

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.589 OF 2019  
AND  
ORIGINAL APPLICATION NO.746 OF 2019**

**DISTRICT : THANE**

Shri Rakesh B. Sahu. )  
Working as Round Forester, Range Forest )  
Office, MMCU Central Mangrove Cell, )  
Mumbai and R/o. 901, B-Wing, Mangeshi )  
Shrushti, Near Vasant Park, Kalyan (W), )  
District : Thane. )...**Applicant in both OAs.**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Revenue & Forest Department )  
[Forest], Mantralaya, Mumbai – 32. )
2. The Principal Chief Conservator of )  
Forest [Forest Force], M.S, Nagpur, )  
Having office at Vanbhavan, )  
Ramgiri Road, Nagpur. )...**Respondents in both  
OAs.**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Smt. S.P. Manchekar, Presenting Officer for Respondents.**

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

**DATE : 16.08.2019**

**JUDGMENT**

1. These two Original Applications being arising from common facts are decided by the common order.
2. In nutshell, the facts giving rise to these applications are as follows :-

Both these O.As are filed by the Applicant viz. Shri Rakesh B. Sahu, who was serving on the post of Forester and promoted to the post of Range Forest Officer (RFO) by order dated 11.12.2018 issued by the Government. The Applicant was promoted temporarily subject to decision of Criminal Case pending against him in the Court of Special Judge, Thane. In pursuance of promotion order, the Respondent No.2 viz. Principal Chief Conservator of Forest, Nagpur had issued posting order dated 21.12.2018 thereby posting the Applicant as R.F.O, Panvel Forest Division, Alibaug. However, the said order was stayed by the Government by order dated 29.12.2018. For the period of near about six months, no further order was issued in respect of the posting of the Applicant. Therefore, on 12.06.2019, the Applicant made representation to Respondent No.2 pointing out that for six months, he is kept without posting despite promotion to the post of RFO, and therefore, requested for issuance of posting order and to maintain his seniority. However, no step was taken for issuance of further posting order. It is on this background, the Applicant has first filed O.A.No.589/2019 for direction to Respondent to implement his posting order dated 21.12.2018 whereby he has been posted on the post of RFO, Panvel Forest Division, Alibaug contending that he has been deprived of working on the promotional post despite the posting at Panvel and keeping his posting in abeyance for no valid reasons.

3. During the pendency of O.A.589/2019, the Respondent No.2 had issued revised posting order dated 11.07.2019 whereby he is

posted at RFO, Sale Depot, Pali, Jawahar Forest Division, Thane. It is on this background and subsequent development, the Applicant has filed 2<sup>nd</sup> O.A. bearing No.746/2019 to set aside the posting order dated 11.07.2019 and to restore his earlier posting vide order dated 21.12.2018 for posting at Panvel.

4. The Applicant contends that once the Government has taken conscious decision of posting at Panvel, there was no reason much less justifiable to change the posting from Panvel to Pali. He further contends that the charge of RFO, Panvel is with Mr. Sonawane and only to protect him, his posting is changed. He also raised the ground of discrimination contending that his colleagues viz. S/Shri Ghuge, Patil and Shinde were given posting on executive post in similar situation. With these pleadings, the Applicant contends that the change of his posting from Panvel to Pali is arbitrary and there exists no ground to modify his posting order. The Applicant, therefore, prayed to set aside the posting order dated 11.07.2019 and to direct the Respondents to post him at Panvel in terms of earlier posting order dated 21.12.2018.

5. The Respondents resisted the application raising common ground contending that the change of posting was necessitated in view of letter of Deputy Conservator of forest, Alibaug dated 26.12.2018. It is not in dispute that by order dated 11.12.2018, the Applicant was promoted from the post of Forester to the post of RFO and by order dated 21.12.2018 issued by Respondent No.2, he was posted at Panvel. It is also not in dispute that subsequently, the Government by order dated 29.12.2018 stayed the posting and later by order dated 11.07.2019, the Applicant was given posting at Pali. The Respondents sought to justify the modification of posting order from Panvel to Pali on the ground that the Applicant's service record is questionable. The Deputy Conservator of Forest by his letter dated 26.12.2018 requested Respondent No.2 – Principal Chief Conservator

of Forest, Nagpur that the Applicant had earlier already worked as Forester in Panvel Sub-Division and while he was working in Thane Division, an offence under 7, 12, 13(1)(D) read with 13(2) of Prevention of Corruption Act, 1988 was registered against him and co-accused Mahadev Natha Shingade, Forester on the ground of demand of gratification and Criminal Case is subjudice. The Deputy Conservator of Forest (DCF) requested Respondent No.2 that Panvel Sub-Division is very sensitive, and therefore, the posting of the Applicant who is facing criminal charge under the provisions of Prevention of Corruption Act would jeopardize the administrative work. He, therefore, requested to post upright Officer so as to take care of the removal of encroachment and to maintain biodiversity as well as ecological balance in the forest area. On receipt of letter of DCF, the matter was again placed before Civil Services Board (CSB) and CSB unanimously recommended the posting of Applicant at Sale Depot, Pali, Jawahar, Thane. The recommendation of CSB has been approved by the Hon'ble Minister. Accordingly, by order dated 11.07.2019, the Applicant is posted as RFO, Sale Depot, Pali, Jawahar, Thane on the point of good governance in the public interest. With these pleadings, the Respondents prayed to dismiss the O.A.

6. Shri A.V. Bandiwadekar, learned Advocate for the Applicant vehemently urged that earlier, the Government has taken conscious decision to promote the Applicant to the post of RFO and the Respondent No.2 accordingly posted him at Panvel knowing well that the Applicant was subjected to departmental enquiry (DE) and Criminal Case under Prevention of Corruption Act is subjudice against him. According to him, once such conscious decision was taken, there was no reason to keep the matter in abeyance for six months and to modify his posting from Panvel to Pali. He submits that one Mr. Sonawane is holding the charge of RFO, Panvel, and therefore, to continue his charge for longer period and to protect the

interest of Shri Sonawane, the Government had stayed the posting of the Applicant, and ultimately, changed his posting from Panvel to Pali. He has also raised the ground of discrimination contending that the Applicant's colleagues S/Shri Ghuge, Patil and Shinde were given convenient posting but the Applicant is subjected to discrimination though all are similarly situated persons. He also sought to question the approval given by CSB in circulation.

7. Per contra, Smt. S.P. Manchekar, learned Chief Presenting Officer retorted that the Applicant cannot insist for posting at Panvel as of right as it exclusively falls within the domain of executive. She has further pointed out that after issuance of order of Applicant's posting at Pune, the DCF, Panvel who is controlling authority of the Division confidentially wrote letter to Respondent No.2 and pointed out unsuitability of the Applicant as RFO at Panvel in view of his questionable antecedents. She, therefore, submits that the Government thought it appropriate not to post the Applicant at Panvel, and therefore, his posting order was modified and by order dated 11.07.2019, he was posted at Pali on promotional post in view of decision of CSB taken in circulation as well as approved by the Hon'ble Minister.

8. In view of the pleadings and submissions advanced at the Bar, the question posed for consideration is whether the subsequent posting order dated 11.07.2019 whereby the Applicant is posted at Pali, Jawahar Division, Thane suffers from any illegality or arbitrariness and the Applicant has any vested right of posting at Panvel in terms of earlier order dated 21.12.2018.

9. Needless to mention that in order to challenge the administrative action, the Applicant needs to establish that the executive decision is contrary to mandatory provision of law or violative of fundamental rights including being in violation of

guarantee of fairness. The executive orders can be assailed on the ground of being in exercise of gross abuse of power, arbitrary or malafides. The malafides or arbitrariness have to be shown patent. Needless to mention that the Government servant has no vested right to claim particular posting at a particular place, as it falls in exclusive domain of the executive. It is for executive to decide the place of posting of concerned employee at a particular place having regard to his antecedents, service record, performance, suitability vis-à-vis the administrative exigencies. At the same time, the executive also needs to ensure that there shall be maintenance of discipline and probity in the Department.

10. Now, turning to the facts of the present case, indisputably, the Applicant had already worked in Panvel Division on the post of Forester in 2008. It is also not in dispute that while the Applicant was working as Forester at Kurla, Mangrove, the offence vide Criminal Case No.5/2015 for the offence under Section 7, 12, 13(1)(D) read with 13(2) of Prevention of Corruption Act, 1988 was registered against him and co-accused Shri Mahadev Natha Shingade by ACB, Thane on the allegation that they demanded bribe of Rs.22 Lakh to complainant Mr. Mohammed Javedul Hak Abdul Rauf to release seized food (Forest Product). It is also not in dispute that the Applicant was subjected to D.E. in which earlier punishment of withholding of one increment was imposed but later in appeal, it was modified and the punishment of censure was imposed. Besides, admittedly, the Criminal Case for offence under Sections 7, 12, 13(1)(D) read with Section 13 (2) of Prevention of Corruption Act, 1988 is subjudice in Special Court, Thane.

11. It is on the above background, the DCF, Panvel has written a confidential letter to Respondent No.2 stating that the appointment of the Applicant at Panvel would be prejudicial to the administration and

requested to post some other up-right Officer. The text of the said letter of DCF is important, which is as follows :-

“श्री. साहू यांनी वनपाल फिरते पथक, पनवेल या पदावर यापूर्वी पनवेल क्षेत्रांत काम केलेले आहे. ते ठाणे वनविभागात कार्यरत असतांना त्यांना लाचलुचपत विभागाने पकडले असून त्यांना अटक करण्यांत आली होती. व त्यांचेवर सद्यस्थितीत ठाणे येथे लाचलुचपत प्रतिबंधक विभागाकडून न्यायालयीन प्रकरण दाखल आहे. तसेच त्यांची विभागीय चौकशीसुद्धा सुरु आहे.

पनवेल परिक्षेत्र हे अत्यंत संवेदनशिल क्षेत्र आहे. तेथे वारंवार अतिक्रमण व वादाचे प्रसंग उद्भवत असतात. त्या ठिकाणी प्रतिमा मलिन झालेले अधिकारी यांची नेमणूक झालेस अतिक्रमण निर्मूलनाचे व संवर्धनाचे काम ठप्प पडेल. त्यामुळे सदर बाब प्रशासकीय दृष्ट्या शासन हिताचे होणार नाही.

तरी वनपरिक्षेत्र अधिकारी, पनवेल या पदावर तरुण, हुशार सरळसेवा अथवा पदोन्नत वनक्षेत्रपाल यांची पदस्थापना करणेकामी विचार करण्यांत यावा अथवा सध्या ज्या स्थितीत पनवेल परिक्षेत्रातील कामे सुरु आहेत त्या स्थितीत चालू रहावे अशी विनंती करण्यांत येत आहे.”

12. In the first place, it be noted that the DCF, Panvel has no axe to grind against the Applicant. There is absolutely nothing to suggest that he had any other reason to oppose or protest the appointment of the Applicant at Panvel. He has written the letter from the point of administration and in public interest, as Panvel being very sensitive area, the appointment of Applicant at Panvel will not be in public interest. As such, the DCF, Panvel who is controlling authority of Sub-Division brought the said aspect to the notice of Government and in consequence to it, the Government felt that it would be just and appropriate to modify the posting order of the Applicant. Accordingly, the matter was placed before the CSB who unanimously resolved to change the posting of the Applicant. Only because the approval of Members of CSB was taken in circulation, that itself cannot be the ground to doubt to brand the decision illegal. Often, due to paucity of time or non-availability for meeting in person, the approvals are taken in circulation as an administrative exigency. Besides, the recommendation made by CSB has been approved by the Hon'ble Minister.

13. As stated above, the Applicant cannot insist for his posting at particular place as of a right, as it falls exclusively within the domain

of executive. This being the position, it is explicit that because of questionable antecedents of the Applicant, the Government thought it appropriate not to post him at Panvel. In such circumstances, no *malafides* or arbitrariness can be attributed. Indeed, the change of posting appears imperative because of questionable antecedents of the Applicant and pendency of Criminal Case filed under the provisions of Prevention of Corruption Act against him. Besides, admittedly, in D.E, the punishment of censure was imposed.

14. True, the Government was aware about the antecedents of the Applicant while posting him at Panvel and knowing it, he was posted at Panvel. However, subsequently, it was brought to the notice of Government that the posting of the Applicant at Panvel would not be in public interest under the circumstances stated above. It is on this background, the posting order has been modified. It is not uncommon that some time, the decisions are required to be modified if found necessary in public interest and probity in the administration. Suffice to say, the impugned action of change of posting cannot be termed 'malicious' or 'arbitrary'.

15. Shri A.V. Bandiwadekar, learned Advocate for the Applicant was much harping upon the alleged discrimination. He vehemently urged that in case of colleagues of the Applicant viz. S/Shri Ghuge, Patil and Shinde were given executive posting but in case of Applicant, he is subjected to discrimination by giving him non-executive posting at Sale Depot, Pali. In so far as the discrimination is concerned, it is not strait-jacket formula and that itself will not render the action unsustainable. One need to see the facts and circumstances of each case and only because some of the colleagues of the Applicant though facing Criminal Cases were posted on executive post, that itself cannot be raised as a ground of discrimination. When DCF, Panvel strongly protested the Applicant's posting at Panvel, it was rather imperative on the part of executive to keep the Applicant's posting on



hold for some time and then thought it appropriate to modify the same in view of questionable antecedents and service record of the Applicant. Only because some of the employees knowingly or unknowingly given posting on executive post, that itself would not create any right in favour of the Applicant to ask for similar post, as otherwise, it would be amounting to continue the wrong committed earlier. It is always open to the executive to modify the posting, if it is necessitated in public interest and not to perpetuate the wrong.

16. In so far as the grievances of seniority and pay and allowances of the promotional post are concerned, it is already protected in view of specific mention in transfer order dated 11.07.2019. As the Applicant's promotion is on ad-hoc basis, his seniority will be considered only after regular promotion. The directions were also issued to pay him difference of wages in the promotional post w.e.f.21.12.2018. Suffice to say, there is no monetary loss because of modification in the posting order. The submission advanced by the learned Advocate for the Applicant that the Applicant in past has done good work but he is victimized by changing his posting, holds no water, as the decision to change the posting was in public interest and for probity in public life.

17. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned order dated 11.07.2019 is devoid of merit. The Applicant has no vested right for posting at Paniel, and therefore, cannot ask for implementation of order dated 21.12.2018. As such, the Applicant is not entitled to the relief claimed and O.A. deserves to be dismissed. Hence, the following order.

**ORDER**

Both the Original Applications are dismissed with no order as to costs.

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

Mumbai  
Date : 16.08.2019  
Dictation taken by :  
S.K. Wamanse.

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