

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1102 OF 2018

DISTRICT : THANE

Shri Dilip Navnath Tonde.)
Age : Adult, Occu.: Range Forest Officer,)
Residing at Vikramgad Jawhar, Forest Division,)
Jawhar, District : Thane.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Forest Division, Mantralaya,)
Mumbai - 400 032.)
2. Chief Conservator of Forest.)
(Regional), Thane, Near Microwave)
Tower, Bara Bungalow Area,)
Krishna Borkar Marg, Kopri,)
Thane (E) – 400 603.)
3. Narendra Bhau Muthe.)
RFO, Tungreshwar Sanctuary,)
Gokhivare, Sanjay Gandhi National Park,)
Borivali.)...**Respondents**

Mr. S.S. Dere, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents 1 & 2.

Mr. D.B. Khaire, Advocate for Respondent No.3.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 24.04.2019

JUDGMENT

1. In the present Original Application, the Applicant has challenged the impugned transfer order dated 16th July, 2018 whereby he has been transferred as Range Forest Officer, Tungareshwar Sanctuary, Borivali to Range Forest Officer, Vikramgad Division, Jawhar, District Thane.

2. Heard Shri S.S. Dere, learned Advocate for the Applicant, Smt. K.S. Gaikwad, learned Presenting Officer for Respondent Nos.1 & 2 and Shri D.B. Khaire, learned Advocate for Respondent No.3.

3. Following are the uncontroverted factual aspect :

- (i) The Applicant who was working as Range Forest Officer at Tungareshwar Borivali was not due for transfer at the time of impugned transfer order dated 16.07.2018;
- (ii) By transfer order dated 16.07.2018, the Applicant has been transferred from Tungareshwar to Jawhar invoking Rule 4(4)(ii) and 4(5) of "Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005" (hereinafter referred to as 'Transfer Act 2005'.
- (iii) In place of Applicant, the Respondent No.3 has been posted by same impugned order dated 16.07.2018.

4. Shri S.S. Dere, learned Advocate for the Applicant mainly focused his submission to challenge the impugned order on following grounds.

- (a) As the Applicant was not due for transfer, no exceptional case is made out to transfer him, and therefore, the transfer is in defiance of Section 4(4)(ii) as well as 4(5) of 'Transfer Act 2005'.

- (b) It being mid-term and mid-tenure transfer, the Applicant being Group 'B' Officer, the approval of Hon'ble Chief Minister being next higher authority is required and it being not done so, the transfer is ex-facie illegal and unsustainable in law.

5. Whereas, Smt. K.S. Gaikwad, learned Presenting Officer sought to justify the impugned transfer order contending that there were complaints against the Applicant, and therefore, his transfer was necessitated. She further urged that the transfer was approved by Civil Services Board (CSB) and the same has been approved by Competent Authority i.e. Chief Conservator of Forest and it being mid-term and mid-tenure transfer, the approval of Additional Principal Chief Conservator of Forest was obtained. In this behalf, she referred to Notification dated 10th May, 2016. On this line of submission, she sought to contend that the transfer of the Applicant was necessitated on administrative exigency in view of complaint, and therefore, the challenge to the impugned transfer order is unsustainable.

6. Whereas, Shri D.B. Khaire, learned Advocate for Respondent No.3 sought to contend that his client was due for transfer and in view of complaints against the Applicant, the Department thought it fit to transfer the Applicant and consequently, the Respondent No.3 has been posted in his place. He, therefore, contends that this is not a case where to accommodate Respondent No.3, the Applicant has been displaced. In alternative submission, he submits that, in case the Tribunal set aside the impugned transfer order, in that event, the Respondent No.3 be permitted to make representation for suitable posting as he will be disturbed without any fault on his part.

7. Needless to mention that, this being mid-term and mid-tenure transfer, there has to be strict compliance of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'. True, the transfer is an incidence of service and cannot be lightly interfered by the Tribunal. However, where the transfer is in contravention of express provisions of law and smacks of *malafide*, then the same deserves to be struck down.

8. In so far as the aspect of alleged complaint is concerned, strangely, the ground of alleged complaint is not make out in the meeting of CSB. The perusal of minutes of CSB (It is wrongly described as Selection Committee in the minutes), there is no reference of any complaint against the Applicant. All that, the minutes shows that the Respondent No.3 who was working at Vikramgad, Jawhar was due for transfer and requested for transfer in Wild Life Department on family difficulties. His request was to transfer in Tungareshwar Centuary. In view of his request, the Applicant who was serving as RFO in Tungareshwar Sanctuary was displaced though he was not due for transfer. It is thus explicit from the minutes of CSB that, only to accommodate Respondent No.3, the Applicant was shifted to other place. There is absolutely no reference of any complaint much less deliberation over the alleged complaints. Had the complaints were the ground for transfer, it would have been reflected in the minutes of CSB. Therefore, the submission advanced by the learned P.O. as well as Shri D.B. Khaire, learned Advocate for Respondent No.3 that the transfer was necessitated because of complaints, has to be rejected.

9. On the contrary, the minutes of CSB clearly demonstrates that the Applicant was displaced only to accommodate Respondent No.3. The reason given for his transfer though stated as 'administrative reason' obviously, it was for accommodation of Respondent No.3. No other reason much less convincing is either mentioned in the minutes of CSB nor the same is forthcoming in the reply filed by the Department. Suffice to say, the Applicant has been

unnecessarily displaced only to accommodate Respondent No.3. This being the position, obviously, there is no compliance of recording special reasons for such mid-term and mid-tenure transfer.

10. As rightly pointed out by the learned Advocate for the Applicant that, it being mid-term and mid-tenure transfer of Group 'B' employee, the approval of Hon'ble Chief Minister is required and it being not taken, the impugned transfer order is liable to be quashed. As per Table of 'Transfer Act 2005', in case of mid-term and mid-tenure transfer, there has to be approval of next higher authority, which is in the present case the Hon'ble Chief Minister.

11. The learned P.O. referred to Notification dated 10th May, 2016 to contend that, on the basis of this Notification, the Competent Authority is Chief Conservator of Forest and immediate superior authority is Principal Chief Conservator of Forest. On the basis of this Notification, she sought to contend that, in the present case, the Chief Conservator of Forest being Competent Authority has approved the proposal of CSB and Additional Principal Chief Conservator of Forest being immediate superior authority accorded sanction to it. In so far as this aspect is concerned, as rightly pointed out by the learned Advocate for the Applicant, such delegation of power of next higher authority to Principal Chief Conservator of Forest is *ex-facie* illegal in view of express provision of Section 4(5) read with Section 6 of 'Transfer Act 2005' and Table thereunder. As per Section 6, the Column No.2 of Table, for Group 'B' Officer, the competent transferring authority is Minister In-charge in consultation of Secretaries of concerned Departments and its next higher authority for mid-term and mid-tenure & transfer is Hon'ble Chief Minister. Whereas, in the present case, as per Notification dated 10th May, 2016, the Chief Conservator of Forest is declared as Competent Authority for general transfers. True, the delegate of powers is permissible by virtue of Section 6 of 'Transfer Act 2005'. However, even in case of delegation of power by Competent Authority to some other authority in case

of mid-term and mid-tenure transfer, there should be approval of next higher authority as contemplated and specified in Table attached to Section 6 of 'Transfer Act 2005'. This being the position, the Notification dated 10th May, 2016 is *ex-facie* in contravention of expression provisions contained in Section 6 of 'Transfer Act 2005' whereby immediate next superior authority is declared as 'Principal Chief Conservator of Forest'. There cannot be such delegation of power of next superior authority in the manner notified in Notification dated 10th May, 2016 being in contravention of Section 6 of 'Transfer Act 2005'. Therefore, the approval given by Additional Principal Chief Conservator of Forest to the mid-term and mid-tenure transfer of the Applicant is *non-est* in law. Consequently, the impugned transfer order does not stand in law and deserves to be quashed.

12. The necessary corollary of aforesaid discussion leads me to conclude that the impugned transfer order has been passed in total defiance of mandatory recruitment of Section 4(4)(ii) as well as 4(5) of 'Transfer Act 2005'. The Applicant has been transferred only to accommodate Respondent No.3, and there was absolutely no other reason to transfer him. The impugned order is, therefore, liable to be quashed and O.A. deserves to be allowed.

13. The Respondent No.3 who is posted in place of Applicant is now required to be transferred to some other place. He is at liberty to make representation to the Competent Authority, which will be considered by the Competent Authority in accordance to Rules. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 14.09.2018 is hereby quashed and set aside.

- (C) The Applicant be reposted on the post from which he was transferred within two weeks from today.
- (D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 24.04.2019

Dictation taken by :

S.K. Wamanse.

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