

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.565 OF 2016

DISTRICT : PUNE

Shri Sunil Pandurang Naik.)
Working as Sectional Engineer,)
Public Works Sub Division No.3, Pune.)
R/o. Savali, Sector No.34/6, Patangrao)
Kadam Nagar, Behind Bharati Vidyapith,)
Dhankawadi, Pune – 43.)...**Applicant**

Versus

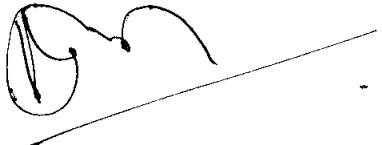
1. The Chief Engineer, Public Works)
Pune Region, Central Building Annex,))
Pune - 411 001.)
2. Shri A.R. Deokar.)
Working as Sectional Engineer,)
Solapur Public Works Circle,)
P.W. Sub Division Sangola, Solapur.)...**Respondents**

Ms. S.P. Manchekar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondent No.1.

None for Respondent No.2.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)



DATE : 03.03.2017

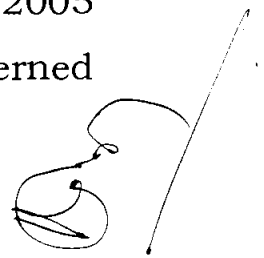
JUDGMENT

1. This Original Application (OA) is brought by a Sectional Engineer disputing the order dated 30th May, 2016 whereby the Respondent No.1 – Chief Engineer, Public Works Pune Division transferred him from Public Works Sub Division No.3, Pune to Public Works Solapur, Sub Division Mohol on a vacant post. The 2nd Respondent was transferred in place of the Applicant to Pune. There is an interim order made in favour of the Applicant dated 16.6.2016 made by the Hon'ble Vice-Chairman on the strength of which he continues to hold the post at Pune.

2. I have perused the record and proceedings and heard Ms. S.P. Manchekar, the learned Advocate for the Applicant and Mrs. A.B. Kololgi, the learned Presenting Officer (PO) for Respondent No.1. None appeared for the 2nd Respondent.

3. The perusal of the impugned order which is at Exh. 'A-1' (Page 32 of the PB) would show that it was an order made in public interest and for administrative convenience and there was a clear reference to Sections 4(4) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act). The Superintending Engineer / concerned

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Officer were directed to make sure that the Applicant was relieved forthwith so as to take the new appointment. The Applicant made representations thereagainst and ultimately brought the present OA and as already indicated at the threshold got the interim relief. It is, therefore, quite significant to note that even as the date of the transfer order which was of the Applicant only was of 30th May, 2016 but it was in accordance with the provisions of Transfer Act.

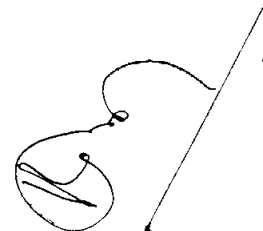
4. It is clear from the record that the Civil Services Board did not clear the case of the mid-term and mid-tenure transfer of the Applicant in which connection, Ms. Manchekar, the learned Advocate for the Applicant relied upon Judgment in the matter of **OA 200/2016 with MA 101/2012 (Shri Ravindra S. Pardeshi Vs. State of Maharashtra and 2 others, dated 20.4.2016)** rendered by the Hon'ble Vice-Chairman by referring to **TSR Subramaniam and others Vs. Union of India & Others : AIR 2014 SC 263.** It was ultimately held that in the first place, the Civil Services Board has to be established and in accordance with the law laid down by the Hon'ble Supreme Court, it must approve of the service condition of an employee like the transfers. That particular Judgment in **TSR Subramaniam** was relied upon by me in **OAs 396/2015 and 397/2015, Mr. Avinash P. Bhanushali Vs. State of Maharashtra and one another, dated 3.8.2015).**



5. It may be recalled that there is a clear reference to the provisions of Sections 4(4) and 4(5) of the Transfer Act. There is nothing on record to show the compliance therewith in case of the Applicant. It is not necessary for me to examine in extenso as to what all is not there, when nothing is there. It is a case of mid-tenure transfer even on Respondents own showing because the impugned order dated 30th May, 2016 explicitly refers to the said provisions of the Transfer Act. Again relying upon **Pardeshi** (supra), it will have to be held that the requirements of law have not been complied with making the impugned order vulnerable beyond redemption. The fate of the OA, is therefore, sealed. A very brief discussion of facts will now suffice.

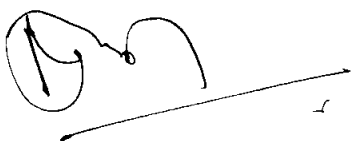
6. The interim order above referred to, in Para 9 makes it quite clear that upon perusal of the minutes of the meeting, it appeared that a person who had completed his tenure and who had been working in a District for more than ten years was to be transferred out of that District. Admittedly, the Applicant had not completed his tenure in the post, and therefore, the interim relief was granted. Although the matter was then extensively argued for final hearing before me, there has been no improvement in the case of the Applicant from the situation that obtained as a result of the interim order above referred to.

7. The Applicant came to be transferred to Pune Region as Sectional Engineer in the year 1997 and functioned at

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various places within Pune Region ever since then. He was at Medical Public Works Sub Division, Pune and from there, by an order of 6.6.2012, he came to be transferred to Public Works Sub Division No.2. According to him, he was, before completion of his tenure, transferred to Public Works Building Sub Division No.4 by the order dated 31.5.2014 which is the first document (Exh. 'A-1', Page 16 of the PB). That order was issued by the Government in PWD on 4.8.2014, thereby he was given an extension of one year on the post in Sub Division No.2. As the tenure was just about to end and realizing that the post at Sub Division No.3 at Pune was vacant, the Applicant requested for being posted there. Both these posts were under the Executive Engineer, Public Works Division.

8. In Para 10 of the Affidavit-in-reply of the Respondent No.1 sworn by Sheetal V. Deshpande, Deputy Executive Engineer, it is mentioned that on the request of the Applicant, he was sent on deputation to Sub Division No.3 by the order dated 14.7.2015. He was, therefore, due according to the 1st Respondent for transfer in 2016 under the provisions of the Transfer Act. In Para 12 of the Affidavit-in-reply, it is pleaded that as per the letter of 14.7.2015 which the Applicant has annexed at Exh. 'A-4', the Executive Engineer, PWD, Pune directed the Deputy Engineer Sub Division No.2, Pune to relieve the Applicant to work temporarily on the post at Sub Division No.3 as per the request of the said Deputy Engineer, Sub Division No.3 because of the work load. It is, however,



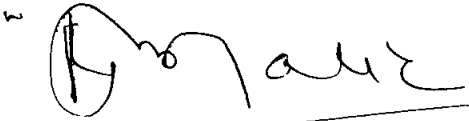
insisted that this was a temporary arrangement and the Pay and Allowances of the Applicant would be drawn from PWD No.2.

9. Submissions were made at the Bar with regard to the concept of deputation and its effect on the posting in the context of the Transfer Act. One aspect of the matter, however, is quite clear that examine it from any angle and the Government themselves have given extension upto 4.8.2015 vide Exh. 'A-1' to the Applicant, and therefore, on the day the impugned order was made, his tenure was subsisting and as already mentioned above, the procedural requirements of the Transfer Act, generally with particular reference to the provisions above discussed was imperative. That having not been done, I hold that the impugned transfer order relating to the Applicant suffers from an incurable illegality and in the result, even the order of the Respondent No.2 in place of the Respondent No.1 also likewise and consequentially suffers.

10. For the foregoing, the orders transferring the Applicant vide Exh. 'A'10' (Page 32 of the PB) from PW Sub Division No.3, Pune to PW Solapur (Sub Division Mohol) stands hereby quashed and set aside. The interim order dated 16.6.2016 in that sense is hereby confirmed. The Respondents are directed to let the Applicant function in his present posting at Pune till such time as he becomes due for transfer in accordance with law and rules. Consequently, the order of



transfer of the 2nd Respondent in place of the Applicant stands hereby quashed and set aside and the Original Application is allowed in these terms with no order as to costs.



(R.B. Malik)

Member-J

03.03.2017

03.03.17

Mumbai

Date : 03.03.2017

Dictation taken by :

S.K. Wamanse.

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