

(2009) 04 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 8116 of 2008

The State of Maharashtra

APPELLANT

Vs

Ashok Ramchandra Kore Chief Engineer Metropolitan Region
Dept. Authority and Shri P.B. Sonawane Chief Engineer, Minor
Irrigation

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 10(4)
Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in
Discharge of Official Duties Act, 2005 — Section 3, 4, 4(4), 4(5), 6

Citation : (2009) 3 BomCR 673 : (2009) 111 BOMLR 1989 : (2009) 4 MhLj 163

Hon'ble Judges : Ranjana Desai, J; J.P. Devadhar, J

Bench : Division Bench

Advocate : P.M. Pradhan, for the Appellant; A.A. Kumbhakoni, for the
Respondent

Judgement

Ranjana Desai, J.—The State of Maharashtra through the Secretary, Water Resources Department, has challenged in this writ petition judgment and order dated 26/9/08 delivered by The Maharashtra Administrative Tribunal, Mumbai Bench ("MAT" for short) in Original Application No. 324 of 2008.

2. The 1st respondent holds B.E. (Civil) degree. In 1976 he joined as Junior Engineer in the Irrigation Department of the State Government. He was recruited directly through the Maharashtra Public Service Commission as Asstt. Executive Engineer Class I in 1982. In due course he was promoted as Chief Engineer. He worked as Chief Engineer Water Resources Development Centre, Aurangabad. In November, 2006 he was transferred as Chief Engineer, Minor Irrigation, Local Sector, Pune. He was working in that post from 4/11/06. Even though he had not completed his normal tenure of three years, he was transferred as Chief Engineer M.M.R.D.A, Mumbai by order dated 10/1/08. By the same order respondent 2, who was posted as Chief Engineer, M.M.R.D.A, Mumbai, was transferred to the post of Chief Engineer, Minor Irrigation (Local Sector) Pune. The said order was

challenged by the 1st respondent in the MAT by filing Original Application No. 45 of 2008. The said original application was allowed by the MAT by its order dated 25/2/08. The MAT observed that no special reasons for midterm transfer of the 1st respondent were recorded as required by Section 4(4) and Section 4(5) of the Maharashtra Government Servant's Regulation of Transfers and Prevention of Delay in Discharging of Official Duty Act, 2005 ("the Transfer Act"). After the MAT set aside the 1st respondent's midterm transfer, the petitioners cancelled the transfer order dated 10/1/08 by order dated 2/5/08 and posted respondents 1 and 2 to their previous posts.

3. On 28/5/08 the petitioners passed another order transferring the 1st respondent to the post of Chief Engineer, M.M.R.D.A., Mumbai and transferring the 2nd respondent to the post of Chief Engineer, Minor Irrigation Department, Pune. The 1st respondent challenged that order before the MAT. By the order dated 26/9/08 the MAT set aside the transfer order dated 28/5/08. Hence the petitioners have challenged the said order in this writ petition.

4. We have heard Mr. Pradhan, learned Counsel for the petitioners at some length. Mr. Pradhan submitted that the impugned order is perverse and deserves to be set aside: He submitted that the MAT's conclusion that the impugned order smacks of favoritism ;that there is colourable exercise of power and that it is malafide has no foundation. He submitted that the power to effect midterm transfer is exercised by the petitioners in public interest and on account of administrative exigencies. Mr. Pradhan submitted that the 1st respondent has merely alleged malafides without giving any particulars thereof. He submitted that the order is supported by reasons which are separately recorded. He submitted that it is well settled that reasons need not be elaborate and the transfer order need not contain reasons. They could be separately recorded. He submitted that though the MAT has referred to several judgments of the Supreme Court, it has failed to appreciate the basic principles laid down by the Supreme Court which should guide the court's while dealing with challenge to a transfer order. Mr. Pradhan submitted that the impugned order rests on conjectures and surmises. The MAT has travelled beyond its jurisdiction and unnecessarily drawn wrong inferences. Mr. Pradhan relied on all the judgments to which MAT has made a reference. In addition to those judgments he referred to S.N. Mukherjee Vs. Union of India, and M. Sankaranarayanan, IAS Vs. State of Karnataka and others, . He submitted that interference is necessary with the impugned order.

5. Mr. Kumbhakoni, learned Counsel for the 1st respondent drew our attention to Section 4(5) of the Transfer Act and submitted that when midterm transfer is effected the said provision is attracted. Mr. Kumbhakoni submitted that a mid term transfer could be effected only in special cases, after recording reasons in writing with prior approval of the immediately Superior Transferring Authority. In this case no reasons at all are given in the transfer order and hence on that ground it must be quashed. Mr. Kumbhakoni submitted that transfer order must

contain reasons because that ensures transparency. Reasons enable the aggrieved person to challenge the order. The requirement to give reasons is not an empty formality. In this connection Mr. Kumbhakoni relied on the judgment of this Court in *Shivaji Jadhav v. The Chief Executive Officer and Ors.* 1996 (5) SLR 808.

6. Mr. Kumbhakoni further submitted that the judgments on which reliance is placed by Mr. Pradhan are not applicable to the present case, because here the transfer is effected by a statutory power. Those judgments will apply only in cases of general transfers. Mr. Kumbhakoni submitted that the alleged reasons noted in the correspondence preceding the impugned order dated 28/5/08 for transferring the 1st respondent were an afterthought as there was not even a whisper about such reasons at the time of the first transfer order dated 10/1/08. Relying on the Supreme Court's judgment in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , Mr. Kumbhakoni submitted that the order passed by statutory authorities has to be judged by the reasons given in the order itself and if, there are no reasons in the order, they cannot be supplemented by affidavits or other material brought on record subsequent to such order.

7. Mr. Kumbhakoni submitted that the Transfer Act states that the Competent Authority must record its reasons in writing for midterm transfer. Therefore, in any case the Competent Authority itself, i.e. the Chief Minister in absence of any reasons set out in the order, ought to have filed affidavit in reply to the original application placing on record the reasons for his subjective satisfaction. In this connection he placed reliance on *Merugu v. State of Andhra Pradesh* AIR 82 SC 1543. Mr. Kumbhakoni submitted that the impugned order transferring the 1st respondent is nothing but a colourable exercise of power and has been passed with a view to accommodating the 2nd respondent in the post of Chief Engineer, Minor Irrigation (Local Sector) Pune. Mr. Kumbhakoni, submitted that in the circumstances no interference is warranted with the impugned order in this Court's extra-ordinary writ jurisdiction.

8. Mr. Bandiwadekar, learned Counsel appearing for the 2nd respondent adopted the legal submissions of Mr. Pradhan. He submitted that the 1st respondent never raised the contention that the transfer order does not contain reasons and hence it is bad in law. It is not open to him to raise it now. He submitted that reasons need not be stated in the order. They can be separately recorded before passing the order. Mr. Bandiwadekar submitted that in this case reasons are not furnished by affidavit as contended. Reasons were always there even before passing the order. Mr. Bandiwadekar submitted that after the affidavit in reply was filed by the State, the 1st respondent should have amended the original application and challenged those documents. He has not done so. Mr. Bandiwadekar submitted that in such circumstances it was not open to the MAT to make a roving and general enquiry by going through the files of the State and record a finding. In this connection he relied on judgment of this Court dated

28/7/08 in Writ Petition No. 1141 of 2008, (Smt. K. N. Bhoir alias Smt. Pathade v. Shri Mukund Laxman Pawar and Ors.). Mr. Bandiwadekar submitted that it was not open to the MAT to examine the sufficiency of reasons. In support of this submission he relied on judgment of Aurangabad Bench of this Court dated 18/12/08 in Writ Petition No. 4859 of 2008, (The State of Maharashtra and Ors. v. Omprakash Mudiraj and Ors.). Mr. Bandiwadekar also relied upon a judgment of this Court (Swatanter Kumar, CJ. & Dr. D. Y. Chandrachud, J.) in Writ Petition (Lodging) No. 1428 of 2007 and companion writ petitions, dated 23/8/07 to contend that the court cannot go behind the order and examine it like an appellate authority to find out whether such order needs to be passed or not. In support of his submission that the transfer order need not contain reasons, Mr. Bandiwadekar relied on the judgment of the Supreme Court in Palanisamy v. General Manager, Tamil Nadu State Transport Corporation Ltd. 2006 I LLJ 62. Mr. Bandiwadekar submitted that the impugned order which is contrary to the settled principles deserves to be set aside.

9. The Supreme Court has on several occasions outlined the scope of the court's power to interfere with transfer orders. It would be advantageous to sum up the observations made by the Supreme Court in the judgments to which our attention is drawn by learned Counsel. Following are the guiding principles laid down by the 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 malafides. (Mrs. Shilpi Bose and others Vs. State of Bihar and others,).

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 and Others Vs. S.L. Abbas,).

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 U.P. and Others Vs. Gobardhan Lal,).

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 malafides 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 malafides 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 malafides 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)).

10. Before we deal with the grievance of the petitioners it is necessary to have a look at Section 4 of the Transfer Act. The said section to the extent to which it is relevant to the present case reads as under:

4. (1). No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in Section 3.

(2)...

(3)...

(4)...

(5). Notwithstanding anything contained in Section 3 or this Section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of the immediately Superior Transferring Authority mentioned in the table of Section 6, transfer a Government Servant before completion of his tenure post.

11. In short this section requires that in special cases there can be midterm transfer but it can be effected only after recording reasons in writing and with the prior approval of the immediately Superior Transferring Authority as mentioned in the table of Section 6. About this interpretation of the section the parties are ad idem. However, whereas the petitioner's case is that the reasons are very much there and they are recorded, according to the 1st respondent no reasons were recorded before passing the transfer order and the reasons which are now being shown as having been recorded prior to passing of the transfer order are clearly an afterthought and are fabricated. It is, therefore, necessary to go to the facts of the case to ascertain who is in the right.

12. The controversy first arose when the 1st respondent who was working as Chief Engineer, Minor Irrigation, Local Sector, Pune from 4/11/06 was transferred to the post of Chief Engineer MMRDA, Mumbai by the State by order dated 10/1/08. By the same order the 2nd respondent who was working as Chief Engineer, MMRDA, Mumbai, was transferred to the post of Minor Irrigation, Local

Sector, Pune. This was a midterm transfer. The 1st respondent filed Original Application No. 45 of 2008 in the MAT challenging the said order on the ground that he was transferred under political pressure to accommodate the 2nd respondent. It was urged that there were no special circumstances or special reasons to warrant the transfer.

13. The MAT after perusing the record observed that no special reasons or exceptional circumstances were recorded by the Minister for Water Resources or by the Minister for Agriculture and Water Conservation; that the order of transfer lacks transparency and is in breach of Sections 3 and 4 of the Transfer Act. The MAT by its order dated 25/2/08 quashed the transfer order dated 10/1/08 but granted liberty to the petitioner to take action according to law. In view of this order of the MAT by order dated 2/5/08, the transfer order dated 10/1/08 was cancelled.

14. Pursuant to the liberty granted by the MAT, the State Government issued a fresh transfer order dated 28/5/08 transferring the 1st respondent to the post of Chief Engineer, MMRDA Mumbai and appointing the 2nd respondent to the post of Chief Engineer, Minor Irrigation, Local Sector, Pune on administrative grounds and in public interest. The 1st respondent challenged the said order by filing Original Application No. 324 of 2008 in the MAT. The 1st respondent inter alia averred in the application before the MAT that he has excellent record and the transfer order issued within a short span of time after the MAT set aside the earlier transfer order, is issued in colourable exercise of power. The 1st respondent contended that the mid term transfer order must be supported by reasons recorded in writing and the burden lies on the State to prove that reasons were in fact recorded. The 1st respondent further contended that the impugned transfer order being malafide deserves to be set aside.

15. On behalf of the petitioners Shri Pradeep Gosavi, Under Secretary, Water Resources Department filed a reply denying the allegations made by the 1st respondent. Shri Gosavi stated in the affidavit that the transfer order dated 28/5/08 was passed on administrative grounds and in public interest by resorting to the provisions of Section 4(4 & 5) of the Transfer Act by recording appropriate reasons and the proposal is approved at the highest level. Mr. Gosavi stated that the Minister for Water Conservation, Khar Land and Agriculture has, as the Executive Head of the Water Conservation Department taken a review in various meetings of the various Minor Irrigation (Local Sector) Schemes that are being implemented in the State and during the review several lacunae were seen in the functioning of the Chief Engineer. Shri Gosavi noted the said lacunae in the affidavit. We shall at the appropriate stage refer to those lacunae. Shri Gosavi further stated that the Minister (Water Resources) also opined that the 2nd respondent has experience in the field of implementation of Minor Irrigation Schemes under local sector and hence he is a suitable person to hold the post of Chief Engineer, Minor Irrigation (Local Sector) Pune in place of the 1st respondent. Mr. Gosavi stated that, therefore, special circumstances do exist and

after recording the same, the Government has taken the decision by invoking the provisions of Section 4(4) & 4(5) of the Transfer Act and effected the transfer of the 1st respondent.

16. According to the 1st respondent during the hearing of the original application on 2/6/08, the relevant file was produced before the MAT. He was made aware that the impugned order was substantiated by reasons. He therefore, submitted an application under the Right to Information Act and obtained the relevant information from the Water Resources Department. He filed a rejoinder in the MAT annexing copies of the said information to it. His case in the rejoinder was that earlier transfer order dated 10/1/08 was quashed by the MAT by its order dated 25/2/08. The Government, therefore, indulged in manipulation of record. The Government recorded reasons which have no factual foundation. False record was created to establish deficiency in his performance. He tried to explain how the adverse remarks made by the Minister Water Conservation on 15/5/2000 are incorrect and unsubstantiated by record. He contended that adverse findings recorded in the noting of 27/5/2000 are without application of mind and resorted only to make him a scapegoat and to favour the 2nd respondent. After perusing the record the MAT upheld the case of the 1st respondent. It is necessary to see how far the MAT's view is correct.

17. It is true that transfer order dated 10/1/08 was set aside by the MAT because it was in breach of Section 4(5) of the Transfer Act. The MAT noted in its order dated 25/2/08 that no reasons were recorded in support of the midterm transfer order. The MAT, however, left it open to the Government to take action in accordance with law.

18. The Government accepted the MAT's order dated 25/2/08 obviously because its transfer order was in breach of the provisions of the Transfer Act. The Government acknowledged that reasons were not recorded prior to the issuance of transfer order dated 10/1/08 and on the strength of the liberty granted by the MAT it passed fresh transfer order dated 28/5/08 after reasons were recorded. The Government in our opinion, cannot be faulted for this action provided its case that transfer order dated 10/1/08 is supported by reasons is genuine. We will, therefore, go to the sequence of events and examine whether the Government's stand is genuine and bonafide. We are aware that we are not sitting in appeal over the order of transfer passed by the Competent Authority but we are required to closely scrutinise the files because of the nature of allegations made in this case.

19. There is no dispute about the fact that the Minister for Water Conservation, Khar Lands and Agriculture is the executive head of the Water Conservation Department. The file produced before us contains letter dated 15/5/08 addressed by him to the Minister for Water Resources stating that in the review taken in various meetings as regards the implementation of the various Minor Irrigation (Local Sector) Schemes it was found that there was no proper coordination at the Chief Engineer's level about the works undertaken by different divisions of local

sector in the State and, therefore, the progress of the said schemes was not satisfactory. The letter further stated that it was noticed that the Chief Engineer Local Sector has not taken care and has not made extra efforts to see that the funds available for Minor Irrigation Schemes were spent properly. The letter further went on to state that the funds made available for implementation of Minor Irrigation Works under the Marathwada Package and the Prime Minister's package were not spent fully and remained unutilised. The Minister further commented that there was no follow up action from the Chief Engineer as regards the various demands made by the representatives of the people in connection with new schemes of minor irrigation. The Minister opined that, therefore, the 1st respondent should be transferred and the 2nd respondent who has experience in the field of implementation of Minor Irrigation Schemes under the local sector should be brought in place of the 1st respondent as the Chief Engineer Minor Irrigation Local Sector, Pune. This letter was placed before the Minister for Water Resources on the same day. The Minister for Water Resources made a note on the letter recommending that the 2nd respondent be appointed as Chief Engineer, Minor Irrigation Sector, Pune. He signed the note and wrote the date 15/5/08 below his signature.

20. On the basis of this letter and recommendation on 26/5/08 the Desk Officer, Water Resources Department prepared a note/submission incorporating the contents of the letter dated 15/5/08 and the recommendation made thereon. The note stated that the 1st petitioner is working as Chief Engineer (Local Sector) Pune, from 4/11/06. He has completed only 1 year and 7 months in that post and hence he is not eligible for transfer. The note further stated that, however, in a special case after recording reasons and obtaining permission of the immediate superior a government servant can be transferred midterm as per Section 4(5) of the Transfer Act. The note further stated that though the 1st respondent has worked for less than three years in his present posting, the Minister for Water Conservation, Khar lands and Agriculture, who is the head of the Department of Water Conservation has made remarks about his work which amount to special reasons for his transfer and, therefore, the 1st respondent may be transferred to the post of Chief Engineer, MMRDA Mumbai and as recommended by Minister for Water Resources the 2nd respondent may be appointed as Chief Engineer, Minor Irrigation Local Sector, Pune in the place of the 1st respondent. This file shows that this note was processed and placed before four officers on 26/5/08. They signed on the note on the same day in token of approval.

21. It appears that this case was discussed with the Chief Secretary of the Water Conservation Department. The Deputy Secretary of that department prepared a note on 27/5/08 which reflected what transpired in the discussion. The note stated the lacunae noticed in the work of the 1st respondent. The lacunae were summarised as under:

i). There is a lack of ability about the effective monitoring and execution of the minor irrigation works on the part of the applicant.

ii). In the year 2007-08 whatever funds were made available for the minor irrigation works they could spend only 78% of the funds made available. This goes to show the lack of financial management on the part of Chief Engineer.

iii). The Chief Engineer has not taken abundant care to reconcile the expenditure made on various minor irrigation works by circle offices and division offices. This has led to raising frequent objections from the Accountant General.

iv). As far as the re-appropriation of accounts of the year 2001-02 are concerned the Chief Engineer has not given full attention towards the important points as regards appropriation accounts and re-conciliation of expenditure. Due to this lacuna on the part of Chief Engineer, it became difficult for the Secretary (Water Conservation) to justify the points raised by Public Accounts Committee in this respect.

v) The Chief Engineer failed to submit proposals of revised administrative approvals of the local sector schemes in the State. Therefore, works of the minor irrigation schemes could not be progressed at faster pace and that led to the increase in the cost of the schemes thereby increasing financial liability on the Government.

vi). Along with the above lacunas and shortfalls in the working of the Chief Engineer it was also found by the Secretary (Water Conservation) Department in various review meetings that the Chief Engineer is lacking in administrative and financial management, which led to unsatisfactory progress of the minor irrigation schemes in the State.

22. This note was placed before the Secretary Water Conservation Department on 27/5/08. He signed thereon restating that "there is a lack of touring by the Chief Engineer and control over field functioning and work is lacking". This note was placed before the Minister for Agriculture Water Conservation and Khar Lands on 28/5/08. He made a note that on 15/5/08 he had made a request to the Minister for Water Resources in this respect and that after considering the above points necessary steps be taken expeditiously. This note was placed before the Minister for Water Resources, who also put his signature thereon.

23. The file shows that the note made by the Desk Officer, Water Resources Department on 26/5/08 along with endorsements made thereon and the note dated 27/5/08 made by the Deputy Secretary Water Conservation along with endorsements of the Minister for Water Conservation and Minister for Water Resources were placed before the Minister for Water Resources on 28/5/08. He recommended the proposal for transfer of the 1st respondent. On the same day the above papers were placed before the Chief Minister who also approved the transfer proposal on the same day.

24. Though on the note dated 26/5/08 prepared by the Desk Officer, Water Resources Department, the Minister for Water Resources and the Chief Minister have signed, they have not noted the date below their signatures. It is argued

that therefore, it is doubtful whether this note was placed before the Chief Minister on 28/5/08. It is also argued that the note prepared by the Deputy Secretary Water Conservation is alleged to be dated 27/5/08 and endorsement made thereon by the Minister for Water Conservation is dated 27/5/08. However, the Minister for Water Resources has put no date below his signature made on this note. This note is on a separate paper. It is contended that it is doubtful whether it was at all placed before the Chief Minister on 28/5/08 as alleged along with the note made by the Secretary Water Resources. In such circumstances it was necessary for the Chief Minister to file affidavit. It is argued that everything is shrouded in suspicion and in fact there were no reasons recorded for the transfer dated 28/5/08. It is suggested that the documents are created to substantiate the false case of the Government. Attention is drawn to the affidavit-in-reply filed by the 1st respondent and it is contended that there are in fact no lacunae in the 1st respondents functioning as Chief Engineers Minor Irrigation (Local Sector) Pune and in order to favour the 2nd respondent documents are fabricated. In short the case of the 1st respondent is that the transfer order dated 28/5/08 is malafide and is issued in colourable exercise of power.

25. This argument found favour with the MAT. The MAT has expressed doubt as to whether note dated 27/5/08 was in fact a part of the file which was placed before the Chief Minister. The MAT has observed that on 26/5/08 when the file moved up to the Minister for Water Resources, the note dated 27/5/08 was not in existence because the endorsement made below the note dated 26/5/08 shows that note dated 27/5/08 was placed in the file on 20/5/08. Date 20/5/08 is a typing mistake in the MAT's order. In fact the date is 28/5/08.

26. The lacunae elaborately quoted by the Secretary Water Conservation Department, the remarks made by the Minister Water Conservation and Minister Water Resources which we have quoted hereinabove, in our opinion, provide sufficient reasons and make out a special case for midterm transfer as contemplated by the Transfer Act. We have already referred to the observations of the Supreme Court in Gobardhan Lal's case (supra) cautioning the courts not to deal with transfer orders as if they are appellate authorities over such orders. In the nature of things it is humanly impossible for us to assess the niceties of the administrative needs and requirements of the situation concerned. These decisions must be best left to the administrative heads. We cannot substitute our opinion for that of the competent authorities of the State. Therefore, it is not possible for us to evaluate the reasons recorded in the files of the Government vis a vis the reply of the 1st respondent and draw our conclusions and substitute them in place of the conclusions of the State Government. We will only have to examine whether there are reasons making out a special case. Our interference would be warranted only if the order is issued malafide. We are unable to concur with the MAT that the instant transfer order is malafide or is issued in colourable exercise of power. In fact, in our opinion, the Government accepted the defect in the first transfer order. Since reasons were not recorded that order was withdrawn after MAT's judgment. If the Government wanted to fabricate reasons

it could have done so at that stage. The Government accepted that the reasons were not recorded earlier. It is the Government's case that reasons were recorded after the MAT's order dated 25/2/08 and the transfer order dated 28/5/08 was passed on the basis of those reasons. There is, therefore, no question of fabrication of documents.

27. It is true that the Minister for Water Resources and the Chief Minister have not put the date below their signatures on the note dated 26/5/08. The Government's case is that they signed the note on 28/5/08. We find an endorsement on the note dated 26/5/08, which says that "annexed hereto is the note submitted by Secretary Water Conservation". This brief note is made by P.S. (Water Resources). Below this note date 28/5/08 is put and in bracket the words "page 19" are found. At page 19 is the note dated 28/5/08 submitted by the Secretary Water Conservation. Thus there can be no doubt that the note dated 26/5/08 was placed before the Chief Minister on 28/5/08 along with note put up by the Secretary Water Conservation Department dated 28/5/08 setting out the reasons for the 1st respondents transfer and the Minister Water Resources and the Chief Minister signed it on the same day in approval. Merely because there is no date below their signatures it is not possible for us to hold that there is fabrication of files by the Desk Officer, Deputy Secretary and Secretary of Water Resources Department, Secretary of the Water Conservation Department and that the Minister Water Resources, the Minister Water Conservation and the Chief Minister are party to this fabrication.

28. Except stating that the State Government wanted to favour the 2nd respondent and commenting on the conduct of the 2nd respondent no foundation is laid by the 1st respondent to support allegation of malafides. It is not even suggested that either the Minister for Water Resources or the Minister for Water Conservation or the Chief Minister were vitally interested in the 2nd respondent and they entertained animus against the 1st respondent. Vague allegations of favouritism are made. The entire case rests on conjectures and surmises and alleged fabrication of record. The Supreme Court has made it very clear in Gobardhan Lal's case that even allegation of malafides when made must be such as to inspire confidence in the court. Allegation of malafides must be based on concrete materials and cannot be entertained on the mere making of it or on consideration borne out of conjectures and surmises. The above tests are not answered by the 1st respondent in this case. Except for strong and convincing reasons it is not possible for us to interfere with a transfer order by inferential reasoning based on conjectures and surmises.

29. In this connection, we may usefully refer to the judgment of the Supreme Court in M. Sankaranarayanan's case (supra). In that case, the appellant was working as Chief Secretary to the Karnataka Government. On 3/1/1991, the Government of Karnataka took a decision that the Chief Secretary should be changed. On 4/1/1991, the post of Secretary, High Power Committee was declared to be equivalent in status and responsibilities to the post of Chief

Secretary and the appellant was transferred to the said post. The appellant challenged the transfer order before the Central Administrative Tribunal (for short, "the Tribunal"), inter alia, contending that because he was not prepared to tell lies and compromise according to the wishes of the Chief Minister, the Chief Minister was displeased with him and he was transferred. The Tribunal dismissed the application. The appellant approached the Supreme Court. The Supreme Court confirmed the Tribunal's order holding that the appellant had not been able to lay any firm foundation warranting a finding that the impugned order was mala fide. We may quote the relevant paragraph:

12. After considering the respective contentions of the learned Counsel appearing for the parties, it appears to us that the appellant has not been able to lay any firm foundation warranting a finding that the impugned order of transfer was passed mala fide and/or for an oblique purpose in order to punish the appellant and/or to humiliate him. The pleadings of the appellant before the Central Administrative Tribunal only indicate that some of his suggestions in the matter of posting of senior bureaucratic officers of the State had not been accepted by the present Chief Minister of the State. Such facts alone do not constitute any foundation for a finding that because the appellant was not agreeable to oblige the Chief Minister by accepting all his suggestions and putting up notes to that effect, he had incurred the displeasure of the Chief Minister and the impugned orders had been passed not on administrative exigencies but only to malign the appellant and to humiliate him. It may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture. In the instant case, we are unable to find that there are sufficient materials from which a reasonable inference of malice in fact for passing the impugned order of transfer can be drawn. It is an admitted position that the Chief Secretary and the Chief Minister had differences of opinion on a number of sensitive matters. If on that score, the Cabinet and the Chief Minister had taken a decision to relieve the appellant from the post of Chief Secretary and post a very senior officer of their confidence to the post of Chief Secretary, it cannot be held that such decision is per se illegal or beyond the administrative authority.

30. The petitioners can draw support from the above observations of the Supreme Court. The administrative authorities are given ample latitude to transfer officers from one place to another in the interest of better administration. In case of midterm transfers, however, recording of reasons is a must. It is pertinent to note that in *M. Sankaranarayanan's* case (supra) the action of the Chief Minister in transferring the appellant therein and bringing a man of his confidence to the post of Chief Secretary was approved by the Supreme Court. Unless firm factual matrix of malafides is laid the transfer order cannot be set aside. The ratio of the above case is clearly attracted to the facts of the present case.

31. It is true that Transfer Order dated 28/5/08 is issued by a statutory functionary. It is also true that being a midterm transfer order, in view of the provisions of the Transfer Act, it can be issued only after recording reasons. Unless the requirement of recording reasons is dispensed with expressly or by necessary implication, an administrative authority is required to record reasons for its decisions. However, it is equally well settled that the reasons need not be elaborate as in the decision of a court of law. (S. N. Mukherjee v. Union of India, (supra)). In the instant case, the transfer order states that the transfer is effected in public interest and on account of administrative exigencies. It is pertinent to note that similar order was struck down by the MAT after examining the file and observing that no specific reasons or exceptional circumstances were recorded. The present order is similarly worded. But the distinguishing factor is that elaborate reasons are found in the files of the Government in its support.

32. We have already quoted the relevant extracts from the files. Thus, this is a case where the transfer order states the reasons in short there being no requirement of law to state elaborate reasons in the order. But elaborate reasons are in existence in the files of the Government. Contemporaneous record contains the reasons. Had there been no reasons recorded in the file prior to the issuance of the transfer order, we would have had to set it aside.

33. Mr. Kumbhakoni contended that S. N. Mukherjee's case (supra) is not applicable to the present case because it does not deal with the Transfer Act which requires recording of reasons for midterm transfer. No doubt in that case the Supreme Court was not considering the validity of midterm transfer order. But the observations of the Supreme Court that reasons must be recorded by the administrative authority unless they are dispensed with expressly or by necessary implication and that the reasons need not be elaborate can certainly be taken into account.

34. No judgment has been cited before us in support of the contention that the transfer order must contain elaborate reasons. In our opinion, reliance placed by Mr. Kumbhakoni on this Court's judgment in Shivaji Jadhav's case (supra) is misplaced. The petitioner therein was prematurely retired in public interest by virtue of Rule 10(4)(b) of the Maharashtra Civil Services (Pension) Rules, 1982. According to the petitioner, his case did not fall within the parameters given in the instructions prescribing criteria for premature retirement. No material whatsoever was placed on record to show how the petitioner fell within the parameters given in the instructions. Only a bald statement was made in the affidavit in reply that the work of the petitioner was found to be not satisfactory. It is in this context that after referring to the Supreme Court's judgment in Mohinder Singh Gill's case (supra), this Court observed that it was not open to the respondents to support the order by giving additional reasons. Facts of this case are totally different. Firstly, here we are concerned with a transfer order and the court's interference with transfer order is extremely limited. Secondly the transfer order in question contains brief reasons which are supported by

elaborate reasons recorded in the files of the Government to which we have already made a reference. The petitioner, therefore, cannot draw any support from this Court's judgment in Shivaji Jadhav's case (supra).

35. Mr. Kumbhakoni tried to draw support from the observations of the Supreme Court in Mohinder Singh Gill's case (supra) that "when a statutory authority makes an order based on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may by the time it comes to court on account of a challenge gets validated by additional grounds later brought out". In our opinion, these observations of the Supreme Court are not applicable to the present case. No reasons are supplemented in this case by affidavits. File has been produced before us. The Transfer Order dated 28/5/08 states the reasons as "public interest and administrative exigencies" and foundation for this is found in the Government files. This is, therefore, not a case where the transfer order is sought to be supported and strengthened by subsequent material.

36. We also cannot accept Mr. Kumbhakoni's submission that the Chief Minister himself should have recorded the detailed reasons and he should have filed affidavit in reply. What is important is the application of mind by the Chief Minister. We have perused the files which have moved from table to table with necessary endorsements. It is stated on oath by Mr. Gosavi, Under Secretary, Water Resources Department that as per the prescribed procedure, the file was placed before the Chief Minister and the Chief Minister has signed thereon. It is pertinent to note that the file was processed through the Desk Officer, the Deputy Secretary, the Chief Secretary, the Minister for Water Resources and the Minister for Water Conservation and then placed before the Chief Minister. We have no reason to disbelieve this statement which is supported by notings. The Chief Minister is entitled to give due weightage to such endorsements and if the Chief Minister wanted to take any other view of the matter, he would have done so by making a note to that effect. Merely because the Chief Minister has not made any detailed note, it cannot be presumed that the Chief Minister has not applied his mind. A very strong case based on acceptable material must be made out to persuade the court to hold that the Chief Minister has not applied his mind and mechanically signed the note placed before him. Mr. Kumbhakoni submitted that the authority to transfer the first respondent under the Transfer Act is with the Chief Minister. Relying on the judgment of the Supreme Court in *Merugu Satyanarayana Vs. State of Andhra Pradesh and Others*, , Mr. Kumbhakoni submitted that when subjective satisfaction is to be exercised by any authority under a statute, a third party not vested with such power of exercising subjective satisfaction cannot file an affidavit to justify and state on behalf of such authority as to what transpired in its mind while performing its duties under the law in force. Mr. Kumbhakoni's reliance on *Merugu's* case (supra) is misplaced. In that case the Supreme Court was dealing with an order passed under the Preventive Detention Statute. By reason of such order, a person is detained without trial for

a long period. It is a drastic power. The same principle cannot be applied to transfer orders. It must also be noted that in that case, the affidavit was filed by a Sub-Inspector of Police. The Sub-Inspector of Police had not said how he came to know about the subjective satisfaction of the District Magistrate. He had not said that he had access to the file or he was making the affidavit on the basis of the record maintained by the District Magistrate. It is in these circumstances that the Supreme Court held that the District Magistrate had abdicated his responsibilities. In the present case, the affidavit is filed by Mr. Gosavi, Under Secretary of the Water Resources Department. Mr. Gosavi obviously had access to the Government files. He has stated that he was making the affidavit on the basis of information gathered by him from official record. He has stated that he had derived his knowledge and information from the records and files maintained in the office. The present case therefore, cannot be equated with Merugu's case (supra).

37. It must also be noted here that neither in the original application nor in the affidavits filed by the 1st respondent, any personal allegations of malafides are made against the Chief Minister. It is not stated that the Chief Minister had any ulterior motives or that he was personally interested in the 2nd respondent and he had any animus against the 1st respondent. The 1st respondent filed two affidavits in the original application. Nothing prevented him from stating so. For the first time in the affidavit filed in this Court on 6/1/09 it is stated that the Chief Minister acted mechanically and that the Competent Authority should have filed an affidavit. In the circumstances, in our opinion, the petitioners' case cannot be thrown overboard because the Chief Minister has not filed any affidavit. Affidavit filed by Mr. Gosavi, Under Secretary Water Resources Department on the basis of the files of Government bears out the petitioners' case.

38. Much stress has been laid by Mr. Kumbhakoni on the fact that, we are concerned here with a midterm transfer covered by the Transfer Act. In this connection, we may usefully refer to judgment of this Court in v. B. Gadekar's case (supra). In that case the petitioner was working as Deputy Engineer in the Maharashtra Housing and Area Development Authority ("MHADA" for short). He was transferred and posted at Nagpur in the office of MHADA by transfer order dated 30/6/07. It was a midterm transfer. The case was covered by the Transfer Act. Similar contention was raised that the petitioner could have only been transferred in exceptional circumstances for special reasons. It was argued that the order of transfer does not indicate any reasons much less special reasons and as such the order is liable to be set aside. After taking a resume of several decisions on the point the Division Bench of this Court presided over by the Hon'ble Chief Justice, observed as under:

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 transfers 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....

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 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 conduct of the petitioners is to be looked into by the authorities and it will neither be just nor fair for the Court to interfere at this stage and hold that the orders of transfer are vitiated on account of mala fide or colourable exercise of power or that they are in violation of the Rules.

In our opinion, the above observations are attracted to this case. Mr. Kumbhakoni tried to distinguish this judgment by commenting that in that case there was a finding that there was nothing to indicate from the record that the transferring authority had exercised its discretion for malafide reasons. In view of the fact that in this case also, we are of the view that the allegations of malafides are not substantiated, Mr. Kumbhakoni's attempt to distinguish this judgment must fail.

39. We may also refer to the judgment of Aurangabad Bench of this Court in Omprakash Ghanshyamdas Mudiraj's case (supra). In that case respondent 1 therein was working as a Superintending Engineer Nanded Irrigation Circle Nanded. A midterm transfer order was issued. He was transferred to Nasik. The case was governed by the Transfer Act. The 1st respondent challenged the transfer before the MAT. It was argued that the transfer order was malafide and that there were no special circumstances. It was argued that no reasons were recorded. The MAT set aside the order of transfer. Before this Court it was inter alia submitted that the transfer order was malafide and in breach of the Transfer Act. It was pointed out that the Chief Minister had merely made an endorsement

to the effect "Please consider" and there was no endorsement of prior approval. This Court took note of the fact that Members of Legislative Assembly and Members of Legislative Council had recommended to the State Government the case of the 2nd respondent who was brought in the place of the 1st respondent by midterm transfer. This Court took note of the fact that the State had received certain complaints about the 1st respondent. After referring to relevant judgments of the Supreme Court this Court observed that whether the reasons recorded by the State Government are sufficient or otherwise could not have been gone into by the MAT; that the employer would be the best judge who would appreciate the performance of his employees and their suitability in a particular place and that the MAT committed error of jurisdiction in re-appreciating and verifying sufficiency of reasons.

40. We are concerned here with somewhat similar fact situation. The Minister for Water Conservation, Khar Lands and Agriculture is the executive head of the Water Conservation Department. He has taken review of various schemes implemented in the State. During the review it was found that the work of the 1st respondent was not satisfactory. The post of Chief Engineer, Minor Irrigation Local Sector, Pune is directly under the control of Secretary Water Conservation. The Secretary, Water Conservation found several lacunae in the functioning of the 1st respondent which we have noted hereinabove. The Minister, Water Resources had also applied his mind to this aspect. He opined that the 2nd respondent was having experience in the field of Minor Irrigation Schemes under the local sector and hence he should be brought in the place of the 1st respondent. All this material was placed before the Chief Minister who approved the proposal of transfer. We have already noted that there is no fabrication of documents. Malafides have not been established. The MAT should not have, therefore, acted as an appellate authority. In our opinion, the MAT exceeded its jurisdiction.

41. Having examined the files of the Government and after considering the present case, in the light of relevant judgments, to which we have made reference, in our opinion, the impugned order dated 24/25/26/9/2008 delivered by the Maharashtra Administrative Tribunal, Mumbai Bench, must be set aside and is accordingly set aside.

42. Writ Petition is disposed of.