

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.579 OF 2017

DISTRICT : MUMBAI

Shri Sanjay Dadaji Pagare.)
Age : 49 Yrs., Occu.: Forester, Mangroves)
Forest Range, Western Mumbai, Borivali and)
Residing at Sanjay Gandhi National Park,)
1/4, Staff Quarters, Dam Pada, Borivali (E),)
Mumbai – 400 661.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary, Revenue &)
Forest Department, Mantralaya,)
Mumbai - 400 032.)
2. The Principal.)
Chief Conservator of Forest,)
Mangroves Cell, SRA Building, 2nd Floor,)
Bandra (E), Mumbai – 400 051.)
3. The Divisional Forest Officer.)
Mumbai Mangroves Conservation Unit)
68 B, Valavalkar Bundalow, Kamgar)
Nagar, Near Tilak Nagar Station,)
Kurla (W), Mumbai – 400 024.)
4. The Range Forest Officer.)
Mangroves Forest Cell, Western Mumbai))
Survey No.147, Near Pancham Society,)
Gokhale College Road, Gorai,)
Borivali (W), Mumbai – 400 091.)
5. Mr. Sainath J. Salve.)
Working in the office of Range Forest)

Officer, West Mumbai, Mangroves)
 Conservation Unit, Borivali, Near)
 Pancham Society, Gokhale College Rd.,)
 Gorai, Borivali (W), Mumbai – 400 091.)

6. Mr. R.R. Mansuri.)
 Working in the office of Range Forest)
 Officer, West Mumbai, Mangroves)
 Conservation Unit, Borivali, Near)
 Pancham Society, Gokhale College Rd.,)
 Gorai, Borivali (W), Mumbai 0 400 091.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents 1 to 4.

None for Respondent Nos.5 & 6.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 08.03.2019

JUDGMENT

1. In the present Original Application, the challenge is to the transfer order dated 15.06.2017 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant was posted as Forester, Western Mumbai, Mangroves Cell, Borivali, Mumbai. He had completed only one year and three months on the said post till the date of passing of impugned order by the Respondent No.3 (Divisional Forest Officer, Mangroves Conservation Unit, Mumbai). The Applicant was transferred by order dated 15.06.2017 and posted as Forester, Mankhurd Forest Range, Mangroves Conservation Cell, Central Mumbai and in its place, the Respondent No.5 was posted. The Applicant contends that, while he was serving

at Borivali, he initiated stern action against trespassers as well as encroachers and was discharging his duties efficiently. However, the Respondent No.3 did not like it. Though he was discharging his duties efficiently and faithfully, the Respondent No.3 issued notice dated 20.05.2017 alleging inefficiency and proximity with encroachers and called upon to submit explanation. Abruptly, the Respondent No.3 transferred the Applicant by impugned order dated 15.06.2017. The Applicant contends that, it being mid-term and mid-tenure transfer, it should not be in consonance and strict 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'). However, there is no such compliance of the mandatory provisions of 'Transfer Act 2005'. The impugned transfer order has been issued by Respondent No.3 who allegedly not competent to transfer the Applicant. Besides, it was purportedly approved by Additional Principal Chief Conservator of Forest, who according to the Applicant is not the next higher competent authority, and therefore, the impugned transfer order is not legal. Furthermore, there is no approval of Civil Services Board (CSB), which is one of the mandatory requirements for the transfer of Government servant. On these pleadings, the Applicant contends that the impugned transfer order is malafide and liable to be quashed.

3. The Respondent Nos.3 and 4 have resisted the claim on behalf of Respondents 1 to 4 by filing Affidavit-in-reply (Page Nos.67 to 75 of the Paper Book) and by filing Sur-rejoinder (Page Nos.286 to 294 of the P.B.). Thereafter again, the Respondent No.3 has filed short Affidavit (Page Nos.364 & 365 of the P.B.). The Respondents denied that the impugned order suffers from any illegality or malice. The foremost contention raised by the Respondents is that the impugned order cannot be termed as a transfer in the eye of law, but it is internal shifting within Mumbai Mangroves Cell, as the Applicant was simply

shifted from Borivali Unit to Mankhurd Unit. Therefore, the question of requirement of compliance of provisions of 'Transfer Act 2005' does not survive. In alternative, the Respondents contend that the Respondent No.3 is competent authority for the transfers as notified in the Official Gazette, and therefore, he was competent to transfer the Applicant. Besides, the transfer was approved by next higher authority i.e. Additional Principal Chief Conservator of Forest, and therefore, even treating the order dated 15.06.2017 as transfer order, it is in compliance of the provisions of 'Transfer Act 2005'. The Respondents denied that the Applicant was discharging his duties faithfully and efficiently. In this behalf, the Respondents contend that the Applicant was not sincere to take action against trespassers and encroachers and on the contrary had developed proximity with the encroachers and was trying to protect their possession. Therefore, show cause notice was issued to the Applicant and it is on this background, he was shifted to Mankhurd. With these pleadings, the Respondents prayed to dismiss the application.

4. Shri K.R. Jagdale, learned Advocate for the Applicant reiterated his contention as pleaded in the application and sought to place reliance on various Judgments in this behalf.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer for the Respondents also reiterated the contentions raised in the reply and contends that the impugned order is not transfer but internal change and in alternative, even if it is held as a transfer, there is compliance of the provisions of 'Transfer Act 2005'.

6. Having gone through the pleadings and on hearing the learned Counsels, the following points arise for the determination :

- (i) Whether order dated 15.06.2017 is internal shifting or it amounts to transfer within the meaning of 'Transfer Act 2005'.

- (ii) If the impugned order is held transfer within the 'Transfer Act 2005', then is it in compliance of the mandatory provisions of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'.

7. At this juncture, it would be apposite to refer the decisions relied upon by the learned Advocate for the Applicant in support of his submission.

(A) The reliance has been placed on the decision rendered by Hon'ble Chairman in ***O.A.No.900/2018 (Prashant S. Pisal Vs. The Principal Secretary, Revenue & Forest Department) decided on 20.12.2018.*** It was the case of transfer of Assistant District Supply Officer, Pune to the post of Tahasildar, Haveli, Pune and the defence of no change of headquarter and internal change within the headquarter was raised. The O.A. was allowed. The Hon'ble Chairman having taken review of various Judgments of Hon'ble Supreme Court and Hon'ble High Court summarized the position of law as follows :

“(a) Before commencement of ROT Act, 2005, matters of transfer were governed exercise of power and prerogative as regards the transfer of Government servant.

(b) The decision as regards Transfer used to be based on good and fair sense of administration as guided and interpreted by judicial pronouncement and was a matter purely governed by executive powers and administrative discretion.

(c) Even after commencement of ROT Act, 2005, even now the power of transfer and its finality continues to be a matter of absolute executive business. However, now the executive business is no more left sheerly to the absolute executive discretion or unquestionable prerogative.

(d) Though final decision continues to be a matter of absolute executive power, however, the procedure, path or locus of reaching that decision is prescribed by provisions of law, which are construed by this Tribunal as well by Hon'ble High Court to be mandatory.

(e) This Tribunal as well as Hon'ble High Court have come across patent violation of the mandatory provisions, and therefore, after taking into consideration the adverse observations of Tribunal and Hon'ble High Court it had become necessary for the Government to reiterate and re-proclaim the

procedure and manner in which the decision to transfers should be reached through Government Circulars dated 31.1.2014, 19.1.2015 and 24.9.2015.

(f) There are divergent views on the point namely, whether transfer at one and same place is open for challenge.

(g) The circulars do in unequivocal terms and in language, pronounce the mandatory dictum that the provisions of ROT Act, 2005 must be meticulously and rigorously followed.”

In ***Prashant Pisal's*** case (cited supra), there was no recommendation of CSB to the transfer of the Applicant therein, but his transfer was effected due to endorsement /change by Hon'ble Minister. However, the Hon'ble Chairman held that the transfer of the Applicant therein was without recording any reasons and was in violation of Section 4(4(ii) and 4(5) of the 'Transfer Act 2005'.

(B) In ***O.A.832/2018 (Ravindra Kadampatil Vs. State of Maharashtra) decided by this Tribunal on 17.10.2018***, the challenge was to the transfer of Deputy Commissioner (Establishment), Office of Social Welfare and Special Assistance Department, Pune to the post of Deputy Commissioner (Planning), Office of Social Welfare and Special Assistance Department, Pune. The transfer was approved by CSB as well as by Hon'ble Chief Minister. However, this Tribunal held that the reasons to treat it as a special case, was not recorded and on that count, the transfer order has been quashed. The contention that the transfer is the internal shifting in the same Office has been turned down.

(C) In ***O.A.668/2017 (Ujwala Gavate Vs. State of Maharashtra) decided by Hon'ble Chairman on 20.12.2017***, the challenge was to the mid-term transfer of Deputy Engineer in Public Works, Medical Sub-Division, Pune to the post of Deputy Engineer, Sub-Division No.1 of P.W.D, Pune wherein one of the point of consideration was as follows :

“Thus, the impugned order by which Applicant’s place/office of working is changed though the term of employment continues to be same, amount to be an order of transfer within the meaning and scope of term ‘Transfer’ as defined in Section 2(i) of ‘Transfer Act 2005’.”

The Hon’ble Chairman held that the impugned order amounts to transfer and O.A. was allowed. The Hon’ble Chairman at Page No.29 of the Judgment observed as follows:

“(e) It is seen from various judgments of this Tribunal that this Tribunal has taken a consistent view in keeping with the definition of the term “Transfer” quotation in foregoing clause (a) and it would not be necessary to refer to all such judgments. It would be useful to deal the question as to how the term “Transfer” is ultimately interpreted by Hon’ble High Court through binding precedent.

Summary of the preposition can be picked up from the judgment in case of Writ Petition Nos.7554, 7563, 7560 of 2013, Pradip B. Lonandkar, Vinod P. Sawant and Jivajirao J. Jadhav Vs. State of Maharashtra & Ors., decided on 22nd November, 2013 by Hon’ble High Court of Bombay in the common judgment.

(f) The ratio of the dictum as laid down in the case of Pradip B. Lonandkar’s case (supra) as regards the definition of the term “Transfer” as defined in Section 2(i) of ROT Act, 2005, can be drawn as follows :-

“Transfer as defined in Section 2(i) of ROT Act, 2005 would mean and include not only the transfer from one place or town to the other but also from one office to other and one assignment to the other. However, plain construction thereof ought be assigned and applicability of the act would depend on totality of the facts and consideration and on the basis of the texts as to whether the subject matter “Transfer” falls within mischief which is sought to be remediate by the ROT Act, 2005.”

(h) In view of the foregoing discussions now as to whether the change of posting as done in present case cannot be ruled and / or dealt within isolation, and shall have to be decided as final conclusion depending upon the findings on to other questions framed by this Tribunal.

(D) In ***Writ Petition No.546/2012 (Kishor Mhaske Vs. Maharashtra OBC Finance and Development Corporation)*** decided by Hon’ble High

Court on 7th March, 2013, the impugned order of transfer was quashed on the ground of absence of recording of reasons as per the mandatory requirement of Section 4(5) of 'Transfer Act 2005'. The Hon'ble High Court held that, a meager expression such as "administrative ground" cannot be a compliance of statutory requirements.

(E) In **O.A.614/2017 (Prasad Sawakhande Vs. State of Maharashtra) decided by Hon'ble Chairman on 27.03.2018**, the impugned transfer order was quashed on the ground of absence of recommendation of CSB as mandated by Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian & Ors. Vs. Union of India)**. In Para No.51 of the Judgment, the Hon'ble Chairman concluded as under :

"51. In the result, questions framed by this Tribunal have to be answered in favour of the applicant holding that :-

(a)& (b) The transfer is vitiated on account of failure to the Government to consult the Civil Services Board on facts there did not exists any emergency for not waiting to refer the matter to Civil Services Board.

(c), (d) & (e) Special reasons and exceptional circumstances based on substantiated complaint are not recorded."

(F) In **O.A.770/2017 (Sunil Saundane Vs. State of Maharashtra) decided on 09.11.2017**, the Hon'ble Chairman again emphasized and highlighted necessity of compliance of mandatory requirement of the approval of CSB and in absence of recommendation of CSB, set aside the impugned order. In Para Nos.7 and 8, the Hon'ble Chairman held as follows :

"7. Government's decision to transfer the applicant is on a very face of it and openly in defiance of judgment of Hon'ble Supreme Court in case of **Writ Petitions (C) No.82 of 2011 with No.234 of 2011, T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013 reported in (2013) 15 SCC 732.** Moreover for

observance of the said judgment, Government had to issue circular dated 31.01.2014 which is placed on record at Exhibit-R, page 75.

8. Thus, present case is a citation of patent / blatant disobedience and disregard of binding precedent laid down by Hon'ble Supreme Court in case of **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013** by a democratic Government under the Constitution. What has shocked further is that the officers of the rank of Secretary have failed in their constitutional obligation to bring to the illegality committed by the Government to the notice of the Government to show that the stance of the Government amounts to open disobedience of the judgment of Hon'ble Supreme Court in the case of **T.S.R. Subramanian and Others Versus Union of India and Others, decided on October 31, 2013** apart from it being in grave departure of policy declared by the State Government."

(G) In ***O.A.768/2012 (Gopal Chavan Vs. Chief Conservator of Forest) decided by Hon'ble Vice-Chairman on 25.04.2013***, there was a transfer of Forest Guard from Mangroves, Mulund to Mumbai Sanjay Gandhi National Park, Borivali, Mumbai. The transfer was found not in compliance of Section 4(5) of 'Transfer Act 2005' and accordingly quashed.

(H) In ***O.A.780/2014 (Dr. Dilip A. Deshmukh Vs. State of Maharashtra) decided on 10.10.2014***, the challenge was to the transfer of Applicant from the post of Deputy Chief Executive Officer (General), Z.P, Thane to the post of Deputy Chief Executive Officer, Water Supply and Sanitation, Z.P, Thane. In defence, the contention raised that, it does not amount to transfer but internal change in Z.P. itself and there is no change of headquarter. However, the contention was turned down and O.A. was allowed.

(I) In ***O.A.426/2013 (Anand S. Dabhane Vs. Chief Conservator of Forest, Thane)***, the Applicant had challenged the impugned transfer order whereby he was transferred from Forester, Kolad, Tal. : Roha, District : Raigad to Forester, Burli Mandal, Tal.: Murud, District : Raigad. The Tribunal held that, it being mid-tenure transfer, prior approval of

immediate superior transferring authority is illegal, as contemplated under Section 5(5) of 'Transfer Act 2005' and accordingly, quashed the impugned order.

(J) Lastly, a reference was also made to the decision of Hon'ble High Court in ***Writ Petition No.5652/2009 (Prakash Waghmare Vs. State of Maharashtra) decided on 16.10.2009*** wherein transfer order was set aside on the ground of absence of recording of reasons, as contemplated under Section 4(5) of 'Transfer Act 2005'.

8. Per contra, the learned P.O. referred to the Judgment of Hon'ble High Court in ***Writ Petition No.8898/2010 (Rajendra Kalal Vs. State of Maharashtra) decided on 30.11.2010*** wherein the Applicant had challenged his transfer in the same office at Nashik. On account of complaint, the Applicant was shifted from one section to another section in the very same office of Divisional Social Welfare. The Hon'ble High Court held that, such internal transfer cannot be termed as transfer, so as to raise challenge and Tribunal should be slow in interfering such orders. The Hon'ble High Court accordingly quashed the Judgment of Tribunal holding that it does not cause any prejudice or inconvenience to the Applicant and his family members.

9. The learned P.O. also referred to the Judgment given by this Tribunal in ***O.A.396/2015 decided along with O.A.397/2015 (Avinash P. Bhanushali Vs. State of Maharashtra)*** and ***(Prakash M. Patkar Vs. State of Maharashtra) decided on 03.08.2015***. I have gone through the Judgment, which is of little assistance to the Applicant in the present case. In that case, there was transfer of Sectional Engineers in general transfer from Palghar to Gadchiroli and the issue involved was about implementation of G.R. dated 11.07.2000, which stipulates for giving choice posting to the Government servant who had worked in Tribal Areas. In that case, the Applicants' service in Thane Circle was totaling to 25

years and issue of clubbing of tenure within Circle was involved. It is in that context, the challenge to the impugned order was rejected. In this Judgment, the reference was made to **Rajendra Kalal** and **Pradip Lonandkar's** Judgment (cited supra) and perhaps for that purpose only, this Judgment has been referred.

10. The learned P.O. further referred to the decision of this Tribunal in **O.A.1029/2017 (Dilip Kulkarni Vs. State of Maharashtra) decided on 4th April, 2018**. In the said matter, there was a transfer of Police Inspector within Police Commissionerate, Pune. The transfer was found in compliance with requirement of law, having approved by PEB-2 and was in public interest. As such, on any fact situation, the O.A. was dismissed.

11. It would be also useful to refer the Judgment of Hon'ble Bombay High Court in **Writ Petition No.7554/2013 (Pradip B. Lonandkar Vs. State of Maharashtra) dated 22nd November, 2013** wherein the issue involved about interpretation of word "transfer" has defined in 'Transfer Act 2005'. The Hon'ble High Court in Para No.18 and 22 observed as follows :

"18. One cannot say that every order entrusting duties other than one which are presently performed or other than a job presently held or seat to which the presently Government servant is assigned or posted would amount to transfer necessarily. Everything would depend upon the facts and circumstances in each case. No general rule can be laid down. True it is that the Division Bench of this Court in one of the orders expressed an opinion that such definition of the word 'transfer' would present difficulty. In the ultimate analysis, it is for the Court to construe an order in individual case and if it amounts to transfer, then, to apply the provisions of the Transfer Act, 2005 so as to ensure that its object and purpose is fulfilled.

22. To my mind, therefore, the label attached or nomenclature cannot be decisive or conclusive. The Transfer Act, 2005 defines the term 'transfer' in the manner referred to above essentially because an innocuous exercise in a given case and being termed as shifting an officer from one office to another, change in assignment or job to be performed, would well amount to a transfer and may require interference if some has been done arbitrarily, malafide and frequently."

12. Thus, what transpires from the Judgment of Hon'ble High Court in **Pradip Lonandkar's** case that, if the transfer is innocuous, no prejudice is caused to the person transferred and his status, pay, perquisites are not disturbed a transfer in city may not amount to transfer within the meaning of 'Transfer Act 2005'. As such, guided by the observations made by Hon'ble High Court in the facts of present case, the contention of the learned P.O. that it is mere internal shifting has to be repelled for the reasons to follow.

13. Now, the foremost question comes whether the impugned transfer order can be termed transfer within the meaning of Section 2(i) of 'Transfer Act 2005'. According to said provision, the transfer means posting of a Government servant from one post, office or department to another post, office or department. Admittedly, at the time of passing of impugned order, the Applicant was serving as Forester, Western Mumbai Mangroves, Borivali, Mumbai and had not completed his normal tenure. By impugned order, he has been transferred as Forester, Mankhurd Forest Range, Mangroves Conservation Cell, Central Mumbai. He has categorically stated that the distance between Borivali (earlier area of jurisdiction/work) is near about 35 kms. from the place where he is now posted i.e. Mankhurd Forest Range, Mangroves Conservation Cell, Central Mumbai. He has also pointed out that the RFOs for both these areas are different. On this ground, the learned Advocate for the Applicant vehemently urged that the impugned order is not mere internal shifting, but it amounts to transfer as the post on which he is transferred is different in terms of jurisdiction of area as well as the distance between these two places. In view of transfer, he is required to work under different RFO. He is staying at Borivali and to attend new place of posting at Mankhurd, he is required to travel around 35 kms., which is causing much hardship and inconvenience to him and his family.

14. Whereas, the learned P.O. sought to contend that the Government of Maharashtra by G.R. dated 23rd February, 2012 created separate Mangroves Cell

for the conservation of Mangroves and its Head Office is Mumbai. According to him, even after impugned transfer, the Head Office of the Applicant is Mangroves Cell, Mumbai, and therefore, the impugned order is a internal shifting and not transfer. In this behalf, the perusal of G.R. dated 23.01.2012 reveals that the Government has formed Mangroves Cell for the conservation and protection of Mangroves and the office was Chief Conservator of Forest, Chandrapur was shifted to Mumbai. It seems that, as majority of Mangroves are in coastal line of Mumbai and Thane, the said decision was taken to have headquarter at Mumbai. True, as per G.R. dated 23.02.2012, the Head Office of Mangroves Cell will be Mumbai. The financial as well as administrative powers were conferred upon Chief Conservator of Forest, Mangroves. Thus, the only because the Head Office of Mangroves Cell is Mumbai, that does not mean that the transfer from Western Mumbai Mangroves Cell, Borivali to Mankhurd Forest Range, Mangroves Conservation, Central Mumbai does not amount to transfer. These two units or sub-divisions are separate. If the interpretation sought to be made by the learned P.O. is accepted, then it would result in anomalous position, as all the employees working in Mangroves Cell would be shifted from one place to another within the jurisdiction of metropolitan city Mumbai for number of times on the ground of internal shifting and such employees will left in lurch without remedy. In my considered opinion, the legislature never intends to have such anomalous position, and therefore, transfer is specifically defined as posting of Government servant from one post, office or department to another post, office or department in 'Transfer Act 2005'. The very object of 'Transfer Act 2005' is to regulate the tenure of the Government servant at particular place and transfer should be made in transparent manner within the framework of 'Transfer Act 2005'.

15. By impugned transfer order, the Applicant has been transferred as Forester from Western Mumbai Mangroves Cell, Borivali to Mankhurd Forest Range, Mangroves Conservation Cell, Central Mumbai. Admittedly, Borivali

Range and Mankhurd Range are two different Ranges controlled by independent Range Forest Officers. In other words, in view of transfer, now the Applicant is required to work under different RFOs. As per Google Map, the distance between Borivali and Mankhurd is near about 35 kms. This being the position, it cannot be said that, by impugned order, no inconvenience or hardship is caused to the Applicant. Only because the Head Office of entire Mangroves Conservation Cell is in Mumbai that *ipso-facto* will not render the impugned order mere innocuous internal shifting in the teeth of provisions of 'Transfer Act 2005'. The Head Office, Mumbai is for administrative purposes and it does not denude the provisions of 'Transfer Act 2005', if the impugned order has trappings of transfer. In my opinion, in the present facts and circumstances, the impugned order cannot be termed mere internal shifting.

16. Consequently, the question comes whether there is compliance of requirement of Section 4(4(ii) and 4(5) of 'Transfer Act 2005'. True, as per alternative stand taken by the learned P.O, the Respondent No.3 seems notified as competent authority, but there is no proper compliance of the 'Transfer Act 2005' as well as the guidelines of Hon'ble Supreme Court in T.S.R. Subramanian's case (cited supra).

17. The learned P.O. has invited my attention to G.R. dated 23rd June, 2014 (Page 313 of P.B.) issued by Revenue & Forest Department, Government of Maharashtra whereby the competent authorities were declared for implementation of provisions of 'Transfer Act 2005'. As per the said G.R, the competent authorities were notified as per the requirement of Section 7 of 'Transfer Act 2005', In terms of G.R. dated 23.06.2014, the Divisional Forest Officer has been notified as competent authority for transfer of Group 'C' and 'D' employees for general transfer under Section 3 of 'Transfer Act 2005'. The Respondent No.3 is Divisional Forest officer and under his signature, the transfer order is issued. However, in the present case, the impugned transfer order being

mid-term and mid-tenure transfer, there was requirement of approval of next higher authority. The learned P.O. tried to contend that higher authority of Respondent No.3 is Additional Principal Chief Conservator of Forest, Mangroves Cell, Mumbai and the said authority has approved the proposal.

18. In this behalf, the perusal of proposal (Page 232 of P.B.) moved by Respondent No.3 addressed to Additional Principal Chief Conservator of Forest, Mangroves Cell, Mumbai reveals that, on account of alleged misconduct of the Applicant, he proposed for the transfer of Applicant to Mankhurd. There is cryptic endorsement on the said letter "मान्य आहे" and nothing more. No date or designation is mentioned below the signature. Later on, the Respondent No.3 has filed Affidavit which is at Page Nos.363 to 365 of the P.B. stating that the proposal of transfer has been approved by additional Principal Chief Conservator of Forest, Mangroves Cell, Mumbai and he is the head of Mangroves Cell.

19. At this juncture, apposite to mention about non-compliance of instructions contained in Circular dated 11.02.2015 issued by G.A.D, State of Maharashtra. Though the Respondents were harping that because of complaint and alleged misconduct of the Applicant, the transfer was necessitated, there is contravention of specific instructions contained in Circular dated 11.02.2015.

Clause No.8 of Circular is relevant which is as follows :

“एखादया प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी/ कर्मचा-याच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधित अधिकारी / कर्मचा-याची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधित अधिकारी / कर्मचा-यांच्या तक्रारी संबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारी मधील गांभीर्य विचारात घेवून, संबंधित अधिकारी / कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे या बाबत बदली प्राधिका-याने ठोस निर्णय घ्यावा. संबंधित अधिकारी / कर्मचा-याच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधित अधिकारी / कर्मचा-याला त्याच पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याबाबत बदली प्राधिका-याने निर्णय घ्यावा. मात्र संबंधित अधिकारी / कर्मचा-याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिका-याचे मत झाल्यास त्या बाबतची कारणमीमांसा नमूद करून बदली प्राधिका-या संबंधित अधिकारी / कर्मचा-याची बदली त्याच्या लगतच्या वरिष्ठ प्राधिका-याकडे प्रस्तावित करू शकतो. लगतच्या वरिष्ठ प्राधिका-याकडे असा प्रस्ताव प्राप्त झाल्यास बदली प्राधिका-याने नमूद केलेली कारणे योग्य आहेत किंवा कसे याची छाननी करून स्वतःचे मत स्पष्ट करून बदली प्राधिका-याच्या प्रस्तावाला मान्यता द्यावी किंवा बदली प्राधिका-याचा प्रस्ताव फेटाळून लावण्यात यावा. ज्या प्रकरणात बदली प्राधिका-याच्या प्रस्तावानुसार गैरवर्तणुकीच्या अनुषंगाने शासकीय अधिकारी / कर्मचारी यांची बदली करण्यात येते अशा प्रकरणात संबंधित अधिकारी / कर्मचारी यांची बदली केल्यानंतर त्याच्या विरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी.”

20. Thus, while approving the transfer, the higher competent authority is also required to assess the situation objectively and to record his satisfaction as to whether the transfer is necessitated in the fact situation. However, in the present case, no such reason much less objective decision is recorded. The concerned authority simply put two words “मान्य आहे” even without putting the date and designation below signature let alone the reasons. As such, obviously, it does not exhibit application of mind and the proposal was mechanically allowed without considering whether it meets the requirement of Section 4(5) of ‘Transfer Act 2005’ and Circular dated 11.02.2015.

21. Furthermore, there is no approval of CSB which is mandatory requirement of law. The learned P.O. fairly stated that there is no approval of CSB though he tried to maintain that impugned order being internal shifting, there is no requirement to comply the provisions of ‘Transfer Act 2005’. I have already concluded that the impugned order cannot be termed as internal shifting within the office, but it is transfer in all respect within the meaning of definition of ‘Transfer Act 2005’. Needless to mention that the consideration of proposal for transfer by CSB is mandatory in view of the guidelines in **T.S.R. Subramanian’s** case and policy of Government of Maharashtra as adopted through G.R. dated 31.01.2014. However, in the present case, there is complete disregard of binding precedent laid down by Hon’ble Supreme Court in **T.S.R. Subramanian’s** case as well as instructions contained in G.R. dated 31.01.2014.

22. Significant to note that, as a matter of law and compliance of provisions of ‘Transfer Act 2005’ for mid-term and mid-tenure transfer, the approval of higher authority i.e. immediately preceding competent transferring authority mentioned in the table of Section 6 is required. This being the position of law, the higher competent transferring authority would be Minister In-charge and not higher

authority of Respondent No.3 in the hierarchy of the office. Section 4(5) and Section 6 of 'Transfer Act 2005' are as follows :

“4(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of immediately superior Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.

4(6) The Government servants specified in column (1) of the table hereunder may be transferred by the Transferring Authority specified against such Government servants in column (2) of the table.

Groups of Government Servants (1)	Competent Transferring Authority (2)
(a) Officers of All India Services, all Officers of State Services in Group “A” having pay-scale of Rs.10,650-15,850 and above.	Chief Minister
(b) All Officers of State Services in Group “A” having pay-scales less than Rs.10,650-15,850 and all Officers in Group “B”.	Minister-in-charge in consultation with Secretaries of the concerned Departments.
(c) All employees in Group “C”.	Heads of Departments.
(d) All employees in Group “D”.	Regional Heads of Departments.

24. As such, in view of above provisions for mid-term and mid-tenure transfer, prior permission of immediately preceding competent transferring authority, which would be Minister In-charge is required and in the present case, admittedly, it is not done so. This aspect has been also dealt with by this Tribunal in O.A.768/2012 (Gopinath Chavan Vs. Chief Conservator of Forest) decided by Hon'ble Chairman on 25.04.2013 in the matter of transfer of Forest Guard from Mangroves, Mulund to Sanjay Gandhi National Park, Borivali. Para No.5 of the Judgment is material which is as follows :

“I have carefully perused the material on record and also considered the arguments on behalf of the Applicant and the Respondents. It is an admitted fact that the Applicant has been transferred before he could complete 3 years as Forest Guard, Mangroves, Airoli. He has not completed two tenures of three years each as envisaged in first proviso to Section 3(1) of the Transfer Act. In the circumstances, it was incumbent upon the Respondents to follow the procedure prescribed in Section 4(5) of the Transfer Act for mid-tenure transfer. As per table of Section 6, the immediately superior Transferring Authority for Group ‘C’ employees is Hon. Minister. There is nothing on record to suggest that approval was obtained from Hon. Minister. Approval from Chief Conservator of Forests does not fulfill the requirement of Section 4(5) of the Transfer Act. On this count itself the transfer order dated 31.5.2012 is bad in law.”

25. In view of aforesaid discussion, I have no hesitation to sum-up that the impugned order suffers from material illegality and it does not stand in law on the touch-stone of requirement of Section 4(4)(ii) and 4(5) of ‘Transfer Act 2005’. Consequently, the impugned order deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 15.06.2017 is hereby quashed and set aside.
- (C) The Respondent Nos.1 to 4 are directed to reinstate the Applicant in his original place within two weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 08.03.2019

Dictation taken by :

S.K. Wamanse.