

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI
ORIGINAL APPLICATION NO.19 OF 2016

DISTRICT: SATARA

Shri Sampat Tryambak Gunjal)
Residing at D.S.P. City, Near 'D' Mart,)
Malkapur, Taluka Karad,)
District : Satara.) .. Applicant

Versus

- 1) State of Maharashtra,)
Through Chief Secretary,)
Mantralaya, Mumbai 400 032.)
- 2) Principal Secretary (Co-operation and Marketing),)
Co-operation, Marketing and Textile Department,)
Mantralaya, Mumbai 400 032.)
- 3) The Commissioner of Co-operation and Registrar,)
Co-operative Societies, Second Floor,)
Central Building, Pune 411 001.)
- 4) Shri Kundan Vasudeo Bhole,)
Dy. Registrar, Co-op. Society,)
Tal. Karad, District Satara.) .. Respondents

Mrs. Punam Mahajan, the learned Advocate for the Applicant.

Shri A.J. Chougule, the learned Presenting Officer for the Respondents No.1 to 3.

Shri D.H. Pawar, the learned Advocate for Respondent No.4.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

RESERVED ON : 02.05.2016.

PRONOUNCED ON : 07.06.2016.



J U D G M E N T

1. Heard Mrs. Punam Mahajan, the learned Advocate for the Applicant, Shri A.J. Chougule, the learned Presenting Officer for the Respondents No.1 to 3 and Shri D.H. Pawar, the learned Advocate for Respondent No.4, at length.
2. Perused the Original Application, annexures and affidavit filed by both parties, and record which was produced at the time of hearing.
3. Averments contained in O.A., which are foundation of challenge and from which foregoing summary of grounds of challenge emerges, are culled out from pleadings, are quoted adverbatisim as below :-

"6.9.1) The Petitioner submits that, the transfer of the Petitioner is arbitrary, malafide and discriminatory. The Respondent No.2 and 3 have arbitrarily transferred the Petitioner by resorting to pick and choose method, which is evident from the file notings –

I) As per the file noting list of 44 Deputy Registrars was prepared, based on the tenure (43 Deputy Registrars and 1 vacant post). Names of 16 Officers were proposed for transfer, on the basis of the tenure. It will be pertinent to note that, as per this list, the name of the Petitioner is at Sr. No.25, whereas only 16 Deputy Registrars were required to be transferred. Therefore, there was no reason to even consider the name of the Petitioner, leave apart transfer. Thus, the minutes of the Civil Services Board – 1 is totally misleading. The list of 43 Officers is annexed and marked as Annexure A8.

II) The name of Shri P.P. Patil, who is Sr. No.6, (in the list of 43 officers) is not there in the list of the names of 16 officers, whose names have been proposed for transfer, even though he has completed 3 ½ years on his post and is overdue for transfer.

III) Shri J.D. Patil, who is at Sr. No.12 and Shri R.R. Veer, who is at Sr. No.13 (in list of 43 Deputy Registrars), their names were not placed before the Civil Services Board for transfer.

IV) Shri M.B. Mhaske, who is at Sr. No.14 and Shri P.P. Patil, who is at Sr. No.16 (in the list of 43 Deputy Registrars), their names were not placed before the Civil Services Board for transfer.



V) The names of persons Shri S.S. Kulkarni – Sr. No.18, Shri R.V. Potil – Sr. No.19, Shri K.N. Mande – Sr. No.20 and Shri K.P. Jebale – Sr. No.23 have also been dropped and not considered for transfer. This clearly shows that Respondents while putting up the list of names of officers to be transfer have acted arbitrarily and malafidely. If these officers who have put in a longer tenure would have been transferred, the Petitioner would not have been transferred.

VI) Deputy Registrar, Shri P.P. Oak, whose name is at Sr. No.9 in the list of 16 Officers, proposed to be transferred and his name was also placed before the Civil Services Board, has not been transferred, as it is stayed by the Hon'ble Chief Minister, without assigning any reasons. Shri P.P. Oak is on the present post from 10/5/2013, Civil Services Board has recommended his transfer and therefore there was no reason to stay his transfer. If Shri P.P. Oak who is at Sr. No.9 in the original list of 16 officers and at Sr. No.16 in the Hon'ble Chief Minister's list, would have been transferred, then the Petitioner would not have been transferred as Petitioner is at Sr. No.18.

Thus it will be seen that if the criteria, as mentioned in the file noting would have been applied fairly bonafidely, then there was no reason to transfer the Petitioner, as well as those officers who would be due for transfer in the month in June / July, 2017.

VII) Shri Pratap Potil and Shri M.B. Mhaske are both transferred and given executive post. If they would have been transferred and given a non-executive post, two posts would have been available for the probationers and there would be no necessity to transfer the Petitioner, as his name is shown lost in the list of Deputy Registrars who are to be transferred. Their proposal was not placed before the Civil Services Board.

The Civil Services Board has given approval for transfer of only 16 persons, whereas the list which is approved by the Hon'ble Chief Minister contains names of 18 persons, i.e. names of Shri M.B. Mhaske and Shri Pratap Patil is included and they are transferred without the approval of the Civil Services Board. They are given an executive posting. Thus the file notings clearly shows that the transfer is both arbitrary and malafide. In the list approved by the Hon'ble Minister for Co-operation as well as the Hon'ble Chief Minister, the name of the Petitioner is at Sr. No.18. Malafide is evident from the fact that, as per the proposal and file noting, only 16 vacancies of executive posts were to be made and one post was already vacant, to accommodate 17 probationers. Therefore the transfer of the Petitioner is not for the professed purpose, but on the contrary it is to accommodate other senior persons who were liable to be transferred, as per the criteria stated in the proposal submitted by the Respondent No.3. The Respondent No.3 has also acted arbitrary and malafidely by not sending the names, as per the criteria stated in the proposal.

VIII) The Petitioner has been informed by the office of the Respondent No.3, in reply to the letter under the Right to Information Act, seeking for the list of the



names sent from the office of the Respondent No.3 to the Respondent No.2, for transfer, Petitioner was informed no list is submitted but as seen from the proposal dated 2/12/2015, the Respondent No.3 has send the name of 16 officers to be transferred. The name of the Petitioner is at Sr. No.16.

IX) Shri A.N. Kumbhar has also been given an Executive posting and he has been transferred in place of Shri Pratap Patil, contrary to the recommendations of Civil Services Board, and the no reasons are assigned for deviating from the recommendations of the Civil Services Board. As per the recommendation of Civil Services Board, Shri A.H. Kumbhar was to be given a posting on the non-executive vacant post. This clearly shows that some of the officers viz. Shri Pratap Patil and Shri A.N. Kumbhar are given executive postings.

Copy of the relevant file noting is annexed and marked as Annexure A9.

6.9.2) The Petitioner therefore submits that from the above facts and file nothing, it is clear that the Respondent No.2 and 3 have resorted to pick and choose method and thus the transfer of the Petitioner is arbitrary and malafide.

6.9.3) The Petitioner submits that, there are no special reasons or exceptional circumstances recorded for transferring the Petitioner, in the proposal which was approved by the Hon'ble Chief Minister. On the contrary Hon'ble Chief Minister's approval has been taken by misleading him. If the following 12 Deputy Registrar, on the basis of their tenure, would have been transferred, (whose names are shown the list of 44 officers, on the basis of their tenure), the Petitioner would have neither been considered for transfer nor transferred at all.

Sr. No.	Name	Working on the present post, since
1	Smt. Shubhangi S. Goud	20/6/2012
2	Shri G.S. Kamble	11/7/2012
3	Shri A.N. Kumbhar	12/7/2012
4	Shri B.M. Jadhav	20/7/2012
5	Shri G.G. Balsane	23/7/2012
6	Shri P.P. Patil	23/7/2012
7	Shri R.S. Dhondkar	26/7/2012
8	Shri R.G. Gaikwad	1/8/2012
9	Shri A.S. Gardi	14/9/2012
10	Shri P.P. Oak	10/5/2013
11	Shri G.G. Mavale	15/5/2013
12	Shri J.D. Patil	16/5/2013

The persons at Sr. No.6, 10 and 12 are not transferred, therefore Petitioner was required to be transferred. Even the Officers at Sr. No.13, 14, 16, 18, 19, 20 and 23 from the list of 44 officers (Page No.33A) are not considered for transfer; therefore the Petitioner was required to be transferred. The impugned order is therefore malafide, illegal and bad in law.



6.10.A) The file notings clearly show that the transfer of the Petitioner is arbitrary and mala fide, as the Deputy Registrar, who were due for transfer viz. Shri Protap Patil, Shri M.B. Mhaske, their names have not been placed before the Civil Services Board for transfer without following any procedure of law, they have been transferred to Executive postings whereas the Petitioner has been transferred on the ground to create a vacancy in an executive post, for the probationer. Thus the reason for transfer of the Petitioner is defeated by the conduct of the Respondents and it cannot be said that the transfer of the Petitioner is for the professed purpose, on the contrary it is because of other officers viz. Shri M.B. Mhaske, Shri Pratap Patil, Shri A.N. Kumbhar and Shri P.P. Oak were to be given undue accommodation. The impugned transfer order is liable to be quashed and set aside on this ground alone.

6.10.2) The impugned order is a midterm and midtenure transfer order, therefore it was obligatory on the part of the Respondent No.2 and 3 to record the special reasons/ exceptional circumstances in writing, before sending the proposal of transfer of the Petitioner, to the Hon'ble Chief Minister for approval. No reasons have been given for the transfer of the Petitioner in the impugned order and to the best of the knowledge of the Petitioner, the special procedure laid down u/s 4(4)(ii) and 4(5) of the Transfer Act has not been followed i.e. to say that neither the reasons have been recorded nor the approval of the Hon'ble Chief Minister has been taken before issued the impugned order. Therefore the impugned order is illegal and bad in law as it is violative of the Section 4(4)(ii) of the Transfer Act."

(Quoted paragraphs 6.9.1, 6.9.2, 6.9.3, 6.10.A and 6.10.2, from pages 4-A to 4-D, 4 D-1 and 5 of the paper book.)

4. First affidavit was filed by the State the Respondent Nos.1 to 3 for answering the O.A. on 29.1.2016 (which is at page 34 to 42) and another was filed for answering the amended paragraphs of the O.A. on 3.3.2016 (which is at page 96 to 103).

It shall suffice to refer to second affidavit which is filed to answer the amended O.A., which have been quoted adverbim in foregoing paragraph. The reply of the State contained in paragraph no.5 and 8 of second affidavit (which is at Page 96 onwards) deals with crucial averments. Para No.5 and 8 of reply are quoted adverbim, as below :-

"5. With reference to amended Para No.6.9.1 (IV), I say and submit that contentions of the said Para are not true, correct and legal and hence, denied by the Respondent No.2. The Respondent No.2 submits that the Respondent No.3 has submitted the list/ proposal of Deputy Registrar,



who were due for transfer but as submitted above, in view of administrative exigency various Deputy Registrars in Mumbai and Thane Districts, names of whom are mentioned in above Para, which includes names of Shri M.B. Mhaske and Shri P.P. Patil, were not considered for transfer to give independent charge to the probationary Deputy Registrars. It is also not true to say that names of the said Deputy Registrars were not place before the Civil Service Board – I for transfer because as submitted above the Civil Service Board – I recommended that names of the Deputy Registrars in Mumbai and Thane Districts to give independent charge to the Probationary Deputy Registrars with a view that such transfer will disturb administrative functioning of the said important districts.

8. With reference to amended Para No.6.9.1 (VII), I say and submit that contentions of the said Para are not true, correct and hence denied by the Respondent No.2. The Respondent No.2 submits that the Respondent No.3 has submitted the list/ proposal of Deputy Registrar, who were due for transfer but as submitted above, in view of administrative exigency various Deputy Registrar in Mumbai and Thane Districts, names of whom are mentioned in above Para, which includes name of Shri P.P. Patil and Shri M.B. Mhaske, were not considered for transfer to give independent charge to the Probationary Deputy Registrars. It is also mentioned that, although Shri P.P. Patil and M.B. Mhaske were not recommended by the Civil Services Board -1 for transfer, there transfers were considered and approved by the Hon'ble Chief Minister by exercising the lawful authority of the Government.

(Quoted paragraph 5 and 8 from pages 99 to 101.)

5. Applicant's averments relating to legal malafides as are seen pleaded in specific words in paragraph no.6.9.1 – (I), (II), (VII) and paragraph No.6.9.3 of the O.A., which are quoted hereinbefore and as orally argued are summarized as hereinafter.

6. According to the learned Advocate for the Applicant Transfers are purportedly made for the "professed object" behind transfer which emerges from the text of the note proposing the Transfer which was furnished by Respondent No.3, while proposing the Transfers. Said purported and professed object can be described as below:-

"To give posting to new recruits/ probationers by giving them posting on "executive post with independent charge", by transferring / displacing District Deputy Registrars who were already working on the Executive posts."

7. Learned Advocate for the Applicant has further submitted that:-



- (i) Said professed object could have been achieved by Transferring Officers holding independent charge who had become due for Transfer due to their stay for more than 3 years.
- (ii) Had the Respondents not included two names i.e. Shri M.B. Mhaske and Shri P.P. Patil and had the postings of Shri P.P. Oak not been deferred, even then transfer of applicant could have been avoided.
- (iii) Thus the professed object as pleaded by the State on the basis of text of the proposal, office note, minutes etc. is to create 16 vacancies by transferring 16 officers, was deviated, and this deviation was done, with the motive of accommodating officers namely Shri M.B. Mhaske, Shri P.P. Patil and Shri P.P. Oak, at choice posting.
- (iv) The object for which the proposal are sought to be or are purportedly issued are not honestly and sincerely followed.

8. In these premises i.e. averments referred to hereinbefore, the challenge contained in O.A. can be summarized as follows :-

- (a) Impugned transfer is malafide in facts and in law.
- (b) Special reasons and exceptional circumstances leading to Applicant's mid-term and mid-tenure transfer, do not exist as well those are not recorded.
- (c) Civil Services Board was not truly and duly consulted before ordering impugned Transfer.
- (d) Officers having longer stay and who were due for transfer, in view of their completion of tenure of 3 years at their places of posting, are retained at the same place, and only in order to protect such officers, Applicant is chosen for transfer though he has completed only 15 months tenure at his present posting.
- (e) Impugned transfers are not made for the "object which was professed", and this has resulted in causing injustice to the Applicant and hence those are ordered in colourable exercise of statutory power.

9. It shall be evident from the contents of para 5 of the second affidavit filed by the State, which is already quoted in foregoing para 4, that the State has denied the plea and contention of the applicant and has in summary averred that entire procedure



required to be followed in accordance with law was followed and the transfers have been ordered in administrative interest.

10. In the aforesaid background questions which arise for consideration are as follows :-

- (I) Have Respondents followed the provision of Section 4(4) and Section 4(5) of R.O.T. Act ?
- (II) Has the State followed the procedure of adherence to the requirement of consulting Civil Services Board ?
- (III) Is impugned order of transfer vitiated due to failure of respondents to consult the Civil Services Board, in so far as Transfer of certain officers named in the order ?
- (IV) Has the Applicant demonstrated that his Transfer is bad and causing injustice to the Applicant because the motive behind said Transfer is to accommodate three officers namely :- (a) Shri M.B. Mhaske and (b) Shri P.P. Patil and other officers posted on executive posts in Mumbai and Thane to achieve the object "professed" or "purported and shown", and therefore impugned Transfer is malafide on facts and in law being ordered in colourable exercise of power to Transfer being ordered in colourable exercise of power to Transfer?

11. For dealing with the questions which are framed it is necessary to record revelations from record. Those are summarized as follows:

(a)	02.12.2015	<p>The Respondent No.3 has furnished to Respondent No.2 a proposal for Transferring 16 Officers in the cadre of District Deputy Registrar, Cooperative Societies.</p> <p>Applicant's name is seen in that list at Sr. No.16.</p> <p>This note contains a version that :-</p> <p>(i) 8 officers who were due for transfer in June/ July, 2015,</p> <p>(ii) 3 officers who were due for transfer in June / July, 2016, and</p> <p>(iii) 5 officers who would be due for transfer in June / July 2017.</p>
-----	------------	---



(b)	03.12.2015	<p>Civil Services Board held its meeting on 03.12.2015.</p> <p>The Civil Services Board considered the proposal, and vetted the Transfers as proposed.</p> <p>In Paragraph No.2 of minutes it is observed as follows :-</p> <p>“</p> <p>२) सदर ४४ मंजूर उपनिबंधक सहकारी संस्था या पदांवरील अधिका-यांची उतरत्या क्रमाने सेवाकालावधी नुसार यादी तयार करून त्याप्रमाणे बदली, प्रस्तावित करताना उतरत्या क्रमाने एकुण १६ अधिकारी यांच्या नावाचा विचार करण्यात आला. कारण ३ वर्षे सेवा कालावधी झालेले मुंबई / ठाणे जिल्ह्यातील ब-याच अधिका-यांच्या बदल्या कराव्या लागत असल्याने व एकाच वेळी महत्वाचे स्थानावरील इतके अधिकारी बदलणे प्रशासकीय कामकाजाच्या दृष्टीने उचित होणार नाही. ही बाब विचानात घेऊन काही उपनिबंधक यांच्या बदल्या प्रस्तावित करण्यात आलेल्या नाहीत. त्यांच्या बदल्या आता न करता नियतकालिक बदल्यांच्या वेळी म्हणजे एप्रिल-मे २०१६ मध्ये करण्यात येतील.</p> <p>(Quoted text is point [2] from page 33-O of O.A. paper book.)</p>
(c)	04.12.2015	<p>Note was put up by the Under Secretary of Department of Co-operation for obtaining sanction of proposal for Transfer.</p> <p>(Copy whereof is at page 33-S to 33- U of the paper book)</p>
(d)	05.12.2015	<p>Hon'ble Minister of Co-operation has approved the proposal as per list marked “तक्ता अ”. The list marked “तक्ता अ” was appended by Hon'ble Minister for Co-operation. Hon'ble Chief Minister has approved it excluding the name of candidate at Sr. No.11.</p>
(e)	28.12.2015	<p>Impugned order is issued.</p>

DISCUSSION ON QUESTION NO (I)

12. (a) It would be convenient to deal with the aspect of Section 4(5) first in the sequence of discussion.



- (i) The Facts which are noted in foregoing paragraph no.11 as revealing from record make it vivid that the order of Transfers is passed by the competent transferring authority i.e. the Hon'ble Chief Minister. Therefore, requirement under Section 4(5) of the R.O.T. Act of taking prior sanction of superior authority is not relevant, because an order of approval from any other higher authority is not required.
- (ii) Therefore Section 4(5) of the Act is not attracted in present case, and hence there is no violation of this provision.
- (b) In so far as grievance about non-compliance of Section 4(4) of the R.O.T. Act is concerned, two things are to be seen namely:-
- (i) Whether the reasons are recorded?
- (ii) In case reasons are recorded, do those reasons conform to the phrase "special reasons or exceptional circumstances?"
- (c) The discussion in regard to foregoing points is as hereinafter :-
- The record reveals that the proposal for transfer is submitted by Respondent No.3 - The Commissioner of Co-operation and Registrar. Copy of said proposal is at page 33-G to 33-K of the paper book. What is stated in this proposal is to following effect:-

"The direct recruits are to be given independent charge, and for this purpose it is necessary to transfer 16 officers already working on executive posts at Taluka / Division, who may have to be transferred elsewhere."
 - It further reveals that out of those 16 officers proposed to be Transferred :-
 - (i) 8 officers have completed tenure in June-July 2015,
 - (ii) 3 officers have completed the tenure in June-July 2016 &
 - (iii) 5 officers have completed the tenure in July, 2016.
 - The proposal contains names of 16 Officers in the cadre of District Deputy Registrar who may be transferred.
 - Said note (Page 33-G to Page 33-K) was placed before the Civil Services Board. The minutes of proceedings of Civil Services Board contains narration and its decision, as to the need of transfer, and the principles and the rational on the basis of which certain officers who were due for transfer are not considered for



mid-term transfer, to the effect that, "It was not considered proper in the administrative interest to transfer the officers in Mumbai, Thane, en-mass, in the mid of year."

- Background referred to in foregoing sub para is quoted at adverbim in 2nd paragraph/ point narrated in the minutes of Civil Services Board, copy whereof is seen at page 33-O of the paper book, which is also quoted the foregoing table item (b) in foregoing paragraph No.7.

(d) The narration contained in the proposal and incorporated in the minutes of the Civil Services Board reveals the "reasons" due to which mid-term Transfers are proposed and those are seen discussed / recorded.

(e) Next point to be considered as a part of question No.(I) is as to whether these reasons brought on record conform to or do constitute "special reasons and exceptional circumstances", or recourse to said reasons is a colourable exercise of powers. This question overlaps question no. (IV). Therefore this aspect would be dealt with while dealing with question (IV).

DISCUSSION ON QUESTION NOS.(II), (III) AND (IV)

13. Learned Advocate for the Applicant has relied upon the judgment of Hon'ble Supreme Court rendered in case of T.S.R Subramanian and Ors. V/s. Union of India and Others 2014 (1) SLR 1 (SC) and the Government circular which is issued on 31.01.2014, to urge that effective consultation with Civil Services Board was not done. Copy of judgment and of circular aforesaid was tendered at the time of hearing.

14. The principles and directions contained in the aforesaid T.S.R. Subramanian's case and adopted by the Government of Maharashtra in aforesaid Government decision, are summarized as follows:-

- (i) The Civil Services Board has to be constituted and it has to function as per the principles laid down in T.S.R. Subramanian's case supra.



- (ii) The Government is under obligation to consult Civil Service Board. The proposal for Transfer must be routed through Service Selection Board.
- (iii) The authority competent to transfer has primacy in the matter of deciding the modality, the course of exact action and decision.
- (iv) Therefore, though the Civil Services Board has to be consulted, final authority to Transfer rests with competent authority empowered to Transfer.

15. In so far as the imperativeness of need of consultation with Civil Services Board (C.S.B. for brevity) is concerned, now it is the law of land and it is mandatory.

The question as to whether consultation to C.S.B. was taken before impugned Transfer was taken, it is a factual matter, and has to be decided on the basis of record i.e. documentary evidence.

16. It is seen from 1st sentence in Point / paragraph no.2 at page 33-O of the paper book (quoted in foregoing text) the words "सदर ४४," that, the list of 44 District Deputy Registrars, duly arrayed in order of length of services, along with the proposal signed by the Respondent No.2 was placed before Civil Services Board. Even the Applicant has brought on record said list of 43 persons/ officers, which is seen on the record / paper book of O.A. at page 33-G of the paper book.

17. It is seen that after the proposal went before Hon'ble Minister of Co-operation, and while endorsing on it, he has furnished a list of officers to be transferred which is marked as तक्ता 'अ'. In this list, Hon'ble Minister of State has adopted the list as approved by Civil Services Board and has added two names for Transfer, namely of Shri M.B. Maske and Shri Pratap Patil.

Said list is approved by Hon'ble Chief Minister with a direction to defer the Transfer / posting of Shri P.P. Oak.

18. It is evident from record that the entire cadre list and the proposal was placed before C.S.B. The requirement of law, namely, sending of proposal, placing thereof



before Civil Services Board taking its consultation, is followed. It is seen that the Services Board/Civil Service Board has concurred with the proposal submitted by Respondent No.3. Thereafter, Hon'ble Minister of Cooperation has suggested partial modification, and Hon'ble Chief Minister has agreed with the list with slight modification. Fact that the decision to order transfers was taken by the Hon'ble Chief Minister is very well borne on record.

In view of the foregoing discussion it is proved that Civil Services Board was consulted.

19. Now, what is to be examined is as to whether any illegality is committed at the stage of taking decision by the Hon'ble Minister and Hon'ble Chief Minister. Applicant's pleadings and submissions in this behalf are based on the malafides and in colourable exercise with emphasis, rather than only on illegality.

20. In the background that out of 16 transfers proposed by Civil Services Board, posting of two officers are altered by Hon'ble Minister and one transfer is deferred by Hon'ble Chief Minister, the applicant will have to show that alteration of posting of 2 officers and deferment of posting of one officer, results in violation of provisions of rule relating to consultation of C.S.B. or alternatively, it becomes bad due to malafides or otherwise bad, being in violation of Article 14 of the Constitution of India.

21. Applicant's grievance is as to choice or preference to two officers namely Shri Mhaske and Shri P.P. Patil. Any specific illegality is not shown, though it is suggested that inclusion of these two names is done after receiving consultation from Civil Services Board, and hence it is an illegality.

22. The point which is argued to urge illegality and/or malafides needs to be referred at the cost of repetition. Substance of what is then argued as regards these transfers is summarized as follows:-



- (i) Had the Government transferred the officers having stay of more than 3 years and alternatively acted on the proposal as furnished by Commissioner of Co-operation, and had three Officers namely Shri Mhaske, Shri P.P. Patil and Shri P.P. Oak not been accommodated applicant's transfer could have been avoided.
- (ii) Consultation with CSB was not effective consultation.

23. Applicant's contention referred to in foregoing para No.22(i) is dealt with as follows:

- (a) The claim that:- "It was possible and legal to transfer those who have longer stay and choice of the Applicants' candidature for transfer could have been avoided, and the act of Government in accommodating the officers having longer stay in the executive posting without resorting to a prudent decision is malafide" is based on his expectation of more prudent or a wiser decision and fairer decision from the Government.
- (b) Therefore the grievance against impugned transfer is revolving around the questions such as propriety, lacking prudence or need of being fairer than what the Government has acted.
- (c) Expectation of fairness from the Government is quite legitimate. For bringing said expectation within the ambit of actionability, one has to show that action complained is arbitrary. Expectation of better governance is a matter of aspiration but not that of actionable claim and right enforceable through court and Tribunal.
- (d) Any submissions on the point of prudence or desirability, is certainly asking this Tribunal to enter in the field of scrutiny of matter of absolute executive prerogative.
- (e) It would be extremely bold proposition to invite this Tribunal to probe into the reasonableness or wisdom, behind the decision on the ground that a better decision would have been possible.
- (f) In present case the Applicant is attempting to drag the issue in the field of propriety and wisdom of decision making by the executive, which cannot be a matter of purview of the jurisdiction of this Tribunal.

24. The aspect of effective consultation as referred to in foregoing para no.22(ii) is dealt with as follows:

- (a) It is clear from what is laid down in T.S.R. Subramanian's case (supra) that the competent authority (in present case, Hon'ble Chief Minister)



can take final decision, within the prerogative of the executive/competent authority.

- (b) Minute scrutiny of various directions contained in TSR Subramanian's case reveals that said judgment does not contain a direction to have prior scrutiny and concurrence to any modification of the proposal vetted by Civil Services Board is either suggested or is made mandatory.
- (c) Facts borne on record reveal that:
 - (i) The CSB was consulted before the matter was placed before Hon'ble Minister and Hon'ble Chief Minister.
 - (ii) CSB was not consulted before Hon'ble Minister altered the proposal to the extent of two officers and also before Hon'ble Chief Minister accorded approval with modification as regards one officer.
- (d) Applicant's submissions to the effect that Civil Services Board was not consulted before inclusion of two names is factually correct. However, in view of the position that in T.S.S. Subramanian's case supra, the position that executive has primacy in the matter of taking decision and to order the transfer and posting is to be accepted.
- (e) Therefore, consultation with CSB, before any alteration in proposal is done by Hon'ble Minister, is not the requirement of the dictum in TSR Subramanian's case.
- (f) The Power and authority to transfer vesting in the State is not a matter brought in debate and dispute. Therefore, the probe and scrutiny which applicant wants by judicial review, is being dragged in the field of scrutiny of wisdom or propriety of executive decision.
- (g) The decisions to be taken by executive in its day to day Governmental business is matter of absolute prerogative of the State. The propriety, reasonableness, correctness therefore cannot be gone into by this Tribunal.
- (h) What would be scrutinized in judicial review is due process of decision making and not of the "decision".
- (i) In order to bring the case within the compass of the decision Judicial Review, the Applicant has to show that the executive decision is contrary to mandatory provisions of law or its being in violative of fundamental rights including being in violation of guarantee of fairness or contrary to any binding precedent. It may also be challenged on the ground of being in exercise of gross abuse of power arbitrary or malafide. The malafides and arbitrariness have to be shown to be patent and not one which



would need a device such as a microscope or to be construed upon interpretation of subtle facts.

- (j) In the case of present nature whether the executive has primacy in the matter of taking decision, it is to be shown that the decision is vitiated due to any of the factors referred to in foregoing paragraph.

25. In the background of foregoing discussion, it is necessary to examine as to whether the reasons leading to impugned transfer withstand the test of special reasons or exceptional circumstances to order mid-term transfer.

26. Record shows that reasons leading to mid-term and mid-tenure transfers are stated in the proposal sent by the Respondent No.3. Reasons contained in the proposal are concurred by the CSB and by the Minister and Hon'ble Chief Minister. Text of reasons is copied in foregoing Para No.11 in second column in item (b). The Government is to be accepted as best judge of the matter of decision as to what action shall achieve larger and administrative interest. The decision of the Government in administrative matters cannot be assessed by use of a calibrating device. Tests such as arithmetic or geometric, tests or tests applicable for gauging, used in any material sciences do not apply to Government decisions.

27. Therefore, the decision which is based on reasons which according to Government constitute special reasons have to be accepted until the reasons are shown to be wholly unintelligible and/or perverse. Moreover, present is not a case of absence of reasons. There are limitations for entering in the field of sufficiency or adequacy of reasons.

28. Existence of reasons on record is a matter capable of objective verification. The test of existence is satisfied in present case. Satisfaction as to reasons is a matter of subjective satisfaction. Once test of existence is satisfied subjectivity of satisfaction cannot be gone into or scrutinized.

29. In the background that Civil Services Board was consulted, the action of the Hon'ble Minister of Co-operation and Chief Minister to add two names for retention in



executive post and transfer the applicant from his executive posting to a non-executive posting is not shown to be an act of violation of any mandatory provision of law, malafide on facts, or violation of equality in the matter of employment.


30. Therefore, it has to be held that the impugned transfer was ordered for reasons which confirm to the test of special reasons or exceptional circumstances.

31. Colourable exercise made malafides are allegations easier to make, are equally difficult to substantiate. Facts of present case are too subtle that it is very difficult to prove and substantiate allegation of colourable exercise, though easy to allege. Applicant has failed to substantiate these allegations.

32. Moreover personal malafides cannot be gone into unless the persons affected thereby, are arrayed as respondents. 3 Officers named in O.A. and other who are not named against whom allegations of favour are made are not arrayed as Respondents.

33. In the result:-

- (a) Question No.I is answered holding that the impugned transfer does not violate Section 4 of the ROT Act.
- (b) Question No.II and III are to be answered holding that impugned Transfer is not bad due to failure to consult the Civil Services Board or for want of the plea of want of effective consultation
- (c) Question No.IV is answered holding that the applicant has failed to establish that the impugned Transfers are made for object other than the professed object, and that the Transfers impugned are bad and/or illegal due to factual or legal malafides.

34. Applicant has failed to make out a case for interference. O.A. is dismissed. In the peculiar facts, parties are directed to bear own costs. 

Sd/-
(A.H. Joshi/J.)
Chairman

prk

D:\PRK\2016\05 MAY\04.05\O.A.19-16 Transfer.doc