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.”

34. In Hon'ble High Court of Bombay in ***Shri Santosh Machhindra Thite Vs. The State of Maharashtra & Ors., 2019(4) ALL MR 681*** has highlighted the need for consultation between Competent Transferring Authorities and Secretaries of Administrative Departments by observing that :-

“The power of transfer under sub-section (5) of section 4 is to be exercised by the Competent Authority only in special cases, after recording reasons in writing and that also with the prior approval of the immediately superior Transferring Authority (in the present case, the Hon'ble Chief Minister). According to the stand of the State Government, the power was exercised by the Hon'ble Minister as a Competent Transferring Authority within the meaning of section 6.

Therefore, the power purportedly exercised is not in consonance with sub-section (5) of section 4 as the concerned Secretaries were not consulted. The Hon'ble Minister can exercise the powers as a Competent Transferring Authority under section 6 only after consultation with the Secretaries of the concerned Departments. Hence, the Hon'ble Minister had no power to pass orders under sub-section (5) of section 4 of the said Act without consultation with the Secretaries.”

35. The Hon'ble Bombay High Court in ***Seshrao Nagarao Umap Vs. State of Maharashtra, (1985)II LL J 73(Bom)*** has summarized the law on the aspect of colourable exercise of powers to accommodate another Government Servant for undisclosed reasons by observing that :-

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilize the services of its employees. However this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colorable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair."

36. The Hon'ble High Court of Bombay in ***Writ Petition No.8987 of 2018 (Shri Balasaheb Vitthalrao Tidke Vs State of Maharashtra & Ors.)*** had recorded the contents of Affidavit in Reply filed by Chief Secretary, Government of Maharashtra regarding attempts of Political Interference in the process of transfers of Government Servants and observed that :-

*"Now there is a clear assurance that all transfers will be effected strictly in accordance with the provisions of the said Act of 2005 and none of the transfers will now be influenced by the recommendations of the political leaders including the Hon'ble Ministers (Who are not a part of the process of transfers). We direct that the statements made in para-1 of the said Affidavit are brought to the notice of all the concerned who have to exercise powers of transfers under the said Act of 2005 so that there will not be any attempt to make any recommendations thereby influencing the process of transfers of the Government Servants".*

37. The facts and circumstances of the Applicant's case and for above stated reasons makes it necessary to 'Lift the Veil' about the Transfer Order of PWD dated 13.04.2023 by which he was posted as Executive Engineer (PWD) Zilla Parishad, Thane in place of Respondent No.2 who replaced him literally by placing unilateral and unfettered claim to the post by writing to

Additional Chief Secretary PWD on 03.03.2023 by citing grounds to high degree of competence and efficiency encouraged by support of his endeavor from few senior politicians who desired that he be posted as Executive Engineer, PWD Division No.1, Thane.

38. The Hon'ble Supreme Court of India and Hon'ble High Courts have observed in several judgments that an order of transfer should not normally be interfered with unless there are strong and pressing grounds like *Mala fides*, Arbitrariness etc. rendering the transfer order illegal (***UOI v HN Kirtania, 1989 (4) Serv LR 9 (SC) : (1989) 3 SCC 445 : JT 1989 (3) SC 131 : AIR 1989 SC 1774 – obvious suggestion is to proceed on case by case basis; Abani Kanta Ray v State of Orissa JT 1995 (7) SC 467 : 1995 Supp (4) SCC 169; State of Punjab v Joginder Singh Dhatt, AIR 1993 Sc 2486 : 1994 SCC (Cri) 46; State of MP v Shri Arjun Singh, AIR 1993 SC 1239 : (1993) 1 SCC 51***). Further except on finding of *mala fides* or absence of rules prohibit such transfer, the courts are not intervene where the post held is transferable and the employee cannot insist on remaining at a place of his posting forever (***Vijay Kumar Chaurasia v State of UP, 2005 (1) Serv LR 304 (All.-DB) See also UOI v Muralidhara Menon, (2009) 9 SCC 304 -incidence of service***). However, these are general principles as the order of transfer may be silent but the operative reasons are often kept hidden. In such circumstances, the Court are not expected to fold its hands merely because the Appropriate Government asserts that the transfer was bona fide. The Appropriate Government should place full materials before the Court so that it could determine for itself whether the transfer was bona fide or not. (***Prem Parveen v UOI, 1973 (2) Serv LR 659 (Del)***). Further it has been observed that in exercising its jurisdiction, if necessary, it is open to the Court to crack the shell of innocuousness which might wrap the order of transfer and by piercing the veil to find the operative reason behind the order of transfer. (***C. Ramanathan V Acting Zonal Manager, Food Corp of India, 1980 (1) Serv LR 309 (Mad-DB); see also Sri Krishna Kanto Roy v The Director of Primary Education 1990 (1) Cal LJ 310***).

39. The Minutes of Meeting of CSB of PWD held on 28.03.2023 reveals that the claim of the Respondent No.2 made in letter dated 03.03.2023 to Additional Chief Secretary, PWD had to be posted in the post of Executive Engineer, PW Division No.1 Thane in place of Applicant had been discussed with Hon'ble Minister-in-Charge of Public Works Department who is 'Competent Transferring Authority'. The Minutes of Meeting of CSB of PWD held on 28.03.2023 shows that even prior to the report of Superintending Engineer PWD Circle Thane dated 27.03.2023 had been received the letter submitted by Respondent No.2 on 03.03.2023 had been discussed with the Hon'ble Minister in Charge of PWD and accordingly came to be considered by CSB of PWD. The consultation between Minister in Charge and Secretary of Administrative Department no doubt is required to be done under Section 6 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 but should have taken place only after the CSB of PWD had made independent recommendations only on merit regarding the transfer of both Applicant and Respondent No.2 and submitted them for further consideration of the 'Competent Transferring Authority' who is Minister in Charge of Public Works Department.

40. The transfer of the Applicant from the post of Executive Engineer PWD No.1 Thane had already been recommended by some senior politicians by their letters of 02.03.2023, 05.03.2023 & 13.03.2023 written to the Hon'ble Minister in Charge of Public Works Department who is Competent Transferring Authority and Hon'ble Chief Minister of Maharashtra State who is next Superior Transferring Authority. Therefore, facts and circumstances make it necessary to seek answer to the question as to whether next 'Superior Transferring Authority' and the 'Competent Transferring Authority' objectively exercise their 'Statutory Powers' under Section 4(4)(ii) and Section 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 to approve the transfer the Applicant from the post of Executive Engineer PW Division No.1 Thane.

41. The report of the Superintending Engineer PWD Circle Thane dated 27.03.2023 submitted directly to the Additional Chief Secretary PWD had no mention about the actual assessment done by him of the Applicant's overall performance in implementing important projects of (i) Constructions of New Government Buildings and (ii) Construction and Repairs of Important Roads. The report of Superintending of Engineer, PWD, Circle Thane dated 27.03.2023 to Additional Chief Secretary, P.W.D. does not mention any details whatsoever of (i) Dates of Work Order of Projects (ii) Dates of Commencement of Projects (iii) Time Schedule of Project Milestones, (iv) Completion Date of Projects etc. which are standard benchmarks for evaluation of process of Public Projects.

42. The CSB of PWD in its meeting held on 28.03.2023 for reasons wrapped in confidentiality did not consider it necessary to seek these details from the Superintending Engineer PWD Circle Thane and direct him to submit them after his assessment is vetted by Chief Engineer PWD Konkan Region. Hence, it did not establish the veracity of claims in the report of Superintending Engineer PWD Circle Thane, dated 27.02.2023 that the Applicant had indeed failed to maintain devotion of duty as was required of him under Rule 3(1) and Rule (2) of MCS (Conduct) Rules, 1979. The CSB of PWD was equally required to take note of the fact that every Government Servant holding a Supervisory Post are themselves required to take all possible steps to ensure integrity and devotion to duty of all Government Servants under their control and authority as per Rule 3(2) of the MCS (Conduct) Rules 1979.

43. The Superintending Engineer PWD Circle Thane thus could not have absolved himself from overall responsibility for delays he reported in completion of important Public Projects of (i) Construction of New Government Buildings and (ii) Construction and Repairs of Important Road by shifting the entire blame on to the Applicant. However, it seems the Superintendent Engineer PWD Circle Thane later on answering call of his conscience rated the Applicant very high on all the indices of Annual Performance Appraisal Report namely (i) Work Completion (ii) Personal Attributes (iii) Efficiency. The Applicant was given 9 out of 10 in 'Overall

Gradation' by the Superintending Engineer PWD Circle Thane on 10.07.2023 and the Chief Engineer PWD Konkan Division also gave 'Overall Gradation' of 9 out of 10 to the Applicant which is sufficient evidence of good performance of the Applicant while serving on the post of Executive Engineer, PWD Division 1, Thane.

44. The legal validity of Transfer Order of PWD dated 13.04.2023 which resulted 'Mid Term' and 'Mid Tenure' transfer of Applicant from the post of Executive Engineer PWD Division 1 Thane in place the Respondent No.2 who serving as Executive Engineer (PWD) Zilla Parishad, Thane will be established only by testing it by applying the principles laid down in important judgments of Hon'ble Supreme Court of India and Hon'ble Bombay High Court.

45. The actual reasons behind the 'Transfer Order' of Respondent No.2 to post of Executive Engineer PW Division No.1 Thane issued on 13.04.2023 against 'Mid Term' and 'Mid Tenure' transfer of Applicant now do not remain invisible after "Lifting of the Veil". The CSB of PWD while conducting its meeting on 28.02.2023 was completely oblivious about the landmark judgments of Hon'ble Supreme Court of India and Hon'ble High Court at Bombay. The GAD Circular dated 11.02.2015 was relegated to state of no consequence; as its principles were brazenly contravened by the CSB of PWD while recommending lateral transfers of both Applicant and Respondent No.2. The 'Competent Transferring Authority' did not desist from accepting such recommendation of CSB of PWD to transfer of Respondent No.2 based on just the cryptic report of Superintending Engineer, PWD Circle, Thane, dated 27.03.2023. Therefore, the 'Competent Transferring Authority' while acting upon the recommendations of CSB of PWD evidently made undue haste to invoke 'Statutory Powers' under Section 4(4) (ii) and Section 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. Hence, this act of 'Competent Transferring Authority' falters on the test of arbitrariness in decision making by Public Authority. Further deep

shades of malice are clearly visible in the report of Superintendent Engineer, PWD, Thane, dated 27.07.2023 against the Applicant; as it seems to have been written under influence and compulsion as there were recommendations made by few senior politicians in favour of Respondent No.2. The Respondent No.2 on the other hand unabashedly laid claim to the post of Executive Engineer, PW Division 1, Thane riding on self-acclaim of high competence and efficiency. Against this backdrop both the 'Competent Transferring Authority' and next 'Superior Transferring Authority' should have exercised 'Statutory Powers' under Section 4(4)(ii) and Section 4(5) of the Transfer Act, 2005 with restraint by strictly remaining within the legal space circumscribed by various landmark judgements cited above of the Hon'ble Supreme Court of India and Hon'ble High Court of Bombay. The Transfer Order of PWD dated 13.04.2023 by which Applicant has been transferred from the post of Executive Engineer, (PW) Division No.1, Thane to post of Executive Engineer, (W) Zilla Parishad, Thane and Respondent No.2 has been transferred from post of Executive Engineer (PW) Zilla Parishad Thane to post of Executive Engineer, PWD, Division No.1, Thane stands rather infirm and vulnerable and is liable to be set aside having failed to meet the high standards expected to be observed by all Public Authorities while exercising 'Statutory Powers' as has been observed in several landmark judgments of Hon'ble Supreme Court of India and Hon'ble Bombay High Court. Hence, it is concluded that Transfer Order of PWD dated 13.04.2023 suffers from the vice of (a) Unlawful Exercise of Statutory Powers, (b) Arbitrary Exercise of Statutory Powers, (c) Colorable Exercise of Statutory Powers (d) Externally Influenced Exercise of Statutory Powers. Therefore, the Transfer Order of PWD dated 13.04.2023 is be quashed and set aside. Hence the following order:-

**ORDER**

(A) Original Application is Allowed.

- (B) The Transfer Order of PWD dated 13.04.2023 is quashed and set aside.
- (C) The Applicant to immediately join back on earlier post of Executive Engineer, PW Division No.1, Thane.
- (D) The Respondent No.2 to also immediately join back on earlier post of Executive Engineer (PWD) Zilla Parishad, Thane.
- (C) No Order as to Costs.

Sd/-  
**(DEBASHISH CHAKRABARTY)**  
**MEMBER(A)**

Place : Mumbai

Date : 15 .12.2023.

Dictation taken by : V.S. Mane

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