

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.556 OF 2019**

**DISTRICT : SANGLI**

Shri Shivaji R. Khandagale. )  
Forest Guard, Office of Range Forest Officer, )  
Social Forestry, Shirala, District : Sangli and )  
R/at. Malewadi, Post : Tandulwadi, )  
Taluka : Walwa, District : Sangli – 415 411. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary (Forests), )  
Revenue & Forest Department, )  
Mantralaya, Mumbai – 400 032. )
2. The Deputy Conservator of Forest. )  
Vanvasahat, Hanuman Nagar, Kupwad, )  
Miraj, District : Sangli – 416 436. )
3. Shri Usman S. Mulla. )  
Forest Guard, Office of Range Forest )  
Officer, Social Forestry, Shirala, )  
District : Sangli. )...**Respondents**

**Mr. Uday Bhosle, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 26.07.2019**

## JUDGMENT

1. The Applicant has challenged the transfer order dated 30.05.2019 contending that he had been transferred before completion of his normal tenure of six years without compliance of Section 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').

2. Shortly stated facts giving rise to this application are as under :-

The Applicant was serving as Forest Guard in the Office of Range Forest Officer, Social Forestry, Shirala since 2016. He is Group 'C' employee, and therefore, claims to be entitled for six years' tenure at one posting. However, by impugned order dated 30.05.2019, he has been transferred to Karad without approval of next preceding Competent Authority. Subsequently, by order dated 12.06.2019, the Respondent No.3 has been posted in his place who was in fact earlier transferred by order dated 30.05.2019 at Karad. The Applicant is due to retire on 30.06.2020. He had requested for retention at Shirala by application dated 14.02.2019. However, the Respondent No.2 – Deputy Conservator of Forest had issued transfer order ignoring his request of retention. Besides, though it is mid-tenure transfer, there is no approval of next preceding Competent Authority. The Applicant, therefore, prayed to set aside the impugned transfer order.

3. The Respondent No.2 resisted the application by filing Affidavit-in-reply (Page Nos.52 to 60 of Paper Book) inter-alia denying the entitlement of the Applicant to the relief claimed. The Respondent sought to contend that the Applicant was transferred on his request, and therefore, now he is estopped from challenging the transfer order. He further contends that at the time of

general transfer, the matter was placed before the Civil Services Board (CSB) wherein it was recommended to transfer him at Karad, and accordingly, the transfer order has been issued.

4. Heard Shri Uday Bhosle, learned Advocate for the Applicant and Smt. A.B. Kololgi, learned Presenting Officer for the Respondents.

5. Admittedly, the Applicant is Group 'C' employee, and therefore, his normal tenure is six years as per proviso to Section 3 of 'Transfer Act 2005'. It is also not in dispute that he had completed three years only at Shirala at the time of impugned transfer order. This being the admitted position, the question posed as to whether the impugned transfer order is in consonance with Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' and the answer is in negative.

6. The contention raised by the Respondents that the Applicant was transferred on his request is totally unfounded rather misleading. The learned Advocate for the Applicant has categorically stated that no such request was made by the Applicant. In fact, his application dated 12.06.2019 (Page No.49 of P.B.) reveals that he had requested for retention at Shirala on the ground that he will be retiring on 30.06.2020. Though the Respondents contend that the transfer was on request, no such documentary evidence is produced along with reply which gives rise to adverse inference that no such request was made for transfer. Indeed, the stand taken by the Respondents that it was on his request is contrary to the minutes of CSB. The perusal of minutes of CSB (Page No.61 of P.B.) reveals that the Office has made a note that the Applicant being retiring on 30.06.2010, the extension of one year can be granted. As such, there is nothing in CSB minutes that the Applicant made a request for transfer. On the contrary, the Office Note itself shows that he request of the Applicant was for retention and not transfer. Suffice to say,

the stand taken by the Respondents that the transfer was made on request is contrary to their own record and has to be rejected.

7. Now turning to the recommendation made by CSB, all that CSB recommended for his transfer at Karad in place of Smt. Kokare. There is absolutely nothing in minutes of CSB as to why mid-tenure transfer of the Applicant was necessitated. Needless to mention that there has to be special reasons and exceptional circumstance for mid-tenure transfer. As such, not a single word is mentioned in CSB to justify mid-tenure transfer of the Applicant. As such, mechanically, he has been transferred without bothering mandatory requirement of the provisions of 'Transfer Act 2005'.

8. Significant to note that later by order dated 12.06.2019, the Respondent No.2 changed the posting of Respondent No.3 who was earlier transferred to Karad by transfer order dated 30.05.2019 and he was posted in place of Applicant at Shirala. The Applicant has challenged both the transfer orders dated 30.05.2019 as well as 12.06.2019.

9. As stated above, it being mid-tenure transfer, there has to be compliance of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' which *inter-alia* provides that it is only in exceptional circumstances and special reasons after recording the same in writing with the prior approval of next higher Competent Authority, such transfer can be effected. In the present case, admittedly, the Applicant has been transferred without obtaining the approval of next preceding Competent Authority as contemplated under Section 6 of 'Transfer Act 2005'. This being the position, the impugned transfer order without approval of next preceding Competent Authority is *ex-facie* unsustainable in law.

10. Thus what emerges from the record that the impugned transfer order is in blatant violation of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'.

Resultantly, the impugned order dated 30.05.2019 and 12.06.2019 deserves to be quashed and set aside. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned transfer orders dated 30.05.2019 and 12.06.2019 are quashed and set aside.
- (C) The Applicant be reposted on the post he was transferred from within two weeks from today.
- (D) No order as to costs.

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

Mumbai

Date : 26.07.2019

Dictation taken by :

S.K. Wamanse.

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