

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3318 OF 2017

Shri Bharat Ramkisan Shingade,
Age : 36 years, Occup.: Executive
Engineer, Majalgaon Canal Division
No.10, Parbhani, District Parbhani

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Water Resources Department,
Mantralaya, Mumbai – 400 032
2. The Superintending Engineer,
Jaykawadi Project Circle,
GMIDC, Aurangabad
3. Shri Umesh Vishwanathrao Wankhede,
Executive Engineer, Minor Irrigation
Division, Parbhani,
District Parbhani
4. Dattatraya Balkrishna Pande,
Age : 57 years, Occup.: Service as
Executive Engineer, Majalgaon Canal
Division No.10 Parbhani,
R/o. "Aaditya"
C/o Shri Karegaon Road,
Parbhani

RESPONDENTS

WITH
WRIT PETITION NO. 3483 OF 2017

Umesh Vishwanath Wankhede,
Age : 35 years, Occup.: Government
Service as Executive Engineer,
Lift Irrigation Division,
Osmanabad, R/o Osmanabad,
District Osmanabad

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Water Resources Department,
Mantralaya, Mumbai – 400 032
2. The Superintending Engineer,
Jaykawadi Project Circle,
GMIDC, Aurangabad,
District Aurangabad
3. Shri Bharat Ramkishan Shingade,
Age : 36 years, Occu.: Service as
Executive Engineer, Majalgaon Canal
Division No.10, Parbhani,
District Parbhani
4. Dattatraya Balkrishna Pande,
Age : 36 years,
Occu.: Government Service,
R/o. "Aaditya" C/o Shri Chetan
Aundhekar, Yashodhan Nagar,
Karegaon Road, Parbhani,
District Parbhani

RESPONDENTS

**WITH
WRIT PETITION NO. 4492 OF 2017**

1. The State of Maharashtra
(Through its Secretary)
Water Resource Department,
Mantralaya, Mumbai
2. The Superintending Engineer,
Jayakwadi Project Circle,
GMIDC, Aurangabad

PETITIONERS

VERSUS

1. Dattatrya Balkrishna Pande,
Age : 57 years, Occ.: Executive Engineer,
Minor Irrigation Department, Parbhani,
R/o. N-3, CIDCO, Aurangabad
2. Shri Bharat Ramkrishnan Shingade,
Executive Engineer,

Majalgaon Canal Division No.10,
Parbhani

3. Shri Umesh Vishwanathrao Wakhede,
Executive Engineer,
Lift Irrigation Division,
Osmanabad

RESPONDENTS

Mr.V.D. Sapkal, Advocate holding for Mr.R.A. Tambe,
Advocate for the Petitioner in W.P.No.3318/2017

Mr.V.H. Dighe, Advocate for petitioner in
W.P.No.3483/2017 and for the respondent No.3 in
W.P.No.3318/2017

Mr.S.B. Talekar, Special Counsel for the petitioners/
State in W.P.No.4492/2017 and for the respondent/State
in W.P.Nos.3318/2017 and 3483/2017

Mr.S.B. Patil, Advocate for the respondent No.2 in
W.P.No.3318/2017

Mr.Ajay S. Deshpande, Advocate for respondent No.4 in
W.P.Nos. 3318/2017 and 3483/2017 and for respondent No.1
in W.P.No.4492/2017

**CORAM : S.V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

JUDGMENT RESERVED ON : 4th APRIL, 2017

JUDGMENT PRONOUNCED ON : 17th APRIL, 2017

JUDGMENT (PER : SANGITRAO S. PATIL, J.):

Rule, returnable forthwith. With the consent of
the learned counsel for the contesting parties, heard
finally.

2. The above-numbered petitions have been filed to
challenge the judgment and order dated 8th March, 2017
passed in Original Application No.1 of 2017 by the

learned Member of the Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad ("Tribunal" for short), whereby the order dated 30th December, 2016, issued by the Department of Water Resources, Government of Maharashtra, Mantralaya, Mumbai, transferring the Executive Engineers namely Shri D.B. Pande, Shri B.R. Shingade and Shri U.V. Wankhede under the provisions of sub-section (5) of Section 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ("the Transfer Act" for short), came to be quashed and set aside.

3. As per the transfer order the above-named Executive Engineers have been transferred as stated below.

Sr. No.	Name	From	To
1	D.B. Pande	Majalgaon Canal, Division No.10, Parbhani	Minor Irrigation Division, Parbhani
2	B.R. Shingade	Lift Irrigation Division, Osmanabad	Majalgaon Canal Division No.10, Parbhani
3	U.V. Wankhede	Minor Irrigation Division, Parbhani	Lift Irrigation Division, Osmanabad

4. Being aggrieved by the said transfer, Shri D.B. Pande filed Original Application No.1 of 2017 before the Tribunal mainly on the grounds that he has not completed his normal three years' tenure as Executive Engineer at Majalgaon Canal No.10, at Parbhani, he is due for retirement on attaining the age of superannuation on 30th April, 2017 and the transfer order is illegal being against the provisions of the Transfer Act.

5. The Secretary, Water Resources Department, the Superintending Engineer, Jayakwadi Project Circle, GMIDC Aurangabad, Shri B.R. Shingade and Shri U.V. Wankhede, who were respondent Nos. 1, 2, 3 and 4, respectively before the Tribunal opposed the claim of Shri D.B. Pande, by filing replies. According to them, the transfer of Shri D.B. Pande is legal and in consonance with the provisions of the Transfer Act. The transfer of Shri D.B. Pande was immensely necessary for completing the project within the prescribed time appointing some efficient and experienced Executive Engineer in his place.

6. The Tribunal considered the rival contentions of the parties as well as the provisions of the Transfer Act and came to hold that the Hon'ble Minister, Water Resources Department, ordered transfer of Shri D.B. Pande without recording any satisfactory and sufficient reasons. The said transfer is against the provisions of the Transfer Act and is *malafide*. The Tribunal, therefore, quashed and set aside the transfer order dated 30th December, 2016.

7. Heard Shri V.D. Sapkal, the learned Advocate representing Shri B.R. Shingade, Shri V.H. Dighe, the learned Advocate representing Shri U.V. Wankhede, Shri S.B.Talekar, the learned Special Counsel, representing the State and the Superintending Engineer, Jayakwadi, Aurangabad and Shri Ajay S. Deshpande, the learned Advocate representing Shri D.B. Pande.

8. As per Clause (i), of Section 1 of the Transfer Act, "Transfer" means posting of a Government servant from one post, office or Department to another post, office or Department. As per sub-section (1) of Section 4, no Government servant shall ordinarily be

transferred unless he has completed his tenure of posting as provided in Section 3. Sub-section (1) of Section 3 states that for All India Service Officers and all Group A, B and C State Government servants or employees, the normal tenure in a post shall be three years. Clause (ii), sub-section (4) of Section 4 shows that the transfer of Government Servant shall ordinarily be made only once in a year in the month of April or May, provided that transfer may be made anytime in the year where the Competent Authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority. Sub-section (5) of Section 4 further shows that notwithstanding anything contained in sub-sections (3) and (4), the Competent Authority, may, in special cases, after recording the reasons in writing with the prior approval of the immediate superior of the transferring authority, mentioned in the table given in Section 6, transfer Government servant before completion of his tenure post. Section 6 has given a table containing groups of Government servants and Competent Transferring Authorities. In the case of the Officers of

All India Services, all Officers of State Service in Group "A" having pay-scale Rs.10,650-15,850 and above, the Hon'ble Chief Minister would be the Competent Authority and for all Officers of State Services in Group "A" having pay-scale less than Rs.10,650-15,850 and all Gazetted Officers in Group "B", the Hon'ble Minister-in-charge in consultation with Secretaries of the concerned departments would be the Competent Authority. Second proviso to Section 6 states that the Competent Transferring Authority specified in the table may, by general or special order, delegate its powers conferred under Section 6 to any of its Subordinate Authority.

9. Advocate Shri Deshpande has produced copy of the notification dated 25th April, 2016, issued by the Department of Water Resources, Mantralaya, Mumbai, by Order and in the name of the Hon'ble Governor of Maharashtra in exercise of power conferred under Section 6 of the Transfer Act, delegating the powers of the Hon'ble Chief Minister to the Hon'ble Minister for Water Resources Department as the Competent Transferring Authority for the purpose of sub-sections (4) and (5) of

Section 4 of the Transfer Act for the Officers of Group "A" having pay scale of Rs.15,600-39,100 G.P. Rs.6,600/-. The Competent Subordinate Authority would be the Principal Secretary of Water Resources (P and D). Admittedly, the above-named three Executive Engineers fall in this Group.

10. The impugned transfer order has been set aside by the learned Member of the Tribunal, mainly on the grounds that the Hon'ble Minister, Water Resources Department, did not assign sufficient and satisfactory reasons for effecting transfer of Shri D.B. Pande, no special case was made out for his transfer as required under the provisions of the Transfer Act and that the transfer order is *malafide* and is in contravention of the provisions of Section 4 (4) (ii) and Section 4 (5) of the Transfer Act.

11. Shri V.D. Sapkal, the learned counsel for Shri B.R. Shingade, pointed out to the office note proposing transfer of the above-named Executive Engineers, which was approved by the Principal Secretary of Water Resources Department, and then by the Hon'ble Minister of the said department. It is specifically mentioned in

the said office note that for completing the Lower Dudhna Project under the "Pradhan Mantri Krushi Sinchai Yojna" (PMKSY) by 31st March, 2017, several instructions were given to Shri D.B. Pande to take expeditious steps to complete the project within time. However, considering the cold response and the manner of functioning of Shri D.B. Pande, it was not possible to complete the project within time. Therefore, it was proposed to appoint some efficient and experienced Executive Engineer in the place of Shri D.B. Pande. The Superintending Engineer sent a letter dated 30th November, 2016 to that effect. Pursuant to that letter, the Hon'ble Minister orally directed to make a proposal for posting some efficient and experienced Executive Engineer in the place of Shri D.B. Pande. The proposal to transfer Shri D.B. Pande was approved by Principal Secretary Shri I.H. Chahal. The said proposal was placed before the Hon'ble Minister, who also approved it with a specific note that in order to complete the project under PMKSY, the transfer be effected pursuant to the letter dated 30th November, 2016 sent by the Superintending Engineer. Accordingly, the impugned order of transfer came to be issued on 30th December, 2016.

12. The learned counsel for Shri Shingade submits that ordinarily, a Government servant should not be transferred unless he completes his tenure of posting i.e. three years. However, in view of the provisions of sub-sections (4) (ii) and (5) of Section 4 of the Transfer Act, notwithstanding anything contained in Section 3 or Section 4 of the said Act, the Competent Authority may, in special case, after recording reasons in writing and with the prior approval of the immediate superior transferring authority, referred to above, transfer a Government servant prior to completion of his tenure of post. He submits that for completion of the project expeditiously under PMKSY, it was immensely necessary to appoint some efficient and experienced Executive Engineer in the place of Shri Pande, who was on the verge of retirement and was not prompt enough to complete the project within the prescribed time. He submits that this was the special reason for effecting the transfer of Shri Pande. The transfer is not tainted with *malafides*. The submission note contains the reasons for necessitating the transfer of Shri Pande. The said submission note was approved by the Principal Secretary,

who was Competent Transferring Authority and further approved by his immediate superior i.e. the Hon'ble Minister. Relying on the judgments in the cases of **Sanjeev Bhagwanrao Kokil Vs. State of Maharashtra and Ors. 2013 (7) Bom. C.R. 148, State of Maharashtra and anr. Vs. Omprakash Ghanshyamdas Mudiraj and anr. 2008 BCI 126 and State of Maharashtra Vs. Ashok Ramchandra Kore and Anr. 2009 (3) Bom. C.R. 673**, he submits that the Tribunal was not right in doubting the wisdom of the Hon'ble Minister in approving the transfer of Shri Pande for the reasons mentioned in the submission note as well as in his own endorsement. He submits that signing of the submission note by the Principal Secretary presupposes that he agreed with every aspect of the proposal contained therein. He pointed out to the scope of the powers of the Courts to interfere in the transfer orders, as has been outlined by the Hon'ble the Supreme Court in several judgments. He submits that the impugned transfer order has been passed as per the procedure prescribed in the Transfer Act. Relying on the judgment in the case of **Vishwanth Babunath Nath Vs. The State of Maharashtra and others, (Writ Petition No.1459 of 2017)**, decided by this Court on 16th February, 2017, he submits

that the Tribunal was not justified in interfering in the impugned transfer order.

13. The learned Special Counsel Shri Talekar, representing the State and the learned counsel Shri Dighe, representing Shri Wankhede, supported the impugned transfer order and challenged the order passed by the Tribunal, on the same grounds which have been canvassed by the learned counsel Shri V.D.Sapkal.

14. As against this, the learned counsel Shri Ajay S. Deshpande, representing Shri D.B. Pande, submits that the impugned mid-term and mid-tenure transfer of Shri Pande has been effected with the sole object to accommodate Shri Shingade. Shri Pande was on the verge of retirement. His transfer is not in consonance with the provisions of sub-sections (4) (ii) and (5) of Section 4 of the Transfer Act. According to him, the transfer of Shri Pande, for the justifiable and special reasons to be recorded in writing, could have been effected by the Hon'ble Minister, after getting it approved from the Hon'ble the Chief Minister. This mandatory compliance has not been made while transferring Shri Pande. The proposed transfers were not

approved by the Civil Services Board. He submits that there was no justifiable reason for transferring Shri Pande. He further submits that the transfer order has been implemented hastily in the absence of Shri D.B.Pande since he was on leave. He stood relieved hastily on the same day on which the impugned transfer order was passed. Therefore, according to him, the transfer of Shri Pande is liable to be quashed and set aside. He supports the impugned judgment and order of the Tribunal.

15. Here, it would be worthwhile to reproduce paragraph 9 of the judgment in the case of **Ashok Ramchandra Kore and Anr.** (supra), enumerating the guiding principles laid down by the Hon'ble the Supreme Court in various judgments.

“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.) 10, 1990 DGLS (soft) 696 : 1991 (Supp.2) SCC 659 : A.I.R. 1991 SC 532.

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) 11, 1993 DGLS (soft) 409: 1993 (4) SCC 357 : A.I.R. 1993 SC 2444.

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) 12, 2004 DGLS (soft) 190: 2004 (11) SCC 402 : AIR 2004 SC 2165.

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))."

16. In paragraph 8 of the judgment in the case of **Sanjeev Bhagwanrao Kokil** (supra), this Court while considering the scope of powers of the Courts to interfere in the transfer orders, has observed as under:

“The statutory authorities having applied themselves to the issues mentioned in the proposal and having thought it appropriate to transfer the petitioner as a special case and in exceptional circumstances, it would certainly qualify the test laid down in Section 4(4) proviso (ii) and/or 4(5) of the Act. That is the subjective satisfaction of the concerned authorities. Sufficiency of the material considered by the Authorities for recording their satisfaction, cannot be the basis for the Court to doubt their wisdom.”

17. The above referred settled legal position makes it clear that the scope of the powers of the Tribunal or the Courts to interfere in the transfer orders is very limited. In the present case, a detail proposal for transfer of Shri Pande and two other Executive Engineers, was prepared giving specific reasons which necessitated the transfer of Shri Pande. The submission note containing the said proposal was approved by the Principal Secretary of the Department, who was the

Competent Transferring Authority, in view of the Notification dated 25th April, 2016. The signing of the said submission note by the Principal Secretary itself indicates that he agreed with the contents of the said proposal. The said proposal was then approved by the Hon'ble Minister, who was delegated with the powers of the Hon'ble the Chief Minister, as per the Notification dated 25th April, 2016 and as such, was empowered to approve the proposal for transfer of Shri Pande and two other Executive Engineers, being the immediate superior of the Principal Secretary, in view of the provisions of sub-sections (4) (ii) and (5) of Section 4 of the Transfer Act. Considering the reasons given in the submission note for transfer of Shri Pande, it cannot be said that the transfer of Shri Pande was effected with *malafide* intention.

18. In the case of **Omprakash Ghanshyamdas Mudiraj and anr.** (supra), it has been observed in paragraph 13 as under :

"We find that by now the law is settled on the issue of interference in transfer orders. No Government servant or employee has any legal right to be posted forever at any one

particular place or place of his choice since transfer is not only an incidence but a condition of service, necessarily in public interest and in aid of efficiency in the public administration. Unless an order of transfer is shown to be outcome of mala fide exercise or stated to be in violation of statutory provisions, normally the Courts or Tribunals would not interfere as a matter of routine."

19. Considering the above referred legal position on the scope of powers of the Tribunal or the Court to interfere in the transfer orders, we are of the view that the transfer of Shri Pande has been effected by following the proper procedure laid down in sub-sections (4) (ii) and (5) of Section 4 of the Transfer Act. The said transfer cannot be said to have been effected by *malafide* exercise of powers. Though earlier the Civil Services Board had not recommended transfer of Shri Pande, since he was not due for transfer and was due for retirement on 30th April, 2017, considering the special reasons given in the submission note dated 1st December, 2016 as also in the endorsement of the Hon'ble Minister, the transfer of Shri Pande from one Division to another at the same station i.e. at Parbhani, cannot be said to be unjustifiable. The events subsequent to

the passing of the transfer order i.e. relieving Shri Pande when he was on leave, etc. as have been agitated by Shri Deshpande, the learned Advocate, in our view, are not relevant, particularly when we found that the transfer order has been passed by following due procedure and is not tainted with malafides. No prejudice can be said to have been caused to Shri Pande by such transfer.

20. The Tribunal did not consider the facts of the case in proper perspective. The Tribunal should not have doubted the reasons given by the Principal Secretary and the Hon'ble Minister for transfer of Shri Pande, from one Division to another at Parbhani. The Tribunal did not consider the above referred legal position, which clarifies the limited scope of powers of the Tribunal in interfering with the transfer orders. In the circumstances, the reasons given by the Tribunal, while setting aside the transfer order of Shri Pande, cannot be upheld. In the result, we pass the following order.

21. The writ petitions are allowed. The impugned judgment and order dated 8th March, 2017 passed by the

Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad in Original Application No.1 of 2017, is quashed and set aside. The impugned transfer order dated 30th December, 2016 is restored.

22. Rule is made absolute in the above terms. No costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.V. GANGAPURWALA**]
JUDGE

sam/wp3318-2017+group