

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.121 OF 2020

DISTRICT : PUNE

Shri Rajendra Mahadeo Sankpal.)
Age : 57 Yrs., Working as Superintending)
Engineer [Civil Engineer], Kolhapur)
Irrigation Circle, Kolhapur and residing at)
176, Rajas Society, Lane No.10, Katraj,)
Pune - 46.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai - 400 032.)
2. Shri Mahesh S. Surve.)
Age : Adult, Working as)
Superintending Engineer,)
Protection Squad, Aurangabad.)...**Respondents**

Mr. A.V. Bandiwadkar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondent No.1.

Mrs. Punam Mahajan, Advocate for Respondent No.2.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 08.10.2020

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JUDGMENT

1. The Applicant has challenged the transfer order dated 5th February, 2020 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The factual matrix giving rise to this application are as under :-

The Applicant is serving in the cadre of Superintending Engineer, Water Resources Department. He was posted as Superintending Engineer, Water Resources Department, Kolhapur by order dated 30.12.2017. He claims to be entitled for three years' tenure at Kolhapur. However, by impugned transfer order dated 05.02.2020, he is transferred from the post of Superintending Engineer, Water Resources Department, Kolhapur to Superintending Engineer, Vigilance Department, Aurangabad invoking Rule 4(5) of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity). The Applicant has challenged the transfer order dated 05.02.2020 *inter-alia* contending that no special case is made out for mid-term and mid-tenure transfer and only to accommodate Respondent No.2, he is displaced before completion of his normal tenure of three years guaranteed under 'Transfer Act 2005' amongst other grounds.

3. The Respondent No.1 resisted the O.A. by filing Affidavit-in-reply (Page Nos.42 to 56 of Paper Book) *inter-alia* denying that transfer order suffers from any illegality. The Respondent sought to contend that the Applicant was not discharging his duties efficiently and several Irrigation Projects were delayed on account of his insufficiency in completing the task. The Executive Director Shri Khalil Ansari, Maharashtra Krushna Khore Vikas Mahamandal by his letter dated 17.12.2019 brought this aspect to the notice of Government wherein request was made to post some competent Superintending Engineer in place of Applicant. Accordingly, approval of Civil Services Board (CSB) was taken by

circulation and the proposal of transfer of Applicant from Kolhapur to Aurangabad has been approved by Hon'ble Minister as well as Hon'ble Chief Minister being highest competent authority having satisfied that the transfer is necessitated on account of administrative exigency as contemplated under Section 4(5) of 'Transfer Act 2005'. Accordingly, in place of Applicant, Respondent No.2 has been posted as Superintending Engineer, Minor Irrigation Department, Kolhapur. The Respondent No.1 thus sought to justify the impugned transfer order.

4. The Respondent No.2 has also resisted the O.A. by filing Affidavit-in-reply (Page Nos.169 to 206 of P.B.) *inter-alia* reiterating the defences and grounds raised by Respondent No.1 in its reply. The Respondent No.1 contends that several Projects were delayed due to alleged incompetency of the Applicant and in that behalf, some Memos/letters were also given to the Applicant. Despite it, the Applicant did not expedite important Irrigation Projects. Ultimately, the Executive Director Shri Ansari made report to the Government and on the basis of which, after approval of CSB, the Applicant was shifted to Aurangabad and in his place, he is posted. Thus, the Respondent No.2 supports the impugned transfer order.

5. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant, Mrs. K.S. Gaikwad, learned Presenting Officer for Respondent No.1 and Mrs. Punam Mahajan, learned Advocate for Respondent No.2 at length.

6. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned transfer order on following grounds :-

(i) It being mid-term and mid-tenure transfer in absence of requisite compliance of Section 4(5) of 'Transfer Act 2005', in letter and in spirit, the transfer order only on the basis of report submitted by Executive Director Shri Ansari is unsustainable in law.

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(ii) The alleged inefficiency or incompetency attributed to the Applicant is contrary to the Annual Confidential Reports reviewed by Shri Ansari, Executive Director himself, and therefore, the ground of incompetency falls flat.

(iii) There was no meeting of mind amongst the Members of CSB as the approval has been taken only by circulation, and therefore, the approval of CSB is not legal.

(iv) Absence of independent Member of CSB renders the approval of transfer illegal.

(v) The transfer of Applicant to Aurangabad is in breach of Revenue Division Allotment for appointment by nomination and promotion to the post of Group 'A' and Group 'B' (Gazetted and Non-gazetted) of the Government of Maharashtra Rules, 2015 (hereinafter referred to 'Cadre Allotment Rules of 2015' for brevity).

(vi) Absence of signature of Secretary on the proposal in the capacity of Secretary shows there is no effective consultation with Secretary of the Department, as required in law.

7. Before advertng to the factual matrix, it would be apposite to outline the scope of the Tribunal's power to interfere with the transfer orders. In this behalf, following are the guidelines laid down by Hon'ble Supreme Court.

(i) The courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the grounds of *mala fides*. Mrs. Shilpi Bose & Ors. vs. State of Bihar & Ors, 1991 Supp. (2) SCC 659.

(ii) A Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer order issued by a Competent Authority does not violate any of his legal rights. *Shilpi Boses's case* (supra).

(iii) Who should be transferred where, is a matter for the appropriate authority to decide. Unless the transfer order is vitiated by mala fides and is made in violation of any statutory provisions, the court cannot interfere with it. *Union of India & Ors. vs. S.L. Abbas (1993) 4 SCC 357.*

(iv) Transfer of an employee is not only an incidence inherent in the terms of the appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. *State of Uttar Pradesh & Ors. vs. Gobardhan Lal (2004) 11 SCC 402.*

(v) Transfer made even in transgression of administrative guidelines cannot also be interfered with, as it does not confer any legally enforceable rights unless it is shown to be vitiated by mala fides or made in violation of any statutory provision and so long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments *Gobardhan Lal's case (supra).*

(vi) The courts should not deal with transfer orders as if they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. They cannot substitute their own decision in the matter of transfer for that of competent authorities of the State. Even allegations of mala fides when made must be such as to inspire confidence in the court or based on concrete materials. *Gobardhan Lal's case (supra).*

(vii) Allegation of mala fides should not be entertained on the mere making of it or on consideration borne out of conjectures or surmises. *Gobardhan Lal's case (supra).*

(viii) Except for strong & convincing reasons no interference could ordinarily be made with an order of transfer. *Gobardhan Lal's case (supra).*"

8. Now turning to the provisions of 'Transfer Act 2005', the normal tenure of Government servant shall be three years but exception is carved out under Section 4(5) of 'Transfer Act 2005' which *inter-alia* empowers the competent authority to transfer the Government servant before completion of his tenure where exists a special case after recording reasons in writing. It further requires prior approval of immediately superior transferring authority, as mentioned in Table of Section 6.

9. In view of aforesaid legal position, the issue posed for consideration is whether the impugned transfer order of the Applicant is in consonance

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with the provisions of Section 4(5) of 'Transfer Act 2005'. As stated above, the learned Advocate for the Applicant sought to assail the impugned transfer order on the grounds enumerated in Para 6 of this Judgment which are required to be dealt with.

10. **As to Ground Nos.(i) & (ii) :**

Indisputably, the Applicant has not completed his normal tenure of three years at Kolhapur and by impugned transfer order dated 05.02.2020, he is transferred mid-tenure with the prior approval of highest competent authority i.e. Hon'ble Chief Minister, as seen from the file noting which is at Page Nos.62 to 64 of P.B. The report dated 27.12.2019 (Page No.61 of P.B.) sent by Shri Khalil Ansari to Principal Secretary, Water Resources Department is the foundation which initiated the process of transfer of the Applicant on the ground that the Applicant has failed to complete several Irrigation Projects within time limit despite various Memos/letters to the Applicant, and therefore, Executive Director requested the Government to appoint some other efficient Superintending Engineer in place of the Applicant. The contents of letter dated 17.12.2019 are important which are reproduced in verbatim as under :-

“कोल्हापूर जिल्हयांतर्गत धामणी, वारणा, आंबेओहोळ, उचंगी, सर्फनाला, नागनवाडी, सोनुर्ले, दूधगंगा, वाकुर्डे उपसा सिंचन योजना इ. प्रकल्प कोल्हापूर पाटबंधारे प्रकल्प मंडळ, कोल्हापूर यांच्या अखत्यारीत येतात.

सदयःस्थितीत तेथे सक्षम अधीक्षक अभियंता कार्यरत नसल्यामुळे धामणी, आंबेओहोळ, उचंगी, सर्फनाला इ. प्रकल्पांच्या घळघरभरणीची कामे रखडलेली आहेत. त्यामुळे अपेक्षित सिंचन निर्मिती अदयाप झालेली नाही. तसेच वारणा, दूधगंगा प्रकल्पांच्या कामाची अपेक्षित गती राखली गेलेली नाही. त्याचप्रमाणे भूसंपादनातील अडचणी, प्रकल्पांच्या मागणी अदयापपावेतो मार्गी लागलेली नाही.

सोनुर्ले प्रकल्पासाठी निधी मंजूर होऊनही त्याची कामे सुरु झालेली नाही. निधीही खर्च झालेला नाही. उपसा सिंचन योजनांची कामे अपूर्ण असल्यामुळे व घळभरणीची कामे रखडल्यामुळे, कोल्हापूर जिल्हयांतर्गत प्रकल्पाद्वारे उपलब्ध होणा-या पाणीसाठ्याचा वापर होऊ शकत नाही ही वस्तुःस्थिती आहे.

वरील बाब लक्षात घेता व कोल्हापूर जिल्हयातील प्रकल्प लवकरात लवकर मार्गी लावण्यासाठी एका सक्षम अधीक्षक अभियंता यांची नियुक्ती करण्यात यावी.”

11. Material to note that the report dated 17.12.2019 was sent on the background of various Memos/D.O. letters issued to the Applicant

whereby the deficiencies and short-comings in his work were brought to his notice but no remedial measure was taken by the Applicant to achieve the target of completion of several Irrigation Projects falling under his jurisdiction. The sum and substance of these letter as seen from the record (Page Nos.178 to 195) is as under :-

“(a) Chief Engineer, Water Resources Department, Pune by letter dated 3rd March, 2018 asked the Applicant to achieve target viz. (i) To finalize the tender process of Dhamni Project, (ii) To submit additional estimate in respect of Doodhganga Canal, (iii) To complete Jambhare Project by the end of May, 2018, (iv) To speed-up acquisition and rehabilitation work of Ambe Ohol, Sarfnala, Naganwadi and Uchangi Project to finalize tender process for increasing irrigation capacity of Warna Project, (v) To examine irrigation capacity of all the Projects including Warna Project and to declare the same to complete lining work of Doodhganga Canal Project to publish tender notice in respect of Wakhurde Canal, (vi) To find out alternate land to release excess water of Sonurle Project and to finalize old tenders. By this letter, the Applicant was directed to look into the matter personally and to submit report immediately.

(b) By letter dated 09.05.2018, the Applicant was asked to submit report of Water Tax for the month of March, 2018 immediately which was delayed by him.

(c) By letter dated 18.06.2018, it was brought to the notice of Applicant that the objection raised in audit account are pending for more than six months and those are required to be complied with immediately.



(d) By letter sent in October, 2019 to the Applicant, he was directed to complete the work of Projects of Ambe Ohol, Sonurle, Naganwadi, Uchangi.

(e) By letter dated 25.09.2019, Shri Khalil Ansari issued direction that the work of revised estimate for administrative approval of 16 minor Irrigation Project is pending for long time and it needs to be completed within 15 days.

(f) Again by letter dated 7th October, 2019, a reminder was sent to the Applicant to comply with the objections raised by the Government in respect of various projects filing within the jurisdiction of Applicant.

(g) By letter dated 16.12.2019, the Applicant was asked to complete Ambe Ohol Irrigation Project by taking suitable steps.

(h) By letter dated 07.01.2020, the Executive Director, Shri Ansari again reprimanded the Applicant for his failure to complete the pending Projects and further intimated him that failing to comply with the directions, the suitable action under Rule 3(1)(8)(18)(19) of Maharashtra Civil Services (Conduct) Rules, 1979 will be initiated against him.

(i) Again by D.O. letters dated 29.01.2020 and 31.01.2020 deficiencies in the performance of the Applicant was brought to his notice and he was asked to take suitable steps to complete the Projections.

12. It is on the above background last straw was in the form of letter dated 17.12.2019 sent by Shri Khalil Ansari to the Government to replace the Applicant by appointing another efficient person. Here significant to note that there is no denial of receipt of all these communications. All this correspondence adverted to above in the form

of Memos and D.O. letters has been produced on record by Respondent No.2 along with his reply. True, indeed, this correspondence germane to the matter ought to have been placed on record by Respondent No.1 – Government along with its reply, as submitted by the learned Advocate for the Applicant. It is apparent that this correspondence was not placed before the Hon'ble Minister while approving the transfer of the Applicant but that hardly matters. As stated above, the Applicant has not denied these various communications nor has filed any counter Affidavit to explain the same. All that, the learned Advocate for the Applicant sought to contend that this correspondence being not part of the proposal of transfer, cannot be looked into. I find no substance in the submission in this behalf. It is a matter of record that several Memos and D.O. letters were given to the Applicant for his failure to complete the Projects and other related work within time limit. Ideally, this correspondence ought to have placed before the competent authority along with the proposal of transfer but the same was not done, apparently, due to non-communication between the Departments. Be that as it may, the fact remains that the Applicant was not taking suitable steps to complete various Irrigation Projects and Projects were delayed due to inaction on the part of Applicant. In other words, in the opinion of Government, the Applicant was not suitable to continue on the post of Superintending Engineer and necessity was felt to replace him.

13. Needless to mention that the employer is the best Judge who would appreciate the performance of employees and their suitability in particular place for continuation having regard to the draw-backs and failure of such employee to achieve expected target as directed by the employer. On receipt of report dated 17.12.2019 sent by Shri Khalil Ansari, the proposal was prepared at the level of Government to transfer the Applicant. In proposal, it is stated that the Applicant needs to be replaced by another suitable and competent person. Accordingly, the Respondent No.2 who was due for transfer and being competent and experienced person was proposed to be posted in place of the Applicant.

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Accordingly, with the approval of CSB by circulation, the proposal was approved by Hon'ble Minister Incharge of the Department as well as Hon'ble Chief Minister as a highest competent authority, as required under Section 4(5) of 'Transfer Act 2005'. As such, after recording the reasons for mid-term and mid-tenure transfer of the Applicant, the impugned order was issued.

14. I am not in agreement with the submission advanced by the learned Advocate for the Applicant that the reasons ought to have been recorded in impugned transfer order and the absence of it rendered the transfer order unsustainable in law. In transfer order, the Applicant is shown transferred on administrative ground invoking Rule 4(5) of 'Transfer Act 2005'. The detail reasons are forthcoming in the file noting of the proposal approved by the highest competent authority. In this behalf, reliance is rightly placed by the learned Advocate for Respondent No.2 on the decision of Hon'ble Bombay High Court in **2009 Mh.L.J. 163 (State of Maharashtra Vs. Ashok R. Kore)** wherein it has been held that there is no requirement of law to state elaborate reasons in the transfer order and where elaborate reasons are in existence in the file of Government, the transfer order cannot be questioned. Needless to mention that the administrative authorities are given ample latitude to transfer Officers from one place to another in the interest of better administration and where reasons for the same are forthcoming in file noting and those are supported by some material on record, then the sufficiency of the reasons cannot be the subject matter of scrutiny in judicial review.

15. It is well settled that the reasons need not be elaborate as in decision of Court of law. Whether reasons which weighed with the authority for arriving at subjective satisfaction would qualify it as exceptional circumstance or a special case would depend upon the facts of each case and it is not possible to reduce it into strait-jacket formula. The Court cannot substitute its opinion for that competent authority.

Existence of reasons on record is a matter capable of objective verification. Whereas, satisfaction as to reasons is a matter of subjective satisfaction. Once test of existence is satisfied, the subjectivity of satisfaction cannot be gone into by Tribunal unless it is a case of *mala-fide* exercise of powers.

16. Now turning to the facts of the present case, there is absolutely nothing to point out that the impugned transfer is outcome of malicious exercise of power or the Applicant is transferred only to accommodate Respondent No.2. The Respondent No.2 was due for transfer and in the opinion of Government, he is efficient person. The Respondent No.2 has also placed on record his ACRs, which shows his overall gradation is 8.5 which is 'A+'. Whereas, the ACRs of the Applicant for the year 2017-18 and 2018-19 are of less gradation than the Applicant.

17. Shri A.V. Bandiwadekar, learned Advocate for the Applicant in order to salvage the damage made feeble attempt to counter the inefficiency attributed to the Applicant by Shri Khalil Ansari in his letter dated 17.12.2019 contending that it runs counter to the ACRs reviewed by Shri Khalil Ansari himself. However, I find no merits in these submissions.

18. True, the perusal of ACR of the Applicant for the year 2017-18 reveals that the overall gradation given by reviewing authority [Shri Khalil Ansari] was 8 marks out of 10. It is also equally true that there is nothing adverse remark in the ACR and the reporting authority as well as reviewing authority seems to have accepted the self-assessment recorded by the Applicant. In so far as ACR of 2018-2019 is concerned, the reporting officer has given overall gradation of 6 marks out of 10 and the same has been confirmed by Shri Khalil Ansari, Executive Director as reviewing authority. In this ACR also, there is nothing adverse written against the Applicant. As per Circular dated 10.10.2017 issued by GAD,



the overall gradation 6 and above but less than 8 would be treated as 'A' and overall gradation 8 and above could be treated as 'A+'.

19. Here material to note that the Memos or D.O. letters issued to the Applicant as adverted to above in detail are of the period from 2018 to 2020. The first D.O. letter in this behalf addressed to the Applicant was of 3rd March, 2018 (Page NO.176 of P.B.) and the last communication in this behalf was of 31.01.2020. This being the position, the ACR of 2019-20 would be relevant having regard to the D.O. letters issued by Shri Khalil Ansari attributing inefficiency of the Applicant. However, the ACR of 2019-20 is not forthcoming which would have been of some significance.

20. Apart, fact remains that in the year 2018-19, the overall gradation was 6 out of 10 whereas the report submitted by Shri Khalil Ansari to the Government for his transfer is of 17.12.2019. As such, the performance of the Applicant in the year 2019-20 seems to be not to the satisfaction of concerned authorities. The deficiencies or shortcomings are specially brought to the notice of Applicant by various communications and D.O. letters. This being the position, the ACR of 2017-18 and 2018-19 does not outweigh the specific shortcomings or drop-backs noticed by Executive Director in his recent proposal of transfer dated 17.12.2019. In this view of the matter, I find no merits in the submission advanced by the learned Advocate for the Applicant that the report submitted by Shri Khalil Ansari, Executive Director is in any way in conflict with the ACR.

21. At this juncture, it would be apposite to refer the observations made by Hon'ble High Court in **2009 (4) Mh.L.J. 163** (cited supra) wherein in similar situation, employee was transferred mid-term for lack of ability and effective monitoring of minor irrigation Projects. The Hon'ble High Court held that the Tribunal/Court cannot substitute its opinion for that of competent authority for the State and if some reasons are recorded making out of special case, the Tribunal should not

interfere unless the order is *mala-fide*. The principles laid down in this authority are clearly attracted to the present case.

22. Reliance placed by the leaned Advocate for the Applicant on the decision in ***Writ Petition No.722/2014 (Shri A.P. Kamble Vs. State of Maharashtra & Anr.) decided on 27.02.2014*** is misplaced. In that case, no special case was made out, as there was no supporting material on record to establish unsatisfactory performance of the employee. Therefore, the transfer order was quashed. Whereas, in the present case, there is ample material on record which compel the Government to replace the Applicant due to lack of adequate supervision and efficiency which resulted into delay in completion of several important irrigation Projects.

23. The submission advanced by the learned Advocate for the Applicant on the basis of decision of Hon'ble Supreme Court in ***(2013) 2 SCC (L & S) 858 (Rashmi Metaliks Limited & Anr. Vs. Kolkata Metropolitan Development Authority & Ors.)*** and ***(1978) 1 SCC 405 (Mohinder Singh Gill Vs. Chief Election Commission)*** that "when statutory authority makes an order based on certain grounds, its validity must be judged by the reasons so mentioned cannot be supplemented by fresh reasons in the shape of Affidavit or otherwise, an order bad in the beginning may by the time it comes to the Court on account of challenges gets validated by additional grounds later brought out" is not acceptable in the present scenario. In the present case, the reasons are not supplemented by the Affidavit but it is borne out from the record and proposal of transfer which has been approved by the highest competent authority. Suffice to say, this is not a case where transfer order is sought to be supported by subsequent material. All the material was before the competent authority and considering the same, the transfer of the Applicant was found necessitated as an administrative exigency. I am, therefore, satisfied that the impugned transfer order is in

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consonance with Section 4(5) of 'Transfer Act 2005' and I see no illegality therein.

24. **As to ground Nos.(iii) and (iv) :**

Shri Bandiwadekar, learned Advocate for the Applicant further raised the issue of absence of one Member in CSB and submits that in absence of one Member, the recommendation for transfer of the Applicant taken by CSB is invalid. He also raised objection for approval of CSB by circulation mode. According to him, there should be meeting in congregation, so that there is meeting of mind for objective decision.

25. True, Shri H.G. Patil one of the Member of CSB was absent and the approval of CSB was taken by circulation on the proposal of transfer itself. The Department first prepared the proposal and then forwarded it to the Members of CSB. The Principal Secretary, Water Resources Department as a Chairperson and Secretary (Catchment Area Development) Shri Rajendra Pawar approved the proposal by putting signature on the proposal itself. As such, the proposal was approved by CSB by two Members as third Member was absent. In other words, it is approved by majority. The leaned Advocate for the Applicant could not point out any provision prescribing coram of CSB. Indeed, as per the decision of Hon'ble Supreme Court in **AIR 1972 SC 1812 (Ishwar Chandra Vs. Satyanarain Sinha & Ors.)** relied by the learned Advocate for the Applicant himself where there is no rule for regulation or any other provision for fixing the coram, the presence of majority Members would constitute it a valid meeting and matter considered there at cannot be held to be invalid. This being the position, the approval of CSB being given by majority cannot be termed invalid for absence of third Member of CSB.

26. This Tribunal has taken consistent view in **O.A.No.903/2015 (Smt. Namita S. Bhalerao Vs. State of Maharashtra) decided on**

07.01.2016 and O.A.No.905/2015 (Smt. Jyotsna Vs. Kapade Vs. State of Maharashtra) decided on 07.01.2016 that absence of one Member of CSB does not render the recommendation of CSB invalid where majority Members had recommended the proposal.

27. As regard circulation note adopted by Respondent No.1, it is expected that there should be meeting of minds, but in certain situation, having regard to urgency, there could be approval by circulation in absence of any rule or provision prohibiting the approval by circulation mode. No such provision which bar approval by circulation is pointed out. I, therefore, see no substance in the submission advanced by the learned Advocate in this behalf.

28. **As to Ground No.(v) :**

Though the learned Advocate for the Applicant sought to assail the impugned transfer order on the ground that it is in contravention of "Cadre Allotment Rules of 2015", I see no merits in it. True, the Applicant was allotted Konkan-II Division but by impugned transfer order, he is transferred from Aurangabad which falls in different Division. The perusal of "Cadre Allotment Rules of 2015" reveals that its object is to have good Officers in all Divisions and it also provides for change of Division after completion of three years' tenure. At the same time, it also permits change of Division after completion of one year as contemplated under Rule 9 read with 12 of "Cadre Allotment Rules of 2015". There is no such embargo for transfer of the employee in another Division, if the same is done under enactment viz. Transfer Act 2005. As such, the statutory powers of Executives invoked under 'Transfer Act 2005' would prevail particularly when there is no such express bar of transfer of employee from one Division to another Division in "Cadre Allotment Rules of 2015".

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29. **As to Ground No.(vi) :**

True, the perusal of proposal (Page Nos.61 to 64 of P.B.) reveals that the Principal Secretary, Water Resources Department has not put his signature and the proposal was signed by Shri Gangarkar, Under Secretary and Shri Sajnikar, Deputy Secretary. Normally, it should have been also signed by Principal Secretary of the Department before going it to the Hon'ble Minister. As per Section 6, the transfer should be by Minister Incharge in consultation with the Secretaries of the concerned Departments. However, it may be noted that the Principal Secretary, Water Resources Department has signed the proposal as Chairperson of CSB on the proposal itself in circular mode. As such, this is not a case that there is no signature of Principal Secretary on the proposal. He had already signed it though in capacity as a Chairperson of CSB. As such, the fact remains that there was no occasion for Principal Secretary to differ from the proposal moved for transfer of the Applicant. Therefore, the submission advanced by the learned Advocate for the Applicant placing reliance on the decision of Hon'ble High Court in ***Writ Petition No.9844 of 2018 (Shir Santosh Thite Vs. State of Maharashtra)*** is of no avail. In that case, there was no such consultation with the Secretary as mandated under 'Transfer Act 2005', and therefore, the transfer order was held invalid. Whereas, in the present case, there being signature of Principal Secretary though in capacity as a Chairperson of CSB, it cannot be said that there is no consultation with the Secretary of Water Resources Department. Therefore, in my considered opinion, reliance placed on the decision in ***Writ Petition No.9844/2018*** is misplaced.

30. Needless to mention that the transfer orders can be interfered only when it is found in contravention of mandatory provisions, arbitrary or *mala fide*. In this behalf, it would be appropriate to refer the Judgment of Hon'ble High Court in ***2008 (2) Mh.L.J. 640 (Shri V.V. Gadekar, Deputy Engineer Vs. MHADA)***, wherein it has been held as follows :

“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power. The authorities concerned have made a class of persons against whom disciplinary action is contemplated. In fact, it has been stated in the reply filed by the respondents in no uncertain terms that they are taking disciplinary action in accordance with the opinion of the Vigilance Department against these Officers for irregularities committed in the special and current repairs in the transit camps all over Mumbai. If the authorities have taken a view that they need to transfer the Officers upon whom show cause notices were served and disciplinary action is contemplated that decision cannot be termed as arbitrary or mala fide. It is a decision obviously taken for administrative reasons and there is no occasion for the Court to go behind the order and examine, like an Appellate Authority, whether or not such order needs to be passed. The expressions "exceptional circumstances" or "special circumstances" have to be read ejusdem generis provided that transfer may be made any time in the year in question under the circumstances stated in those provisions. The expression "exceptional circumstances" has been explained in Black's Law Dictionary, Sixth Edition, as conditions which are out of the ordinary course of events, unusual or extraordinary circumstances. The Shorter Oxford English Dictionary on historical principles, Vol. 1 A-Markworthy explains the word "exceptional" - of the nature of or forming an exception, unusual. The discretion is vested in the authorities to make an exception of tenure of two and three years wherever special circumstances exist. Special circumstances should be understood in the concept of service jurisprudence and not in its literal sense. Conditions of service make transfer as a necessary incidence of service. The Rules give protection to an employee to stay at the place of posting for three years but this is subject to the exception that, where in the wisdom of the authority concerned, he should, for administrative and exceptional circumstances, even be transferred during that period. We do not see any fault in exercise of such power. In the present case, from the record before us, there are no patent mala fides or arbitrariness in exercise of power by the respondents.”

The exposition of law enunciated in the above mentioned Judgment are squarely attracted to the present case.

31. The totality of aforesaid discussion leads me to conclude that the challenge to the transfer order is devoid of any merit and O.A. deserves to be dismissed. Hence, I pass the following order.

W.D. Kumar

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 08.10.2020

Dictation taken by :

S.K. Wamanse.

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