

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.307/2017. (S.B.)

Ravi Munnalal Agrawal,
Aged about 57 years,
Occ. Service as Sub-Divisional Forest Officer,
Allapalli, Tq. Aheri,
Distt. Gadchiroli.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
2. The Additional Principal Chief Conservator of Forests,
(Personnel), Van Bhavan, Ramgiri Road,
Civil Lines, Nagpur.
3. The Conservator of Forests,
Gadchiroli,
Near the office of Dy. Conservator of Forests,
Gadchiroli.
4. Dy. Conservator of Forests,
Allapalli Division, Opp. Petrol Pump,
Van Bhavan, Allapalli, Tq. Aheri,
Distt. Gadchiroli.

Respondents.

Shri P.C. Marpakwar, Ld. Advocate for the applicant.
Shri P.N. Warjekar, Ld. P.O. for the respondents.

Coram:- Shri J.D. Kulkarni,
Vice-Chairman (Judicial)

JUDGMENT

(Delivered on this 27th day of April 2018.)

Heard Shri P.C. Marpakwar, the learned counsel for the applicant and Shri P.N. Warjekar, the learned P.O. for the respondents.

2. The applicant had challenged the order dated 25.5.2017 issued by respondent No.1 (Annexure A-1) whereby he has been transferred from the post of Sub-Divisional Forests Officer, Allapalli to the post of Assistant Conservator of Forests (Working Plan), Gadchiroli. It is prayed that the said order be quashed and set aside and the applicant be allowed to continue to work as Sub-Divisional Forests Officer, Allapalli. According to the applicant, the applicant was transferred to Allapalli from Nagpur vide order dated 21.8.2014 and, therefore, he was not due for transfer. The impugned order of transfer is, therefore, mid-tenure. According to the applicant, he is due for retirement on 31st July 2018. The learned counsel for the applicant further submits that as per Section 5 (a) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the "Transfer

Act of 2005”), the tenure of post of a Government servant may be extended in exceptional cases such as, an employee is due for transfer after completion of tenure at a station of posting or has less than one year for retirement and, therefore, the applicant could not have been transferred. The learned counsel for the applicant has also invited my attention to the various facts, from which it seems that number of complaints were filed against the applicant by some interested persons, since the applicant was working honestly and they were aggrieved by the honest working of the applicant. These persons tried to bring influence on the Hon’ble Minister and enquiries were initiated against the applicant. In all enquiries, the applicant was exonerated. Not only that, even criminal case under the Prevention of Anti Corruption Act was also filed against the applicant. But, the Government thought even not to grant sanction for the prosecution and, therefore, the applicant was discharged. However, the applicant has been unnecessarily harassed.

3. Respondent Nos. 1 to 4 filed their affidavit in reply and it is admitted that the applicant has not completed his normal tenure at Allapalli. It is also admitted that a person who has

worked in the rural / naxalite affected area, shall be given choice posting. It is further admitted that some enquiries were held against the applicant and the applicant was given clean chit in some matters.

4. According to the respondents, order of applicant's transfer was made under exceptional circumstances. It is stated that the Chief Conservator of Forests had to recommend for transfer of the applicant, looking to the prevailing condition of the area in which he was posted and the unpleasant atmosphere was spread over in the said area. The Chief Conservator of Forests vide letter dated 19.5.2017 requested the Principal Chief Conservator of Forests (M.S.), Nagpur to transfer the applicant. The Principal Chief Conservator of Forests (M.S.), Nagpur vide letter dated 20.5.2017 also forwarded the said letter to the Chief Conservator of Forests and in view thereof, a proposal was forwarded to the Government which was considered by duly constituted Board comprising of the Chairman i.e. Additional Chief Secretary / Principal Secretary / Secretary (Forests), Member as the Principal Chief Conservator of Forests (Personnel) and three

Members-Deputy Secretary (Establishment), Tribal Development area.

5. The respondents also tried to justify the order on the ground that the applicant was more interested in issuing show cause notices to the staff members down below him and it is doubtful that as to why such notices were issued to a lady forest guard. It is stated that the working environment was disturbed in the area and, therefore, it was necessary to transfer the applicant. The applicant filed rejoinder which is replied by the respondents also.

6. The only material point to be considered is, as to whether the impugned order of transfer issued to the applicant, has been issued by the competent authority under exceptional circumstances ?

7. Admittedly, the applicant was not due for transfer at the time of impugned order of transfer passed on 22.5.2017. However, it must be noted that he joined at Allapalli s per order dated 21.8.2014, whereas the impugned order has been passed on 25.5.2017 i.e. his tenure was almost completed and only three months period was due for his regular transfer. From the

allegations made against the applicant, it seems that there were number of complaints against the applicant. The learned counsel for the applicant, however, submits that all these complaints were duly investigated by the department and every time the applicant was exonerated and the competent authority came to the conclusion that all these complaints were baseless and there was no need to transfer the applicant. From the record, it seems that the respondents are admitting the fact that the work of the applicant was good and he was an honest officer. The learned counsel for the applicant has also invited my attention to the communication dated 6.5.2017 (Pages 51 and 52) (Annexure-12), from which it seems that the Deputy Conservator of Forests came to the conclusion that there was no material against the applicant so as to hold him guilty.

8. The learned counsel for the applicant further invited my attention to one communication dated 26.5.2016, from which it seems that a lady who has filed complaint against the applicant for harassment, has been kept under suspension. From the record, it seems that all the complaints against the applicant were held to be baseless and it seems that the complaints were

made against the applicant, because he was doing his work honestly. From various correspondence on record, it seems that earlier case of the applicant was considered for his extension at Allapalli by all the authorities including the Principal Chief Conservator of Forests (M.S.), Nagpur. However, vide letter dated 20.5.2017, the Principal Chief Conservator of Forests (M.S.), Nagpur himself recommended the applicant's transfer and has given reason for the same as under:-

“मुख्य वनसंरक्षक (प्रा), गडचिरोली यांनी विशायांकित प्रकरणाच्या अनुषंगाने केलेल्या फेरचौकशी नुसार श्री. आर. एम. अग्रवाल, सहा. वनसंरक्षक यांचे विरुद्ध सर्व महिला वनरक्षक / वनपाल यांनी केलेली तक्रार व दिलेल्या बयानात एकसारखेपणा आहे. विशाखा समिती मधील सदस्य हे स्वतः तक्रारकर्ते असल्याची वस्तुस्थिती असली तरी त्यातील सत्याची गुणवत्ता नाकारता येत नसल्याने तसेच कार्यरत महिला वनरक्षक / वनपाल यांच्यामध्ये असुरक्षिततेची भावना निर्माण झाल्याची शक्यता नाकारता येत नसल्याचे नमूद केले आहे. त्यामुळे त्यांना सदर पदावर ठेवणे इष्ट होणार नसून त्यांची तातडीने बदली करण्याची शिफारस केली आहे.

यापूर्वी मुख्य वनसंरक्षक (प्रा), गडचिरोली यांनी त्यांचेकडील पत्र क्र. १२२९ दिनांक ३.२.२०१७ अन्वये केलेल्या शिफाराशिनुसार, या कार्यालयाचे पत्र क्र. मवसे/वैन/आरएमअ/प्र. क्र. ५९६/१४-१५/२५८/कक्ष-९ दिनांक २७.४.२०१७ अन्वये श्री. आर. एम. अग्रवाल यांना कार्यरत पदावर सेवानिवृत्तीपर्यंत ठेवण्याची शिफारस करण्यात आली होती. तथापि प्रकरणाची वस्तुस्थिती व गांभीर्य लक्षात घेता, श्री. आर. एम. अग्रवाल, सहा.

वनसंरक्षक यांना आल्लापल्ली येथून बदली करणे अत्यावश्यक असल्याचे या कार्यालयाचे मत झाले आहे.

सबब, श्री. आर. एम. अग्रवाल यांचे सेवानिवृत्तीस जवळपास १ वर्षाचा कालावधी शिल्लक असल्याने त्यांना कोणत्याही कार्यकारी पदावर पदस्थापना न देता, त्यांची बदली सहा. वनसंरक्षक, कार्य आयोजना, गडचिरोली या रिक्त पदावर तत्काळ करावी. अशी शिफारस करण्यात येत आहे.”

9. In view of the said recommendation, case of the applicant has been kept before the competent committee and it was decided to transfer the applicant. The minutes of the meeting is placed on record which are at page Nos. 150 to 159 (both inclusive).

10. In my opinion, even for the sake of argument, it is accepted that the applicant was exonerated from all the allegations made against him. Question remains that there was a complaint by some lady forest guards against the applicant and enquiry was held. In such circumstances, the Principal Chief Conservator of Forests (M.S.), Nagpur thought it proper to transfer the applicant on the ground that it would not be proper for the applicant to continue in such circumstances at the present place. I do not find any reason to interfere in such decision taken by the competent

committee and, therefore, the impugned order of transfer cannot be said to be illegal.

11. The another aspect of the case is that, the applicant is going to retire on superannuation on 31st July 2018. This Tribunal was pleased to pass the order dated 8.6.2017, whereby the impugned order of transfer was stayed and the applicant was directed to be continued to work at Allapalli. Admittedly, even today, the applicant is working at Allapalli and no complaints are received against him during this period.

12. As per Section 5 (1) of the Transfer Act of 2005, tenure of a Government servant may be extended in exceptional cases, such as whether he has less than one year for retirement. The impugned order of transfer was passed on 25.5.2017 and in spite of such order, the applicant is continuing to work on the said post till today. Admittedly, he is going to retire in the month of July 2018 and, therefore, in such circumstances, it may not be in the interest of justice and equity to shift the applicant to some other place for such a short period. In such circumstances, even though the impugned order of the applicant's transfer can be said to be

legal, it may not be proper to implement the same. Hence, I proceed to pass the following order:-

ORDER

- (i) The O.A stands partly allowed.
- (ii) The request of the applicant for quashing and setting aside the impugned order of transfer dated 25.5.2017 (Annexure A-1) issued by respondent No.1, is rejected.
- (iii) The respondents, however, are directed not to implement the said order as regards the applicant in view of the fact that the applicant is going to retire on superannuation on 31st July 2018.
- (iv) The applicant, therefore, be allowed to continue to work at Allapalli till his retirement i.e. on 31st July 2018.
- (v) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)
27.4.2018.