

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,, MUMBAI

ORIGINAL APPLICATION NO. 703/2014

**DISTRICT: THANE**

Shri Raosaheb Daulatrao Mahale, )  
Occu.Office Superintendent. )  
Now transferred from the office )  
Of the Superintending Engineer )  
(Public Works) Circle, Thane (W) )

Address for Service of Notice: )  
Shri Gaurav Arvind Bandiwadekar, )  
Shri Bhushan Arvind Bandiwadekar, )  
Shri Arvind V.Bandiwadekar )  
Advocates, Having office at 9, )  
"Ram-Kripa", Lt.Dilip Gupte Marg, )  
Mahim, Mumbai-400 016 )  
..Applicant

Versus

1. The Superintending Engineer, )  
Mumbai (Public Works) Circle )  
And Co-ordinating )  
Superintending Engineer, )  
Mumbai (Public Works) Zone, )  
Mumbai. )
2. Smt.S.S.Gangarde, )  
Occu. Office Superintendent, )  
Now transferred in place of the Petitioner )



From the office of the Superintending )  
 Engineer, Design Circle, )  
 (Bridges and Buildings), )  
 Konkan Bhavan, C.B.D., Belapur, )  
 Navi Mumbai )

3. The Chief Engineer, )  
 Mumbai (P.W.) Region, )  
 25, Marzban Road, Fort, )  
 Mumbai-400 001 )

4. The Secretary, )  
 Public Works Department, )  
 Having office at Mantralaya, )  
 Mumbai-400 032 )

Shri A.V.Bandiwadekar, the learned Advocate for the applicant

Ms. K.S.Gaikwad, the learned P.O for Respondent Nos. 1, 3 and 4

Ms.S.P.Mancheekar, the learned Presenting Officer for the Respondent No.2.

**Coram: Justice Shri A.H.Joshi, Chairman**

**Date: 16.09.2014**

### **JUDGEMENT**

1. Heard Shri A.V.Bandiwadekar, the learned Advocate for the applicant, Ms.K.S.Gaikwad, the learned Presenting Officer for Respondents 1, 3 and 4 and Ms.S.P.Mancheekar, the learned Advocate for the Respondent No.2.

2. Taken up for final hearing by consent.

3. Respondents 1, 3 and 4 have filed their joint affidavit, and the Respondent No.2 has filed separate affidavit.



and posted by order No. जा.क.कार्यालय-७/परिमंडल/बदल्या/२०१४/६६६९ dated 31.07.2014 in the office Superintending Engineer, P.W.D, Thane.

5. The order of transfer is challenged on the grounds narrated in the original Application which are as follows:

- (1) The applicant has put in only two and half years' tenure at his present post.
- (2) The applicant is a Group "C" employee and his tenure is of six years as per Section 3 of the Transfer Act, 2005.
- (3) In view of short duration of the stay of the applicant at his last/present posting, his transfer could be made only if special reasons and exceptional circumstances under second proviso to Section 4 (4) and Section 4 (5) respectively of the ROT Act exist.
- (4) Prior permission from the Superior, as required under Section 4 (5) of ROT Act is not legally secured.

6. The points averred in the foregoing paragraph are contained in ground No. 3 and 4 of the Original Application.

In the reply to the O.A., which is filed by the Respondent No.2 Ms.S.S.Gangarde, she has claimed that:-

- (a) She has completed tenure of five years at her present posting.
- (b) She had requested for transfer and upon acceptance of her request, she has been transferred.

The Respondent No.2 has kept silence on the points averred in paragraph No. 3 and 4 of the O.A..

7. Respondent Nos. 1, 3 and 4 have initially filed an affidavit in reply to the O.A.. Said 1<sup>st</sup> affidavit was sworn by Shri Vilas Sukhlal Chavan, Deputy Engineer (Central Sub Division) in the office of Respondent No.1, on 20.08.2014.

8. By order dated 22.08.2014 this Tribunal had directed Respondent Nos. 1 and 4 to file their own affidavits on or before 26.08.2014. This Tribunal had directed the Respondents to produce record pertaining to transfer.

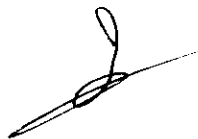


9. It is pertinent to note that Respondent No.1 has filed another affidavit describing it to be an affidavit for and on behalf of Respondent Nos. 1, 3 and 4.

10. Record was required for enabling this tribunal to find out as to whether prior approval for transfer is secured, and as to whether special reasons are borne on record. Original record was produced and it is perused

11. Perusal of record reveals that it consists of various letters. The relevant documents contained in the record are as follows:

- (1) The application dated 29.10.2013 made by Respondent No.2 requesting that she be transferred to P.W.D, Thane Circle.
- (2) Application dated 27.11.2013 made by the Respondent No.2 to Superintending Engineer, Mumbai requesting for Transfer.
- (3) Letter dated 28.11.2013 sent by the Superintending Engineer, Design Circle, Konkan Region to Superintending Engineer, P.W.D, Mumbai Circle forwarding Respondent No.2's application for transfer.
- (4) Letter dated 28.11.2013 sent by the Superintending Engineer, P.W.D, Mumbai Circle forwarding the application submitted by the Respondent No.2 requesting the transfer to the Superintending Engineer, P.W.D, Designs Circle, Navi Mumbai.
- (5) The letter dated 20.01.2014 sent by Jitendra Avhad, M.L.A recommending transfer of Respondent No.2 in Public Works Department, Thane Circle.
- (6) Letter dated 25.02.2014 sent by the Superintending Engineer, Mumbai Circle calling remarks from the Superintending Engineer, Thane Circle as to whether the transfer recommended by Shri Jitendra Avhad, Hon'ble Minister can be effected.



- (7) Letter dated 13.05.2014 sent by the Superintending Engineer, P.W.D Circle, Thane giving consent to accommodate Respondent No.2 and suggesting that his office should get approved a proposal for Transfer of Shri Mahale from higher authorities.
- (8) Letter dated 22.07.2014 sent by the Superintending Engineer, P.W.D Circle, Mumbai to the Chief Engineer proposing transfer of Respondent No.2 by giving reference to various communication and letter written by the Hon'ble M.L.A Shri Jitendra Avhad.
- (9) Letter dated 31.07.2014 sent by Chief Engineer, P.W.D, Mumbai Regional Office sent to Superintending Engineer, Mumbai Circle Mumbai granting approval for the transfer.

12. It is stated in the said letter dated 13.05.2014 (Sr.No. 7 in foregoing paragraph) that in response to the letter received from the Hon'ble Minister Shri Jitendra Avhad, informing suitable action on the application of Smt.S.S.Gangarde, Respondent No.2 may be transferred to the office of Superintending Engineer, P.W.D, Circle Thane and he has no objection, if Mr.R.D.Mahale, the present applicant is transferred after securing prior permission from the Competent Authority.

13. The proposal i.e. letter dated 22.07.2014 on the basis of which transfer is approved contains five references and request for approval is sought. It contains at item No.4 in the reference clause a letter received from Hon'ble M.L.A Shri Jitendra Avhad and also another letter received from the Superintending Engineer, Thane Circle who had suggested that the transfer be got approved at his level. The Superintending Engineer, P.W.D Circle, Mumbai, therefore, sought approval for transfer under second proviso to Section 4 (4) as well as sub section (5) of Section 4 of the ROT Act.



14. The letter dated 22.07.2014 contains a mention that on account of the reasons disclosed in the letters stated in the reference clause, Shri R.D.Mahale's transfer be permitted under Section 4 (4) proviso (ii) and Section 4 (5) of the Transfer Act of 2005.

15. The Chief Engineer, the Respondent No.3 has approved the transfer by letter dated 31.07.2014. The text of the letter of approval dated 31.07.2014 reads thus:

प्रति,

अधीक्षक अभियंता,  
मुंबई सा.बां.मंडळ, मुंबई  
व समन्वय अधीक्षक अभियंता,  
मुंबई सा.बां.परिमंडळ, मुंबई

विषय : बदलीस मान्यता मिळणेबाबत

संदर्भ : आपले पत्र क्र. कार्यासन-७/मुंबई सा.बां.परिमंडळ/बदल्या/६५०२,  
दि.२२.०७.२०१४

उपरोक्त संदर्भाधीन पत्रान्वये ठाणे मंडळ कार्यालयात कार्यरत असलेले श्री. आर.डी.महाले, अधीक्षक यांच्या मुदतपूर्व बदलीस मान्यता देण्याबाबतचा प्रस्ताव या कार्यालयास सादर केला आहे. त्या अनुषंगाने श्री. आर.डी. महाले, अधीक्षक यांचा सध्याच्या पदावरील पदावधी ३ वर्षांपेक्षा कमी असल्याने महाराष्ट्र बदली अधिनियम क्र.२९ दि. १२.०५.२००६ मधील प्रकरण दोन नियम क्र.४ (४) (दोन), (५) नुसार अपवादात्मक परिस्थितीमुळे किंवा विशेष कारणामुळे बदली करणे आवश्यक आहे अशी आपल्या कार्यालयाची धारणा असल्याने हे कार्यालय सदर अधिनियमातील तरतूदीनुसार श्री. आर.डी.महाले, अधीक्षक यांची दक्षता पथक, मुंबई येथे बदली करण्यास मान्यता देत आहे.

स्थळप्रत मु.अ.यांनी मंजूर केली आहे.

मुख्य अभियंता  
मुंबई (सा.बां.) प्रादेशिक विभाग,  
मुंबई करिता -----”



16. It is thus evident that only special circumstance which reveal from the file are the letter of request by the applicant and the letter received from the then Shri Jitendra Avhad in which Honourable MLA/Minister has recommended transfer of the respondent No.2..

17. The disclosure of existence of special reasons has to occur at initial stage itself, i.e. the proposal for transfer for which approval was sought, and thereafter it has to be seen in the office noting if any in which the proposal for transfer is approved.

18. In the present case, initiation of the proposal of transfer has occurred when the letter dated 22.07.2014 was sent by Respondent No.1. The said letter dated 22.07.2014 does not disclose any special reason or special circumstance, except the fact that a letter request and a letter of recommendation was received from the Hon'ble M.L.A/Minister Shri Jitendra Avhad, and based thereon, Respondent No.1 had to propose the transfer and sought approval from higher authority for transfer of the applicant to accommodate the respondent No.2.

19. The existence of special reasons or exceptional circumstances leading to the transfer, when and if approved, has to and culminates into the decision. The communication sent by the Respondent No.3 contains articulation as regards existence of special reasons and/or exceptional circumstance which are referred to in the quotation in the foregoing paragraph Number 15.

20. Thus special circumstance and special reason which has surfaced from the record is a letter of recommendation from the Hon'ble Shri Jitendra Avhad and nothing else.

21. The existence of special reason etc. referred to in second proviso to S. 4(4) of the ROT Act 2005 is referable to an "objective" ground based on facts. The quality of objectivity is required to be found out from the measuring device implied by the ROT Act 2005.



22. On facts it is seen that a compulsion for transfer has cropped up due to a letter from the representative of the people namely then M.L.A Shri Jitendra Avhad. This Tribunal is of the view that special reason has to be referable to public interest or cognizable and compulsive personal emergency of an employee which satisfies the test of "special reason". If the transfer is merely on the request, the fact of such request seen from any angle does not satisfy the test of existence of and special reason or exceptional circumstances.

23. It is pertinent to note that Respondent No.3 has for the sake of compliance of formality, employed in his letter dated 31.07.2014 the words which mean that "his office approves the transfer because the office of Superintending Engineer believes that such transfer was necessary in view of existence of special reason and exceptional circumstance". The language used in said letter reveals that in fact, the Respondent No.3 has surrendered all his authority and powers to the proposal in view that the transfer was supported by a dignitary. The version of Respondent No.3 reveals a message that since the proposal for transfer contains a version that there exist special reasons; Respondent No.3 accepts said version without it being his own decision upon application of his own mind.

24. The purpose and object of the prior approval as provided U/s 4 (5) of ROT Act 2005 is in order to have a dual check, control and the proper scrutiny in the matter of existence of the grounds based on special reasons and exceptional circumstances as reason for transfer. Said purpose is totally frustrated in present case in the background of lack of application of mind and evasive attitude of the superior officer i.e. the Respondent No.3. If the reason now disclosed from the record and in the affidavit, is to be regarded as special reason, it will have the effect of making statutory instrument of the ROT Act 2005 to be a toy like device destructible at the option of the executive.

25. Respondent No.3 ought to have in his own power and authority either approved or disapproved transfer as his own decision, since it was his power to approve or refuse. He was to be guided by his own judgment based on discretion and not to get dictated by the contents of the proposal. All that can be observed is



that Respondent No.3 has not exercised his power and simply acceded to the proposal of transfer as received.

26. It is pertinent to note that Respondent No.4 ought to have filed his own affidavit. This Tribunal had in no ambiguous terms directed Respondent No.1 as well as Respondent No.4 to file their affidavits by order dated 22.08.2014. Paragraph 4 of the order reads as follows:

“Respondent No.1 and 4 are directed to file their own affidavit on or before 26.08.2014.”

In spite of specific directions, Respondent No.3 had failed to file affidavit and constrained this Tribunal to proceed with the matter barely on the record. Filing an affidavit is ordinarily a matter of choice of a party. Whenever the Respondents are Public Officers and Organs of State they cannot take a stance the way private parties could feel that let the court decide the case without reply exparte, but that a reply cannot be forced.

27. Whenever Tribunal directs an officer to file affidavit, it is the bounden duty of public officer to subject himself to the scrutiny of law and judicial review. An officer could always claim a privilege of abstaining him from filing affidavit, if the affidavit had to contain some incriminating admission from which he has right to abstain. In our considered view, present case does not involve any point having a semblance of criminal law and that the respondent No.3 was not called to testify on an aspect involving self-incrimination. Whatever embracing a version or a statement could be, still Public Officer could not have abstained from filing an affidavit. The attitude of protecting oneself or preventing oneself from judicial scrutiny is liable to be deprecated and abhorred.

28. This Tribunal is, therefore, satisfied that the special reason and special circumstance for transfer of the applicant through impugned order did not exist. Any office note approving the transfer is not the apt of record tendered for perusal.



29. In the result, the Original Application succeeds. The transfer order by which the applicant is transferred i.e. Annexure 'A' page 11 is quashed and set aside. The manner in which the Respondent No.2 should be dealt with may have to be decided by the Respondents inter se by issuing appropriate order.

30. The applicant should be forthwith allowed to join if he is already relieved without offering any excuse whatsoever.

31. Ordinarily, Tribunal could take a view that cost should be the cost in cause, however, considering the attitude of stubbornness towards action and total lack of sensitiveness towards the judicial proceedings, and the conduct and attitude of avoiding to file affidavit, Respondent No.3 deserves to be saddled with cost which is quantified to Rs. 10,000/-. Respondent No.3 is directed to pay cost of Rs. 10,000/- to the applicant within 30 days by issuing a cheque in his name to be delivered at his place by R.P.A.D..

32. Original Application is allowed accordingly.



Sd/-

(A.H. Joshi)  
Chairman

Dictation taken by: P.S. Zadkar  
Date: 16.09.2014  
Place: Mumbai