

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 129 OF 2018

DIST. : AURANGABAD

Madhukar s/o Kisan Shingade,
Age. 44 years, Occu. : Service,
R/o Plot no. 5, Pruthvilok Colony,
Padegaon, Aurangabad,
Tq. and Dist. Aurangabad.

-- APPLICANT

V E R S U S

1. The Chief Conservator of Forest
(Territorial), Station Road, Aurangabad,
Dist. Aurangabad.
2. The Deputy Conservator of Forest
(Territorial), Station Road, Aurangabad,
Dist. Aurangabad.
3. The Range Forest Officer,
(Territorial), Station Road, Aurangabad,
Dist. Aurangabad.
4. B.B. Ingale,
Age. Major, Occu. Service,
R/o Opp. Roplekar Hospital,
Dargah Road, Aurangabad,
Dist. Aurangabad.

-- RESPONDENTS

APPEARANCE :- Shri V.B. Wagh, learned Advocate for the
applicant.

: Smt. Sanjivani Deshmukh Ghate, learned
Presenting Officer for the respondent nos. 1
to 3.

: Shri V.G. Pingle, learned Advocate for
respondent no. 4.

CORAM : Hon'ble Shri B.P. Patil, Member (J)

DATE : 1st November, 2018

ORDER

1. Applicant has challenged the order dtd. 16.12.2017 issued by the respondent no. 2 transferring him from the post of Forest Guard (Saw Mill Checking) under the office of Forest Territorial Range Officer, Aurangabad Territorial Forest Division to the office of Deputy Conservator of Forest (Working Plan Division), Aurangabad on the post of Forest Guard (working plan Division) and posting the res. no. 4 on his post, by filing the present O.A.

2. Applicant has served under Indian Army for 18 years. After retirement from Indian Army he was recruited as a Forest Guard from ex-servicemen category in the year 2008 and was posted under Deputy Conservator of Forest, Parbhani. Thereafter he was transferred from the office of Deputy Conservator of Forest, Parbhani to the office of Deputy Conservator, Social Forestry, Parbhani and was posted in the office of Social Forestry Division, Hingoli, Dist. Hingoli, by the order dtd. 12.12.2012. Thereafter vide order dtd. 4.7.2013 he was transferred from the office of Social Forestry Division, Hingoli to the office of Aurangabad Territorial Forest Range on the post of Forest Guard (Saw Mill checking) and since then he was working there. Applicant was discharging his duty sincerely and honestly and he had taken several actions against the owners of the saw mills and also filed

complaints against the illegal saw mills. On 19.11.2017, he filed complaint against Shri Vijay Madanlal Lohiya, who was running Saw Mill at Paithan alleging that he is illegally cutting the trees of Mango and Neem without obtaining permission from the office of Range Forest Officer. The said Saw Mill owner had brought political pressure on res. nos. 1 & 2 for transferring him. The res. no. 2 issued the impugned order on 16.12.2017 on the recommendations of the Civil Services Board and transferred the applicant from the post of Forest Guard (Saw Mill Checking) under the office of Forest Territorial Range Officer, Aurangabad Territorial Forest Division to the office of Deputy Conservator of Forest (Working Plan Division), Aurangabad on the post of Forest Guard (Working Plan Division). It is alleged that there are complaints against the applicant regarding his misconduct and misbehavior and enquiry in that regard is pending against him. It is his contention that the impugned transfer order has been issued in the midst of his term and before completion of his tenure. It is not in accordance with the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005) and therefore the same is illegal. Hence he filed the present O.A. challenging the impugned transfer order.

3. Respondent nos. 1 to 3 resisted the contentions of the applicant by filing their affidavit in reply. They have not disputed about the appointment of the applicant, his posting at different places and issuance of the impugned transfer order. They have not disputed the fact that the applicant has lodged complaints against owner of Saw Mills. It is their contention that owner of Vijay Saw Mill and other Saw Mills owners filed complaint / representation against the applicant on 23.11.2017. Not only this, but there are several complaints against the applicant and therefore a show cause notice has been issued to him on 5.12.2017. Applicant is incompetent to discharge his duties. Therefore his case was placed before the Civil Services Board no. 2. Civil Services Board no. 2 held its meeting on 8.12.2017 and recommended the transfer of the applicant. On the recommendations of the Civil Services Board the res. no. 1 directed the res. no. 2 to transfer the applicant and accordingly res. no. 2 issued the impugned transfer order. It is their contention that the applicant has obtained signature of several labourers by misleading them and filed a complaint in English against one Smt. S.K. Amina, Forest Guard, on 5.7.2017. After knowledge about the said complaint, the labourers had submitted an application in Marathi to Deputy Conservator of Forest,

Aurangabad on 8.6.2017 stating that their signatures were falsely & fraudulently obtained on the application written in English by the applicant. It is their contention that one Smt. Amina Shaikh Bashir, Forest Guard had filed a complaint against the applicant before the Vishakha Committee on 12.7.2017. The said Committee conducted inquiry and recommended transfer of the applicant and said Smt. Amina in different zones. Because of misconduct of the applicant he has been transferred by following the provisions of sec. 4 (4) (ii) and 4 (5) of the Transfer Act, 2005 and there is no illegality in the impugned order. Therefore they prayed to reject the O.A.

4. Res. no. 4 resisted the application by filing his affidavit in reply. It is his contention that the Labourers working in the Forest Department filed complaint against the applicant alleging that he has obtained their signatures on the complaint written in English falsely and fraudulently. On the basis of same a show cause notice was issued to the applicant. Not only this, but Vishakha Committee recommended the transfer of the applicant. Res. no. 2 thereafter issued impugned transfer order of the applicant as per the directions of res. no. 1 and transferred him in place of the applicant. It is his contention that he joined his new posting on 20.12.2017 in the office of Range Forest Officer no. 5,

Aurangabad on the post of Forest Guard (Saw Mill Territorial). It is his contention that he has been transferred in place of the applicant for smooth functioning in the office. It is his contention that there is no merit in the O.A. Therefore, he prayed to reject the O.A.

5. I have heard Shri V.B. Wagh, learned Advocate for the applicant, Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for the respondent nos. 1 to 3 and Shri V.G. Pingle, learned Advocate for respondent no. 4 and perused documents filed on record.

6. Admittedly the applicant was working as a Forest Guard (Saw Mill Checking) under the office of Forest Territorial Range Officer, Aurangabad Territorial Forest Division on the basis of order dtd. 4.7.2017. Admittedly, he has been transferred from the post of Forest Guard (Saw Mill Checking) under the office of Forest Territorial Range Officer, Aurangabad Territorial Forest Division to the office of Deputy Conservator of Forest (Working Plan Division), Aurangabad on the post of Forest Guard (Working Plan Division), by the order dtd. 16.12.2017. Admittedly some labourers working in the Department filed complaint against the applicant alleging that he has fraudulently obtained their signatures on the complaint written in English misleading them. A show cause

notice was issued to him in that regard. Admittedly one Smt. Amina Shaikh Bashir filed a complaint against the applicant before the Vishakha Committee and the Vishakha Committee recommended the transfer of the applicant and said Smt. Amina in different zones. Admittedly one Shri Vijay Madanlal Lohiya, Saw Mill Owner and others filed complaint before the higher authority of the applicant regarding his misconduct and misbehavior. Admittedly, the res. no. 4 was posted in place of the applicant by the impugned transfer order and he joined on his new posting on 20.12.2017.

7. Learned Advocate for the applicant has submitted that the applicant was posted in the office of Aurangabad Territorial Forest Division on the post of Forest Guard (Saw Mill Checking) by the order dtd. 4.7.2013. He has not completed his normal tenure of posting on that post, but he has been transferred by the impugned order dtd. 16.12.2017. He has submitted that transfer of the applicant is midterm and mid-tenure. The respondents have effected the transfer of the applicant on the basis of false complaints filed by the Saw Mill owner Shri Vijay Madanlal Lohiya against whom the present applicant had filed complaint as he was illegally cutting the neem & mango trees without obtaining required permission. He has submitted that the transfer of the

applicant is made due to pressure of the Saw Mill owners and the impugned transfer order is against the provisions of the Transfer Act, 2005. He has submitted that the impugned order has been issued in the nature of punishment to the applicant and therefore it is in violation of the provisions of the Transfer Act, 2005. Therefore he prayed to allow the present O.A. and quash the impugned transfer order.

8. Learned P.O. has submitted that there were several complaints against the applicant regarding his misbehavior and misconduct. Several staff members complained against the applicant that he obtained their signatures falsely & fraudulently on a complaint written in English. Not only this, but one female employee namely Smt. Amina Shaikh Bashir, Forest Guard filed a complaint with the Vishakha Committee for her harassment, at the hands of the applicant. He has submitted that the Vishakha Committee enquired the said complaint and recommended transfer of the applicant and said Smt. Amina in different zones. He has submitted that the case of the applicant regarding his transfer was placed before the Civil Services Board no. 2 for smooth administration in the office. Civil Services Board no. 2 held its meeting on 8.12.2017 and recommended the transfer of the applicant before completion of his tenure. On the

recommendations of the Civil Services Board and Vishakha Committee, an approval of the competent transferring authority has been obtained and thereafter the competent authority has issued the impugned transfer order. He has submitted that there is sufficient compliance of the mandatory provisions of sec. 4 (4) (ii) and 4 (5) of the Transfer Act, 2005 before making transfer of the applicant and there is no illegality in the impugned order and therefore he justified the impugned transfer order. Therefore, he prayed to reject the O.A.

9. On perusal of documents on record it reveals that one Smt. Amina Shaikh Bashir was serving in the same office where the applicant was working. She filed complaint against the applicant regarding harassment at the service place at the hands of applicant before the Vishakha Committee. The said Committee conducted an enquiry and on completion of enquiry it recommended transfer of both i.e. applicant as well as complainant Smt. Amina Shaikh from the said office. The record also shows that employees working in the office of applicant filed complaint against the applicant alleging that he has falsely & fraudulently obtained their signatures on the complaint written in English. On the basis of complaint filed by the employees working in the office a show cause notice has been issued to the applicant

in that regard. Because of misconduct and misbehavior of the applicant there were hurdles in running the administration smoothly in the office. Therefore the department has proposed the transfer of the applicant. Not only this, but Shri Vijay Madanlal Lohiya and others, who are running Saw Mills had also made a complaint against the applicant regarding misbehavior of the applicant and demanding of the money. On the basis of the said complaint the department had prepared a proposal for transfer of the applicant and it has been placed before the Civil Services Board no. 2. The Civil Services Board in its meeting dtd. 8.12.2017 considered a proposal in detailed and recommended the transfer of the applicant. Thereafter, the proposal prepared by the competent authority and thereafter it was placed before the higher competent authority for approval. The higher competent authority i.e. Chief Conservator of Forest (Territorial), Aurangabad approved the proposal and on the basis of said approval, the competent authority i.e. the Deputy Conservator of Forest (Territorial), Aurangabad issued the impugned transfer order. The reasons have been recorded while making the transfer of the applicant. Considering the situation in the office and misbehavior of the applicant, the transfer of the applicant has been made for smooth functioning in the office.

10. The impugned transfer of the applicant has been issued for the exceptional circumstances mentioned in the proposal submitted by the Department. The impugned order has been issued on account of administrative exigency. In these circumstances, in my view, the impugned order has been issued in view of the provisions of sec. 4 (4) (ii) and 4 (5) of the Transfer Act, 2005 by recording special reasons on account of administrative exigency. It is issued in the public interest also. In these circumstances, in my view, there is compliance of mandatory requirements of sec. 4(4)(ii) and 4 (5) of the Transfer Act, 2005 and therefore it cannot be said that the impugned transfer of the applicant is in violation of the mandatory provisions of the Transfer Act, 2005. I find no illegality in the impugned transfer order. Hence no interference in it is called for. There is no merit in the O.A. Consequently it deserves to be dismissed.

11. In view of the discussion in foregoing paras the present Original Application stands dismissed with no order as to costs.

PLACE : AURANGABAD
DATE : 1st November, 2018

(B.P. PATIL)
MEMBER (J)