

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.647 OF 2018**

**DISTRICT : RAIGAD**

Shri Sunil Shivram Kapse )  
Saraswati Nagar, Vrundavan Building, )  
Block No.7, Chichwali Shekin (Khopoli), )  
Post Shilphata (Khopoli), Taluka – Khalapur, )  
District : Raigad – 410203. )...**Applicant**

**Versus**

1. Principal Chief Conservator of Forests. )  
M.S., Van Bhawan, Ramgiri Road, )  
Civil Lines, Nagpur. )
2. Chief Conservator of Forests. )  
Thane Microwave Tower, )  
Bara Bungalow Area, Kopri, )  
Thane - 400 603. )
3. Deputy Conservator of Forests. )  
Alibaug Forest Division, Alibaug, )  
District : Raigad. )....**Respondents**

Shri Aditya Pratap, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for the Respondents.

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

**DATE : 03.01.2019**

**JUDGMENT**

1. The applicant who was posted as Forester (Group 'C' employee) has challenged his transfer order dated 20.06.2018 whereby he was transferred from

Forester, Vajapur, Panvel Forest Range to Forester, Pahi Depot Range, Karjat (W) invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

The applicant is serving as Forester with the Forest Department of Government of Maharashtra who was posted as Forester, Vajapur, Panvel Forest Range, District Alibaug with effect from 03.09.2016. He contends that while working as Forester in the said place, he had noticed some illegal activities in the construction of farmhouse owned by Arpita Farm on reserved forest land. Arpita Farm is owned by film star Salman Khan and his family, and therefore, higher authorities in the forest department were reluctant to initiate the legal process against Arpita Farm. The Applicant as a Forester even issued notice to Arpita Farm for alleged illegal construction on 09.06.2018. However, instead of taking action against Arpita Farm, he has been victimized by the department as he was working as whistleblower and was determined to take action against Arpita Farm. It was not liked by the department, and therefore, by the order dated 20.06.2018, he was transferred as Forester, Pahi Depot Forest Range, Karjat, District Alibaug.

3. The Applicant sought to challenge the impugned order dated 20.06.2018 contending that it is mid-term and mid-tenure transfer without compliance of the mandatory provision contained in section 4(4)(ii) and 4(5) of the Maharashtra Government Servants Regulation and Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Hereinafter referred to as 'Transfer Act 2005'). There are no special reasons recorded in writing for his mid-term and mid-tenure transfer besides there are no prior approval of immediately superior transferring authority. According to him, the transfer has been effected to scuttle probe against the owner of Arpita Farms. In the impugned order dated

20.06.2018, the reason for transfer is shown as administrative ground on vacant post, which is not in conformity of Section 4(4)(ii) and 4(5) of the 'ROTA Act 2005'.

4. Respondent Nos.1 to 3 have resisted the application by filing Affidavit-in-Reply (page 47 of the Paper Book) *inter-alia* denying that the applicant has been victimized by transferring him by impugned order dated 20.06.2018. The respondents denied that the alleged illegal constriction of Arpita Farm was the reason for impugned transfer of the applicant. The respondents further denied that they were protecting the constriction of Arpita Farm. In this behalf, the respondents contend that timely action was taken by the department for removal of unauthorized construction in Arpita Farm. In fact, the conduct and behavior of the applicant was unbecoming of a government servant and there were several complaints against him. He was also reprimanded by the department from time to time by issuing memos but he failed to mend his ways. He was not discharging his duties efficiently as expected from public servants. Accordingly, the Range Forest Officer conducted enquiry and submitted report on 17.5.2018 highlighting the misconduct of the Applicant. The report was placed before the Civil Services Board for consideration. The Civil Services Board discussed the issue and recommended for his transfer to Pahi Depot, Karjat Range. Accordingly, the Competent Authority i.e. Chief Conservator Forest, Thane was pleased to transfer him on administrative ground in view of the complaint against him. As such, there was no *malafide* in the impugned transfer order. There is full compliance in provision of Section 4(4) (ii) and 4(5) of 'Transfer Act, 2005'.

5. On this pleadings, the Respondents contends that there is no substance in the challenge made to the impugned transfer order and the application is liable to be dismissed.

6. The Applicant has also filed the Affidavit-in-Rejoinder reiterating his contention raised in the application. He contends that allegation of misconduct made against him in the reply filed by the Respondents are absolutely false. According to the Applicant, the Competent Authority for such mid-term and mid-tenure transfer is Principal Chief Conservator of Forest and there being no approval of Chief Conservator of Forest, the impugned transfer order is not sustainable in law. He further contends that the principals of natural justice were not followed by the Respondents in respect of alleged misconduct, and therefore, the transfer order is punitive and stigmatic.

7. The Respondents have also filed Affidavit-in-Sur-Rejoinder (Page 127 of Paper Book) reiterating the contention raised in the reply. The Respondents denied that the transfer order is punitive or stigmatic. According to the Respondents, preliminary enquiry was conducted in respect of misconduct of the Applicant and the Civil Services Board has appropriately recommended for his transfer. It has been approved by the next higher authority i.e. Chief Conservator of Forest. Therefore, there is no illegality in transfer order.

8. The learned Advocate for the Advocate vehemently urged that the Applicant has been victimized and because of his persuasion of the investigation against Arpita Farm, he has been maliciously transferred, and therefore, transfer being punitive, it needs to be quashed and set aside. He further emphasized that, in case of alleged misconduct or misbehavior of the Applicant as sought to contend by the Respondents, the Department ought to have proceeded with the D.E. but without doing so, the Applicant has been shunted out unceremoniously. He further highlighted that the present transfer being mid-term and mid-tenure transfer, there is no proper compliance of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'. He referred to certain decisions which will be dealt with a little later.

9. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer strenuously urged that the impugned transfer has nothing to do with the investigation against Arpita Farm and factually, the Applicant was found indulged in various activities of misconduct, and therefore, on the report of Forest Range Officer, the Services Board (CSB) recommended the transfer of the Applicant from the point of administrative exigencies and to maintain discipline in the Department. As it was mid-term and mid-tenure transfer, the same has been recommended by CSB and approved by next higher competent authority which is in consonance with Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'.

10. The Applicant has admittedly completed only one year and ten months tenure, and therefore, undisputedly, the impugned transfer is mid-term as well as mid-tenure within the meaning of provisions of 'ROTA Act 2005'. In view of submissions advanced at the Bar, in the facts and circumstances of the present case, the crux of the matter is whether the Applicant has been victimized to scuttle the probe against Arpita Farm maliciously or his transfer was necessitated on account of administrative exigencies in view of complaints of misbehavior and misconduct against him and the same is in compliance of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'.

11. At this juncture, it would be apposite to highlight the legal aspects to be borne in mind while considering the controversy in the present case.

12. The learned Advocate for the Applicant referred to various decisions which are as follows :

- (a) **2012 (3) ALL MR 845 (S.B. Bhagwat Vs. State of Maharashtra and Ors.)** wherein the Hon'ble Bombay High Court in Para No.8 held as follows :

*"8. Ordinarily, a government servant cannot be transferred unless he has completed the tenure of posting. An employee who has not completed his normal tenure of three years may yet be subjected to*

*transfer, as provided in Subsection (5) of Section 4. Subsection (5) of Section 4 begins with an overriding nonobstante provision, but requires that reasons have to be recorded in writing in a special case for transferring an employee even prior to the completion of tenure. Merely calling a case a special case does not constitute a sufficient reason. The rationale why the legislature has required that reasons be recorded in writing for transferring an employee even before completing his tenure is to bring objectivity and transparency to the process of transfers. Indeed, the matter of transfers has been brought within a regulatory framework laid down in the statute enacted by the State legislature. Section 4(5) permits as an exceptional situation, a transfer to be carried out, notwithstanding anything contained in Section 3 or in Section 4. The exceptional power must be exercised strictly in accordance with Subsection (5) of Section 4. It is a settled position in law that when a statutory power is conferred upon an authority to do a particular thing, that exercise has to be carried out in the manner prescribed by the statute.”*

- (b) **2013 (3) ABR 51 (Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance & Development Corporation & Ors.)**, wherein the Hon’ble Bombay High Court in Para No.5 held as follows :

*“5. The mid-term or pre-mature special transfer has to be strictly according to law, by a reasoned order in writing and after the due and prior approval from the competent transferring authority concerned for effecting such special transfer under the Act. The exercise of exceptional statutory power has to be transparent, reasonable and rational to serve objectives of the Act, as far as possible, in public interest. Mandatory requirements of the provision under Section 4(5) of the Act cannot be ignored or bye-passed. **The exceptional reasons for the special mid-term or pre-mature transfer ought to have been stated in writing. Vague, hazy and meager expression such as “on administrative ground” cannot be a compliance to be considered apt and judicious enough in the face of mandatory statutory requirements.** The impugned order of the transfer in the absence of mention of special and exceptional reasons was passed obviously in breach of the statutory obligations and suffers from the vices as above. Impugned order dated 30-05-2012 would ex facie indicate that merely because of request made by the respondent no 3 Shri Murar, the Petitioner was sought to be transferred pre-maturely to Raigad. It is therefore unsustainable for want of even handedness or fairness to the Petitioner Government employee concerned and we therefore quash and set aside the impugned order of transfer.”*

- (c) Judgment of Hon’ble Bombay High Court in **Writ Petition No.3056/2017 (Sanjay Tulshiram Shinde Vs. Maharashtra State**

**Electricity Transmission Co.),** wherein the Hon'ble Bombay High Court in Para No.16 held as follows :

**“16.** *Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia malafide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”*

(d) **1985 (1) BOM CR 30 (Seshrao N. Umap Vs. State of Maharashtra & Ors.),** wherein it has been held in Para No.5 as follows :

**“5.** *A provision for transfer is intended to check creation of vested interest, nepotism and corruption. It is true that nobody has a right to say that he cannot be transferred without his consent. However, like any other Executive or administrative power, the power of transfer must be exercised in good faith and as per the guide lines laid down in that behalf. The Government is bound by its own policy decision and must enforce it faithfully. While implementing the policy it cannot pick and choose.”*

(e) **2010 (1) ALL MR 176 (Prakash Maruti Waghmare Vs. The State of Maharashtra & Ors.),** wherein it has been held in Para No.7 as follows :

**“7.** *Division Bench of this Court had an occasion to deal with what is exceptional circumstances and what are special circumstances as understood in the concept of service jurisprudence and is discussed in the judgment of V.B.Gadekar versus Maharashtra Housing and Area Development Authority (MHADA) and another, reported in 2008(1) All M R 45. The relevant observations in para no.7 of the judgment read as follows:*

*The expressions “exceptional circumstances” or “special circumstances” have to be readejusdem generis provided that transfer may be made any time in the year in question under the circumstances stated in those provisions. The expressions “exceptional circumstances” has been explained in Black’s Law Dictionary, Sixth Edition, as conditions which*

*are out of the ordinary course of events, unusual or extraordinary circumstances. The Shorter Oxford English Dictionary on historical principles, Vol.1 A Markworthy explains the word "exceptional" of the nature of or forming an exception, unusual. The discretion is vested in the authorities to make an exception of tenure of two and three years wherever special circumstances exist. Special circumstances should be understood in the concept of service jurisprudence and not in its literal sense. Conditions of service make transfer as a necessary incidence of service. The Rules give protection to an employee to stay at the place of posting for three years but this is subject to the exception that, where in the wisdom of the authority concerned, he should, for administrative and exceptional circumstances, even be transferred during that period. We do not see any fault in exercise of such power."*

- (f) Judgment of Hon'ble Bombay High Court in **Writ Petition No.2665/2011 (Pradeepkumar K. Deshbharatar Vs. State of Maharashtra & Ors.)**, wherein it has been held in Para No.21 as follows :

*"21. Perusal of note, as approved by Hon'ble Minister at page 165, again does not show any specific application of mind in so far as the transfer inter se of the petitioner and respondent no.5 is concerned. The specific cases which can be said to be looked into by the Hon'ble Minister are already mentioned by us above. Whether this fact which we have noticed is looked into by Hon'ble Minister or not is not very clear. Section 4 (5) permit competent authority in special cases to transfer the petitioner after recording reasons in writing and that too with prior approval of Hon'ble Minister. Thus, Section 4(5) of the 2005 Act contemplates such premature transfers only in exceptional cases. The facts above show that request made by the President of Zilla Parishad and recommendation of Hon'ble Minister has been the only reason for treating the proposal as special case. This is not contemplated by Section 4(5) of 2005 Act and reasons to be recorded for permitting such transfers must be spelt out and must be found to be in the interest of administration. Those reasons cannot be only the wish or whim of any particular individual and such transfers cannot be ordered as special case to please the particular individual for mere asking. On the contrary, records show that respondent nos.2 and 3 have not recorded any special reasons at all. These respondents are not satisfied with relevance of reasons placed before Hon'ble Minister. Hence, they have developed a new story in an attempt to justify that transfer before this Court. We, therefore, do not find compliance of provisions of Section 4(5) r/w Sec. 6 of 2005 Act in the present matter."*



13. Whereas the learned P.O. referred to the decision of Hon'ble Supreme Court in **(2004) 4 SCC 245 (Union of India & Ors. Vs. Janardhan Debanath & Anr.)**, wherein it has been held in Para No.14 as follows :

*“14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.”*

14. There could no dispute about legal principles propounded in these Judgments cited by the learned Advocate for the Applicant. Needless to mention that the ratio of any decision needs to be understood in the context of facts and little difference may make a lot of difference in the precedential value. The Judgments cited by the learned Advocate for the Applicant are of little assistance to him in the facts and circumstances of present matter. The proposition enunciated in the aforesaid Judgments can be summarized as follows :

“(i) An order of transfer is an administrative order and ordinarily an incidence of service. Therefore, it should not be interfered with except where malafides on the part of authority is proved.

(ii) The transfer which is made on the ground of complaint is punitive in nature. The punitive transfer cannot be effected without an enquiry or substantiation of the same by the competent authority.

(iii) In case of mid-term or mid-tenure transfer, it must be shown that the matter has been examined objectively and the transfer is necessitated on account of administrative exigencies and it should be in compliance of Section 4(4)(ii) and 4(5) of 'ROTA Act 2005'

15. Before turning to the facts of the present case, it would be appropriate to refer Government Circular issued by GAD dated 11.02.2015 pertaining to instructions and guidelines to be followed in the matter of mid-term and mid-tenure transfer. Para No.8 of the Circular is material, which is as follows :

“८. एखाद्या प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचा-यांच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधीत अधिकारी/कर्मचा-याची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधीत अधिकारी/कर्मचा-यांच्या तक्रारीसंबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारीमधील गांभीर्य विचारात घेऊन, संबंधीत अधिकारी/कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे याबाबत बदली प्राधिका-याने ठोस निर्णय घ्यावा. संबंधीत अधिकारी/कर्मचा-यांच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधीत अधिकारी/कर्मचा-याला त्याच पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्यातबाबत बदली प्राधिका-याने निर्णय घ्यावा. मात्र संबंधीत अधिकारी/कर्मचा-याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिका-याचे मत झाल्यास त्याबाबतची कारणामिमांसा नमूद करून बदली प्राधिका-या संबंधीत अधिकारी/कर्मचारी-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 संबंधीत अधिकारी/कर्मचारी यांची बदली केल्यानंतर त्याच्या विरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी.”

16. This takes me to the facts of present case. According to the Applicant, he was pursuing the investigation against Arpita Farm vigorously which was not liked by his higher authorities, as they were trying to protect the illegalities of Arpita Farm, and therefore, being antagonized, the Respondents transferred him out of Vajapur Forest Range so that to shield legal construction made in Arpita Farm. The learned Advocate sought to contend that because of issuance of this show cause notice dated 09.06.2018 (Page 36 of the P.B.), the higher authorities of the Applicant got enraged and it triggered into passing of impugned transfer order. In so far as this aspect of investigation and action against Arpita Farm is concerned, it is significant to note that, much before the issuance of show cause

notice of 09.06.2018 by the Applicant, the CSB in its meeting dated 06.06.2018 has recommended the transfer of the Applicant citing various irregularities and misconduct of the Applicant in performing his duties as Forester. As such, it is difficult to believe that the issuance of show cause notice dated 09.06.2018 was the reason for his transfer.

17. The Applicant's contention that the higher authorities were trying to shield alleged legal construction of Arpita Farm does not borne out from the record. In this behalf, the perusal of correspondence and notices reveals that the Department was taking required action against Arpita Farm. In this respect, the letter dated 06.11.2017 (Page No.99 of the P.B.) reveals that the Applicant in his capacity as Forester had informed RFO that, some illegal construction has been made in stable of Arpita Farm located in Vrundanvan Horticulture Society, Vajapur Forest Range. By this letter, he had sought direction from Forest Range Officer about further course of action. Consequently, the RFO issued notice to Arpita Farm (owner Salim A. Rashid Khan) on 20.11.2017 (Page No.100 of the P.B.) informing him that the construction is in violation of the permission granted to Arpita Farm and he was called upon to remove unauthorized construction within three days as it will be removed by the Department subject to cost to be saddled on Arpita Farm.

18. There is another letter / show cause noticed dated 07.12.2017 (Page No.101 of P.B.) issued by RFO to the Applicant himself directing him that, despite oral instruction to him to remove unauthorized construction of Arpita Farm, he failed to do so and he simply registered FIR, but did not take further steps for the removal of unauthorized construction. Significantly, in the same show cause notice, the RFO stated that the Applicant is not taking timely action in respect of unauthorized construction on forest land and he failed to take timely action against the encroachers despite repeated oral instructions to him. The RFO further observed that the Applicant is not performing and discharging duties

efficiently and he is guilty of insubordination. By this show cause notice, the explanation of the Applicant was sought, as to why departmental action could be initiated. In this connection, it is worth to make reference of letter of RFO addressed to Deputy Conservator of Forest dated 15.12.2017 wherein it is stated that the owner of Arpita Farm had removed their unauthorized construction at their own on 15.12.2017. The said letter is at Page No.103 of P.B. In view of this correspondence and notices, it cannot be said that the Department was not taking action against Arpita Farm and on the contrary, it was being protected by the higher-ups of the Applicant, as he sought to contend. In fact, the show cause notice dated 07.12.2017 shows that the Applicant himself was not discharging his duties efficiently and was indulging in the activities of insubordination. As such, very fulcrum of the Applicant's case that he has been working as a whistleblower, but the Depart was protecting the interest of Arpita Farm is shattered.

19. Now, the next material question comes whether the transfer is punitive or it was necessitated for the administrative exigencies because of alleged misconduct and insubordination of the Applicant. The Respondents' contention that the Applicant was not discharging his duties efficiently, faithfully and the transfer was necessitated because of his misconduct and unrest in the Forest Guards working under the Applicant is sufficiently demonstrated by the Respondents in view of various show cause notices and letters placed on record. In this respect, the Respondents have placed on record Memorandum dated 07.10.2017 issued to the Applicant by RFO, Panvel. As per this Memorandum, the Applicant has failed to prohibit unauthorized construction made in Gut No.5-B-7, 5-B-9, 5-C-6, 5-C-9 of Vijapur Forest Range. The RFO observed that the Applicant has registered only one FIR instead of registering FIR independently against each owner and further failed to stop on-going unauthorized construction. The Applicant was allegedly responsible and negligent while discharging public duties. The Applicant was accordingly called upon to submit

explanation within three days and also directed to remove unauthorized construction immediately.

20. By another Memorandum dated 26.10.2017 (Page 71 of the P.B.), the RFO observed that the Applicant was entrusted with the enquiry in the matter of application of Sau Anita Kakkad, but the Applicant failed to make proper and detailed enquiry and on the contrary, asked RFO to take action at his level which is nothing but insubordination. The text of the matter is as follows :

“उपरोक्त संदर्भीय पत्र क्रं. 9 व 2 अन्वये सौ. अनिता केतन कक्कड यांनी केलेला अर्ज आपलेकडे चौकशी करणेकरीता देण्यात आलेला होता. आपण सदर अर्जाची सखोल चौकशी करून तसेच आपलेकडे असलेल्या अभिलेखावरून चौकशी अहवाल देणे अपेक्षित होते. तथाति आपण संदर्भीय क्रं. 3 अन्वये दिलेल्या रिपोर्टचे अवलोकन करता आपण सदर प्रकाणी चौकशी पंचनाम न करता तसेच कोणत्याही प्रकारचा अभिलेख तपासणी करून केल्याचे दिसून येत नाही. आपण केलेला रिपोर्ट हा मोघम स्वरुपाचा तसेच वस्तुस्थितीला सोडून अवास्तव मुद्द्यांचा उहापोह करून केलेला दिसून येत आहे.

वास्तविक पाहता आपण तक्रारदार यांनी त्यांचे तक्रार अर्जात नमुद केलेल्या मुद्द्यांच्या संदर्भातच चौकशी करून वस्तुस्थिती निहाय अहवाल अभिप्रायासह देणे आवश्यक होते. आपण तसे न करता खालील हस्ताक्षरकर्ते यांनाच आपले स्तरावरून सदर प्रकरणाशी संबंधित असलेल्या व्यक्ति अथवा संस्था यांचेशी पत्र व्यवहार करणे विषय लिहीलेले आहे. आपण सदर केलेला पत्र व्यवहार हा शासकीय कार्यप्रणालीनुसार केल्याचे दिसून येत नाही. तरी आपणास याद्वारे सक्त ताकीद देण्यात येते की, आपलेकडून वरिष्ठ कार्यालयास होणारा कोणताही पत्रव्यवहार हा शासकीय कार्यप्रणालीस अनुसरून व वस्तुस्थितीस धरून असावा. अन्यथा आपले विरुद्ध शिस्तभंगाची कारवाई करणेबाबत वरिष्ठांस कळविणेत येईल याची आपण नोंद घ्यावी. तरी आपण सदर प्रकरणी पुन्हा सखोल चौकशी करून तक्रारदार यांनी तक्रारीत नमुद केलेल्या सर्व मुद्द्यांबाबत वस्तुनिष्ठ अहवाल खुलाशासद सादर करावा व यापुढे अवास्तव पत्र व्यवहार टाळावा.”

21. Again by Memorandum dated 17.11.2017, the RFO observed consistent insubordination of the Applicant and censured him. The text of letter is as follows :

“खालील हस्ताक्षरकर्ते यांचे असे निदर्शनास येते की, श्री. सुनिल एस.कापसे, वनपाल वाजापूर हे त्यांचेकडील कोणत्याही विषयाचा पत्र व्यवहार करताना त्याची प्रत माननिय सहाय्यक वनसंरक्षक पनवेल यांना देत आहेत व सदर प्रत देते वेळी त्या पत्रामध्ये वरिष्ठांस सुचना अथवा आदेशीत केल्याप्रमाणे भाषा वापरली जात आहे. वास्तविक पाहता वनपाल यांनी करावयाचा कोणताही पत्र व्यवहार हा प्रथम संबंधित वनक्षेत्रपाल यांचेकडेच करणे आपेक्षित आहे व तशी कार्यपध्दती आहे. त्याचप्रमाणे माननिय वरिष्ठांस पत्र व्यवहार करावयाचे झाल्यास तो देखिल वनक्षेत्रपाल यांचे मार्फत करणे आपेक्षित आहे. परंतू वनपाल वाजापूर हे असे न करता सर्व पत्र व्यवहाराची प्रत परस्पर वरिष्ठ कार्यालयास सादर करीत असल्याचे त्यांच्या या कार्यालयास केलेल्या पत्र व्यवहारावरून दिसत आहे. ही बाब खचितच योग्य शासकिय कार्यप्रणालीस अनुसरून नाही.

तरी वनपाल वालापूर यांना याद्वारे सुचित करणेत येते की, यापुढे आपलेकडून होणारा पत्र व्यवहार हा या कार्यालयाशी संबंधित असावा व या कार्यालया मार्फत असावा या बाबत आपणांस याद्वारे सक्त ताकीद देणेत येत आहे. आपणाकडून वारंवार अशा प्रकारच्या चुका व कार्यालयीन पध्दती मध्ये अशोभनीय कृत्य होत आहेत व ही बाब खचितच खेद जनक आहे. यामध्ये आपलेकडून भविष्यात

सुधारणा न झाल्यास आपणा विरुद्ध शिस्तभंगाची कारवाई करणेबाबत वरिष्ठांस प्रस्ताव सादर करणेत येईल याची आपण नोंद घ्यावी.”

22. Again, RFO by his Memorandum dated 09.02.2018 observed insubordination of the Applicant and his failure to discharge his duties while processing the application made by permission to cut trees. The RFO again reprimanded the Applicant, the text is as follows :

“उपरोक्त संदर्भिय १ अन्वये मौजे चेरवली मालकी गट नं. ०९ मधील बंधनकारक वृक्षतोडीस परवानगी मिळणेबाबतच्या अर्जाची सविस्तर चौकशी करून अभिप्रायासह अहवाल सादर करणेबाबत आपणास यांना कळविणेत आले होते. तरी आपण संदर्भिय पत्र क्रं.०२ अन्वये सदर प्रकरणी कोणत्याही प्रकारची सविस्तर चौकशी न करता मोघम स्वरूपाचा पत्र व्यवहार करून सदर प्रकरणी रेंज स्तरावरून कार्यवाही करणेबाबत कळविले आहे. वास्तविक पाहता आपण सदर प्रकरणी पूर्ण चौकशी करून त्यांचेकडील अभिप्राय देऊन प्रकरणे या कार्यालयास सादर करणे अपेक्षित असताना त्यांनी तसे न करता अवास्तव पत्र व्यवहार करून त्यांचे वरील जबाबदारी झटकून सदर प्रकरणे या कार्यालयास परत केली आहेत.

आपण वारंवार अशाप्रकारचे अवास्तव व मोघम स्वरूपाचे पत्र व्यवहार करून आपले कामामध्ये अक्षम्य अशी टाळाटाळ करून बेजाबाबदारपणे वागत आहेत. याबाबत आपणांस वारंवार ताकीद दिलेली असताना देखील आपले वागण्यात सुधारणा होत नाही. तसेच सदर प्रकरणाबाबत शासनाचे लोकसेवा हमी कायदा-अंतर्गत विहित मुदतीत कार्यवाही करणे अपेक्षित होते परंतु त्याप्रमाणे कार्यवाही झालेली नाही. तरी याबाबत आपला खुलासा सादर करावा.”

23. Lastly, the RFO, Panvel by his letter dated 19.04.2018 again observed negligence of the Applicant for not removing the unauthorized construction of Gut Nos.42 and 45 made by Mr. Kashinath Khanavkar and Mr. Rajaram S. Patil. In the said letter, he observed that the Applicant being Forester was under obligation to take timely action to stop unauthorized construction on the forest land, but he failed to do so. The text of the letter is as follows :

“उपरोक्त संदर्भिय क्र.०२ अन्वये आपणास मौजे आंबिवली तर्फवाजे ता. पनवेल येथील संरक्षित वन सर्व्हे नं ४२ गट नं ४५ मधील सुरु असलेले घराचे बांधकाम संरक्षित वनापच येत असल्याचे वनसर्व्हेक्षक अलिबाग यांचे अहवालानुसार खात्री झालेली असल्याने सदर अतिक्रमण निष्काषित करण्याकरीता नियोजन आखणेबाबत आपणास कळविले आहे. तथापि आपण अतिक्रमण निष्काषित करण्याकरीता नियोजन न करता या कार्यालयास अवास्तव मुद्दे नमुद करून सदरची कार्यवाही करणेबाबत टाळाटाळ करत असल्याचे दिसून येते.

वास्तविक पाहता वनसर्व्हेक्षक, अलिबाग यांचेकडून सदर क्षेत्राचे सर्व्हेक्षण झाल्यानंतर त्यांनी दिलेल्या अहवालावरून तात्काळ समक्ष आपल्याशी केलेल्या चर्चेत सदरचे अतिक्रमण हटविणेबाबत नियोजन करण्याच्या सुचना दिल्या होत्या. तरी देखील आपण या संदर्भातील नियोजन या कार्यालयास कळविलेले नाही. आपणास पुन्हा आपण कोणत्या तारखेला अतिक्रमण हटविणार आहात व आपण त्या संदर्भातील कोणती तयारी केली, जेणे करून आपणास इतर परिमंडळातील स्टाफ मदतीस देणे कायदा व सुव्यवस्थेच्या दृष्टीने पोलिस बंदोबस्त घेणे इ. चे नियोजन करता येणे शक्य होणार आहे. परंतु आपण अश्या

प्रकारे अतिक्रमण निषकाषण करण्याकरीता नियोजनाची माहिती वेळेत न दिल्याने पुढील कार्यवाही करता येत नाही. असे असताना या बाबतचे नियोजन या कार्यालयाकडून करण्यात यावे असे म्हणणे साफ चुकीचे आहे. व आपण आपली जबाबदारी झटकत असल्याचे व आपण आपले कर्तव्यात कसुर करित असल्याचे दिसून येते.

आपण आपले संदर्भिय पत्र क्र.३ मध्ये मौजे आंबिवलो तर्फावाजे स नं ४२ मध्ये श्री. काशिनाथ खानावकर हे नवीन बांधकाम करीत असल्याचे ते ही अतिक्रमण १०० टक्के संरक्षित वनात येत असल्याचे नमुद केले आहे. सदरचे अतिक्रमण हे नव्याने होत आहे व ते शासकीय वनातच होत असल्याची खात्री आपल्याला आहे, तर ते आपण आपले स्टाप चे मदतीने बांधकाम होण्याच्या सुरवातीस थांबवणे अथवा निष्काषित करणे अपेक्षित आहे. व ते आपले कर्तव्या आहे. परंतु आपण नव्याने झालेले अतिक्रमण देखील हटविलेले नाही. व ते हटविणेबाबत देखील खालील हस्ताक्षरकर्ते यांनी त्यांच्या स्तरावरून कार्यवाही करण्यात यावी असे नमुद करीत आहात. यावरून आपण फक्त व्यर्थ पत्रव्यवहार करून या संबंधी फक्त वेळकाढुपणा करीत आहात. आपली या बाबत काम करण्याची इच्छाशक्ती दिसून येत नाही. सदर प्रकरणातील दोन्हीही अतिक्रमण ही नव्याने झालेली आहेत व ही अतिक्रमण होवु न देणे व अतिक्रमण होण्यापुर्वी ती हटविणे हे आपले अधिनस्त स्टाप चे कर्तव्य असताना आपण यामध्ये दिरंगाई केली आहे.

वरीलप्रमाणे श्री राजाराम शंकर पाटिल यांचे अतिक्रमण हटविणेबाबत कार्यावाहीबाबत आम्ही स्वतः जागेवर आलो असता आपण त्या ठिकाणी उपस्थित नव्हता. तरी आपण यापुढे विनाकारणचा व्यर्थ पत्रव्यवहार न करता ठोस नियोजन करून सदरचे अतिक्रमणे आपण कोणत्या तारखेला हटविणार आहात व त्या अनुषंगाने आवश्यक ती तयारी करून या कार्यालयास तत्पुर्वी कळवावे जेणेकरून संबंधीत यंत्रणाची मदर घेऊन आपणास सर्व सहकार्य करण्यात येईल. तरी तात्काळ ठोस नियोजन सादर करावे.”

24. Furthermore, the Forest Guards viz. Mr. Dhole, Mr. Devkate, Mr. More, Mr. Sapte and Mr. Chivde also submitted report to RFO on 17.10.2017 and 25.04.2018 which are at Pages 81 to 84 of the P.B. In these letters / representations, these guards raised grievance against the working of the Applicant. It is stated that the Applicant was avoiding to take timely action to protect forest land and he simply leave the said work with them. The sum and substance of these representations is that the Applicant was avoiding to discharge his duties faithfully and there was failure on his part to stop unauthorized construction. He was demoralizing the Forest Guards working under him and was abusing his position as Forester. At the end of representation, it is stated that they are fed-up with the functioning of the Applicant and requested for their mass transfer to another Sector.

25. It is on the above background, the RFO submitted his detailed report on 17.05.2018 to Dy. Conservator of Forest, Alibaug citing various examples and illustrations about the insubordination, negligence and dereliction in duties of the

Applicant and requested for his transfer on administrative ground. The RFO observed that the continuation of the Applicant in Vajapur Forest Range is not in the interest of administration, as entire atmosphere has become quite unhealthy, and therefore, he made strong recommendation of his transfer from the point of smooth administration and to maintain discipline in the forest range.

26. Consequent to it, the CSB in its meeting dated 06.06.2018 (Page No.86 of the P.B.) pondered over the issue and in view of report of RFO, recommended Applicant's transfer unanimously. It was accordingly approved by Chief Conservator of Forest, Thane and ultimately, transfer order has been issued. In the impugned transfer order, the Applicant is shown transferred on administrative ground. It is obviously in reference and in context of the various complaints and insubordination of the Applicant as discussed above.

27. As it was mid-term and mid-tenure transfer, the compliance of Sections 4(4)(ii) and 4(5) of the 'Transfer Act 2005' was necessary. In this behalf, the perusal of G.R. dated 11.01.2018 issued by Revenue & Forest Department, State of Maharashtra reveals that the list of Head of the Departments, Regional Heads and Authorities competent to make transfers within their jurisdiction for the purpose of 'Transfer Act 2005' was notified. As per this G.R, the Chief Conservator of Forest was notified as higher competent authority for the transfer of Group 'C' and 'D' employees under Sections 4(4)(ii) and 4(5) of the 'Transfer Act 2005'. As such, it is quite clear that there is delegation of power as per Section 6 to Deputy Conservator of Forest as a competent authority for general transfer and for mid-term and mid-tenure transfer, the next higher authority is Chief Conservator of Forest. In the present case, the Chief Conservator of Forest, Thane is the next higher authority and the transfer order has been issued after his prior approval which is in consonance with Sections 4(4)(ii) and 4(5) of 'ROTA Act 2005'.



28. The submissions advanced by the learned Advocate for the Applicant that, in case of mid-term and mid-tenure transfer, the approval of Principal Chief Conservator of Forest is necessary, and therefore, the transfer is vitiated, is therefore, misconceived as discussed above.

29. Thus, what transpires from the report that, this is not a case where transfer has been made on the basis of vague or unsubstantiated complaint. The Applicant was found indulging insubordination consistently and he was not discharging his public duties efficiently and to the satisfaction of his higher authorities. Even various guards working under the Applicant were unhappy and were insecure. In fact, because of misconduct of the Applicant, he requested for their mass transfer. As such, having considered from these aspects, the Deputy Conservator of Forest, Alibaug has submitted his detailed report to CSB for his transfer for smooth administration of the Department. The CSB approved the same and with prior approval of Chief Conservator of Forest, Thane, transfer order has been issued. Where there are series of insubordination or unsatisfactory work, the competent authority is always at liberty to transfer the employee for smooth administration and if the said decision is conscious and objective, then it should not be interfered with by the Court / Tribunal. Therefore, present case is fully governed by the Judgment in ***Janardhan Debanath's*** case (cited supra) where it has been held that whether the employee could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and in such situation, insistence of holding elaborate D.E. is not necessary as the very purpose of transferring an employee in such situation in public interest or exigencies of administration could get frustrated.

30. Here, it would be apposite to refer one more Judgment of Hon'ble Bombay High Court in ***V.B. Gadekar, Deputy Engineer Vs MHADA : 2007 (6) BOM CR 579***, wherein it has been held as follows :

*“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power.”*

31. As referred above, the impugned transfer order is also in consonance with the instructions given in Para No.7(a) of Circular dated 11.02.2015 which empowers the competent authority to transfer the employee in case of misbehavior, if it is found substantiated. As such, the submission of learned Advocate for the Applicant that the Respondents ought to have first resorted to regular D.E. instead of transferring the Applicant is fallacious. The transfer of the Applicant found necessitated for administrative exigencies and smooth functioning of the department.

32. For the aforesaid reasons, I have no hesitation to sum-up that the challenge to the impugned transfer order is devoid of merit and the application deserves to be dismissed. Hence, the following order.

### **ORDER**

The Original Application is hereby dismissed with no order as to costs.

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

Mumbai  
Date : 03.01.2019  
Dictation taken by :  
S.K. Wamanse.