

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.931 OF 2016

DISTRICT : PUNE

Shri Mahadeo N. Pawar.)
Age : 57 years, Working as Divisional)
Forest Officer (Land & Campa), having)
Office at Van Bhavan, Gokhale Nagar,)
Bibwewadi, Pune - 37.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Principal Secretary)
(Revenue), Revenue & Forest Dept,)
Mantralaya, Mumbai - 400 032.)
2. Shri S.R. Katti.)
Aged : Adult, Occu. Government)
Service as ACF (Protection, etc.))
at Van Bhavan, Gokhalenagar, Pune)...Respondents

Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents.

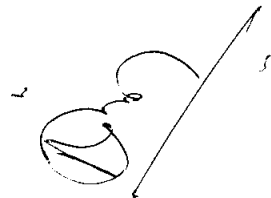
P.C. : R.B. MALIK (MEMBER-JUDICIAL)



DATE : 20.09.2016

JUDGMENT

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.
2. This OA can be finally disposed of at this stage itself.
3. I have perused the record and proceedings and heard the rival submissions. The Applicant is a Divisional Forest Officer. He has been vide the impugned order of 12.9.2016, a copy of which is at Exh. 'A' transferred as Associate Professor at Kundal Training Institute, Dist Sangli. The private party Respondent No.2 is his successor in the office at Pune. He has been promoted and posted there. The Applicant has raised mainly the issue of the total non-consideration of the facts falling within Section 5(1)(a) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay n Discharge of Official Duties Act, 2005" (Transfer Act).
4. The OA was set down for consideration of interim relief, but as mentioned at the outset, it is not only possible to but in fact necessary to decide the same finally at this stage itself. The provisions of Section 5(1)(a) reads as follows :



“5(1)(a) : the employee due for transfer after completion of tenure at a station of posting or post has less than one year for retirement.”

5. It is a common ground that the Applicant made the representation dated 2nd August, 2016 and submitted the same on 8th August, 2016 requesting for the benefit of the said provision and extension of time till his retirement which is due on 31st May, 2017. It is similarly an indisputable factual position that no formal decision has been communicated to the Applicant thereabout and in the meanwhile, by the impugned order, he has been transferred. The issue was debated as to whether the provisions of Section 5(1)(a) are directory or mandatory. In that behalf, a Judgment of this Tribunal (Hon'ble Vice-Chairman) in **OA 426/2015 (Shri Vijay V. Thule Vs. Divisional Commissioner, Konkan Division & 2 ors., dated 29th October, 2015)** was cited wherein there are observations to the effect that those provisions are directory. However, it has been observed quite clearly in effect that even as those provisions are not mandatory, that did not mean that the representations invoking that Section should not even be considered. I find from the said order that it has proceeded on the basis that the said provisions are directory. With great respect, I do not find reasons in support of the conclusion that the said provision is directory. It is a trite legal position in the realm of interpretation of statute that in certain circumstances, “shall” can be so construed as to mean directory and “may” as mandatory. However, in the present set of facts and



circumstances, it is not necessary for me to examine that aspect in great details because even in that matter, this Tribunal was pleased to hold that consideration of the representation was a must.

6. In another Judgment of this Tribunal in **OA 480/2014 (Harishchandra Vs. State of Maharashtra and one anr., dated 17.6.2014)**, directions were given which when translated into actuality would mean that the provisions of Section 5(1)(a) have to be effectuated. In **Writ Petition No.11464/2014 (Shri Anil P. Dalvi Vs. State of Maharashtra and anr., dated 23.03.2015)**, a Division Bench of the Hon'ble Bombay High Court in overturning an order of this Tribunal in fact made observations that in the circumstances, if the employee was due to retire within one year, he was entitled to the protection of the said provision. In my opinion, the word "protection" is highly significant and no authority has got a right to make light of the same. My attention was also invited to an order in **OA 812/2014 (Shri Vilas P. Patil Vs. State of Maharashtra and one another, dated 30th September, 2014)**.

7. The above discussion would, therefore, make it quite clear that the Respondents are in duty bound to consider the representation dated 2nd August, 2016 made by the Applicant which is anterior in point of time to the order impugned herein. The point, therefore, remains that even now, they will have to consider the same and regard being had to the facts and circumstances, an appropriate time limit will be fixed to do so



and till such time, as the directions herein are complied with, the issue is as to what state of affairs should prevail. The learned CPO submits that the Applicant has been relieved yesterday and the Respondent No.2 has taken over the charge of that post. This factual position is disputed by the Applicant. Mr. Bandiwadekar furnishes for my perusal, an Office Order of 19.9.2016 (yesterday), Para 4 of which in fact mandated that the Applicant should handover the charge to the Respondent No.2 and according to the learned Advocate, the Applicant has not handed over the charge and he has not been relieved. How I wish, it was easier if both the parties had been candid enough. However, in the context of the facts such as they are, in my opinion, I will have to proceed on the basis that the status quo such as at the time of institution of the OA yesterday must continue and that status quo is that the Applicant shall continue to hold the post in question. Even otherwise, just like every judicial forum, even this Tribunal is empowered to make even at ad-interim stage orders of mandatory nature, and therefore, mere paper orders cannot defeat the very purpose for which the judicial forum exist. Therefore, the above is defined as status quo.

8. Another issue raised was that at Pune itself, another post has now become vacant which is equal to the post in question and if the Applicant was so minded, it can be offered to him. On instructions from Shri S.B. Mokalikar, Section Officer, Forest Department, he informs that the said post is Tree Officer, Pune Municipal Corporation. In fact, as of now,



there are hassles in the matter because that appears to be a deputation post. I, therefore, prefer not to give any directions in that behalf and decide this OA on its own merit.

9. The order herein impugned in so far as it relates to the Applicant and 2nd Respondent is held in abeyance till the compliance with the directions herein. The Respondent No.1 is directed to decide the representation dated 2nd August, 2016 received on 8th August, 2016 made by the Applicant on or before 30th September, 2016 and the result of the same be communicated within four working days to the Applicant. The parties are directed to maintain the status quo as defined above till such time as service of the said decision on the Applicant and in case, it is adverse to him, then the same status quo shall continue for a period of one week from that day. The Original Application is allowed with these directions with no order as to costs. Hamdast.

Sd/-
(R.B. Malik)
Member-J
20.09.2016

MLZ

20.9.16

Mumbai
Date : 20.09.2016
Dictation taken by :
S.K. Wamanse.