

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS. 677, 678, 679 and 680 of 2020

DISTRICT : SANGALI

ORIGINAL APPLICATION NO.677 OF 2020

Smt. Vaishali Raju Mode,)
Age : 32, Working as Junior Clerk in the office ,)
Of the Deputy Conservator of Forest (T),)
Sangali, O/at. Forest Colony, Hanuman Nagar,)
Kupwad, MIDC, Sangali.)
R/o Utkarsh Nagar, Kupwad Road, Sangali.) **...Applicant**

Versus

The Chief Conservator of Forest (T), Kolhapur)
Having office at Vanvardhan, Tarabai Park,)
Kolhapur.) **...Respondents**

WITH

ORIGINAL APPLICATION NO.678 OF 2020

Shri Shakil S. Mujawar,)
Age : 41, Occu.: Round Forest Officer,)
(Forester/Vanpal), Range Jath, Forest Division,)
Sangali..)
R/o. A/p Kupwad, Ulhasnagar, Tal. Miraj,)
Dist. Sangali.) **...Applicant**

Versus

1. The Chief Conservator of Forest (T),)
Kolhapur, Having office at Vanvardhan,)
Tarabai Park, Kolhapur.)
2. Shri Anil C. Deshmukh, Aged Adult,)
Working as Forester (Wild Life), Aadoli,)
Wild Life, Kolhapur Division.)
(Absent though served)) **...Respondents**

WITH**ORIGIINAL APPLICATION NO.679 OF 2020**

Shri Rajendra Sureshrao Patil,)
 Age : 43, Occu.: Forest Guard, Bhoose, Range Sangali Division,)
 Sangali, o/at Deputy Conservator of Forest, Sangali,)
 Hanuman Nagar, Kupwad, MIDC, Sangali.)
 R/o.Vasant Nagar, Shree Swami Samarth Bunglow,)
 Polt No.23, Sangali.)...Applicant

Versus

1. The Chief Conservator of Forest (T),)
 Kolhapur, Having office at Vanvardhan,)
 Tarabai Park, Kolhapur.)
2. Shri Sagar Vasant Thorwat, Aged Adult,)
 Working as Forester Guard (T), Aadoli, Bambwade)
 Forest Division, Kolhapur.)...Respondents

WITH**ORIGIINAL APPLICATION NO.680 OF 2020**

Shri Sachin Appaso Patil,)
 Age : 39, Occu.: Forest Guard, Bihur, Range Forest Officer,)
 Shirala, Dist. Sangali., Forest Division Sangali,)
 Having office in the office of the Deputy Conservator of)
 Forest, (Range Shirala), Sangli, Forest Colony, Hanuman)
 Nagar, MIDC, Sangali, R/o A/p Dhavali, Tal. Walwa,)
 Dist.Sangali.) ...Applicant

Versus

1. The Chief Conservator of Forest (T),)
 Kolhapur, Having office at Vanvardhan,)
 Tarabai Park, Kolhapur.)
2. Shri Hanmant Prakash Patil,)
 Aged Adult, working as Forest Guard (T))
 Kolgaon (South), Forest Division,)
 Sawantwadi.)...Respondents

Shri Bhushan A. Bandiwadekar, Advocate for the Applicants
Shri A. J. Chougule, Presenting Officer for Respondent No.1.

CORAM : SHRI A.P. KURHEKAR, MEMBER (J)

DATE : 10.08.2021

JUDGMENT

1. In these Original Applications, the challenge is to the transfer order dated 03.08.2020 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985. Since all these Original Applications are arising from common issue, they are decided by the common judgment.

2. Shortly stated facts giving rise to these applications are as follows:-

The Applicant in O.A.No.677/2020 is serving as Junior Clerk on the establishment of Respondent No.1 – The Chief Conservator of Forest (T), Kolhapur. Whereas, Applicants in O.A.Nos.678, 679 & 680/2020 are serving as Foresters. The Applicants have challenged the transfer order dated 03.08.2020 *inter-alia* contending that they are transferred mid-tenure without compliance of Section 4(5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005) which *inter-alia* permits mid-tenure transfer, in special cases, after recording reasons in writing with prior approval of immediately preceding Competent Authority as mentioned in the table of Section 6 of 'Act 2005'. They contend that being Group-C employees from the Non Secretariat Services in terms of proviso of Section 3 entitled for two full tenures (six years). However, they have completed only three years tenure in the present post but transferred without making out any such special case as contemplated under Section 4(5) of 'Act 2005'.

3. Shri Bhushan A. Bandiwadekar, learned Counsel for the Applicant sought to assail the impugned transfer orders *inter-alia* contending that none of the Applicant has completed six years normal tenure but they were transferred mid-tenure without compliance of Section 4(5) of 'Act 2005'. He has further pointed that the Respondent No.1 was the only Head of the Department for general transfers and was not competent to effect special/mid-tenure transfers.

4. Per contra, Shri A. J. Chougule, learned Presenting Officer sought to justify the impugned transfer orders *inter-alia* contending that the Applicants were due for transfer and impugned transfer orders need no interference.

Original Application No.677/2020

5. In this O.A., the Applicant contends that she was posted at Sangali by order dated 17.06.2017 but by impugned transfer order dated 03.08.2020, she is transferred on the establishment of Director General, Kundal Development, Administration & Management Academy (Forest), Kundal, Dist. Sangali on vacant post. As such, she claims to have not completed three years in the present post at Sangali, and therefore, impugned transfer order dated 03.08.2020 without compliance of Section 4(5) of 'Act 2005' is unsustainable in law.

6. Whereas, the Respondent in Affidavit-in-Reply, sought to contend that the Applicant had already completed more than six years in the present post at Sangali and she was overdue for transfer. In this behalf, in Para No.5.1 of reply, it is stated that prior to posting of the Applicant in Sangali office, she was Clerk in the office of Chief Conservator of Forest (T), Kolhapur for three years, but her services as a Clerk were utilized in the office of Deputy Conservator of Forest(T), Sangali only with difference that her salary was drawn from the office of Chief Conservator of Forest, Kolhapur. Pertinent to note that, this factual aspect is not

disputed by the Applicant. In this behalf, material to note the contentions raised by the Applicant herself in Rejoinder. In Para No.11 of Rejoinder, the Applicant stated as under :-

“ 11. I say that in the interest of administration, I worked since the year 2013 in the office of Deputy Conservator of Forest (T), Sangali but I drew my salary and other allowances from the office of the Chief Conservator of Forest (T), Kolhapur and therefore, my such a service period has to be treated on the establishment of the Kolhapur office and not Sangali office.”

7. As such, there is no denying that the Applicant was working as Junior Clerk in the office of Deputy Conservatory of Forest (T), Sangali since 2013. In this reference, it would be further useful to see her transfer order dated 17.06.2017 (Page No.18 of PB) wherein there is a specific reference that in the year 2017 itself, she was serving on the establishment of Deputy Conservator of Forest, Sangali but her pay and allowances were drawn from the establishment of Kolhapur office. By letter dated 31.05.2017, she had requested for transfer to Sangali where she was already serving for administrative convenience. Her request was accepted and she was given posting at Sangali by order dated 17.06.2017. As per definition of 'post' given in Section 2 (g) of 'Act 2005', it means the job or seat of duty to which a Government servant is assigned or posted. The Applicant was given post at Sangali from 2013. As such, her entire period from 2013 has to be counted on said post at Sangali as per plain meaning of 'post' defined in 'Act 2005'.

8. True, the Respondents have not placed on record the office order by which her services diverted to the office of Deputy Conservator of Forest, Sangali before her posting in Sangali office by order dated 17.06.2017. However, there is no denying that the Applicant was working on the said post from 2013. This being the position, her period in the post at Sangali will have to be counted from

2013. This being the position, it cannot be said that the Applicant was entitled for six years tenure afresh from order dated 17.06.2017.

9. Suffice to say, the submission advanced by learned Counsel for the Applicant that the Applicant had completed only three years tenure in Sangali office, and therefore, she was not due for transfer holds no water.

10. As such, since the Applicant in O.A.No.677/2020 has completed more than six years in a post in Sangali office, she was due for transfer in general transfers of 2020. The general transfers which were required to be effected in the month of April or May as provided under 'Act 2005' were not effected due to Covid-19 pandemic situation and consequent lockdown. Therefore, by G.R. dated 07.07.2020, the Government had extended the period of general transfer up to 31.07.2020. Thereafter again by another G.R. dated 23.07.2020, the deadline of issuance of general transfers was extended up to 10.08.2020. It is on this background, the Applicant has been transferred by order dated 03.08.2020 before the deadline of 10.08.2020 as mentioned in G.R. dated 23.07.2020.

11. As regard competency, the Applicant has been transferred after the recommendation of PEB by Respondent No.1-Chief Conservator of Forest (T), Kolhapur. The Respondent is declared Head of the Department for general transfers of Group 'C' & 'D' employees in terms of Clause 3 of G.R. dated 23.06.2014 which has been issued in terms of Section 7 of 'Act 2005' which *inter-alia* provides for publication of notification for declaration of Head of the Department for the purposes of transfers under the provisions of 'Act 2005'.

12. As such, since the Applicant in O.A.No.677/2020 had completed her normal tenure and she was due for transfer in general transfer of 2020, the question of compliance of Section 4(5) of 'Act 2005' does not survive.

13. Pertinent to note that at the time of general transfer of 2020, the information was called from a Government servants in terms of G.R. dated 09.04.2018 calling their options and minimum ten options were required to be given. However, the Applicant has given only two options that to from Sangali Division without giving any other options. The Applicant was required to give minimum ten options in terms of G.R. dated 09.04.2018 and in that event only she could have raised grievances for not getting choice posting in terms of the options given by her. Needless to mention that the transfer is incident of service and a Government servant cannot claim a particular post or place as of right. I, therefore, see no illegality in transfer order of the Applicant in O.A.No.677/2020.

O.A.Nos.678/2020, 679/2020 & 680/2020

14. In so far as these three Original Applications are concerned, these Applicants have not completed two tenures (six years) in a post from which they were transferred by impugned order dated 03.08.2020.

15. The Applicant in O.A.No.678/2020 was posted at Shegaon, Division Sagali by order dated 01.06.2017. He was earlier posted at Radhanagari and by order dated 01.06.2017, he was brought to Shegaon, and thereafter by impugned order dated 03.08.2020, he was transferred in the office of Conservator of Forest cum Area Director, Sahyadri Tiger Reserve, Kolhapur and in his place Respondent No.2

was posted by common order dated 03.08.2020. The Respondent No.2 though served with the notice of O.A. did not remain present.

16. As regard O.A.No.679/2020, the Applicant was serving as Forester, Bhose, Division Sangali and by order dated 03.08.2020 he was transferred in the office of Conservator of Forest cum Area Director, Sahyadri Tiger Reserved, Kolhapur and the Respondent No.2 has been posted in his place. Insofar as the tenure of the Applicant at Bhose is concerned, he was posted at Bhose, Division Sangali by order dated 09.01.2017. As such, he had not completed two tenures (six years) at Bhose, Division Sangali.

17. In O.A.No.680/2020, the Applicant by order dated 03.08.2020 was transferred from (page 19) Biur, Division Sangali to in the office of Conservator of Forest cum Area Director, Sahyadri Tiger Reserved, Kolhapur. Insofar as his posting at Biur is concerned, he was posted there by order dated 02.06.2017. As such, he had not completed three years tenure at Biur but transferred by impugned order dated 03.08.2020.

18. The transfer orders in these three Original Applications have challenged for non compliance of Section 4(5) of 'Act 2005'. The perusal of reply in these three Original Applications reveal that these three Applicants were transferred under the assumption that their normal tenure was three years and after calling their options in terms of G.R. dated 09.04.2018, they were transferred.

19. Shri A. J. Chougule, learned P.O. also sought to contend that though the Applicants in these three Original Applications have completed only three years, they have already served for more than six years in Circle at different places, and

therefore, they will have to be said completed six years and due for transfer. This submission is devoid of merit in view of the provisions of 'Act 2005'.

20. Insofar as O.A.No.679/2020 and 680/2020 are concerned, the Respondent No.2 appeared and file their one page reply stating that they have already joined in place of the Applicants and their transfer is legal and valid.

21. True, the transfer is incident of service and a Government servants have no vested right to claim a particular post for particular period. However, now the transfers are governed, regulated and controlled by the provisions of 'Act 2005' which *inter-alia* ensures normal tenure to a Government servants at a post. As per Section 3 of 'Act 2005' normal tenure of a Government servants of Group –A, B & C shall be three years in a post. As discussed earlier, as per Section 2 (g) of 'Act 2005 the "post" means the job or seat of duty to which a Government servant is assigned or posted. In terms of proviso of 'Act 2005' where a Government servant is from the non-secretariat services, in Group-C, such employee is entitled for two full tenures on a post. Thus, the plain meaning of this proviso makes it quite clear that these Applicants were entitled for six years tenure on each post. The services of these Applicants on different posts though in same circle cannot be clubbed with their present post so as to count their total period of services. Such interpretation would defeat the intent of law.

22. Admittedly, none of the Applicant from these three Original Applications has completed six years tenure in their last post from which they were transferred by impugned transfer order. However, they have been transferred by transfer order dated 03.08.2020 without compliance of Section 4(5) of 'Act 2005'. They were transferred by Respondent No.1 – Chief Conservator of Forest (T), Kolhapur who is the Head of the Department and competent for general

transfers only. Indeed, as stated above the Respondents have transferred these Applicants under the assumption that they were due for transfer. Only because the Applicants have submitted information in terms of G.R. dated 09.04.2018 as asked by the department, it cannot be construed that they have requested for transfer. Apart, none of the Applicant was given posting as per the options given by them. Indeed, G.R. dated 09.04.2018 applied to general transfer whereby the decision was taken by the Government to effect the transfer by calling options through counseling so that a Government servants can be accommodated considering their options.

23. Perusal of Minutes of PEB also reveals that the file was processed under the assumption that the Applicants were due for transfer having completed three years tenure. However, the Members of PEB forgot to note that the Applicants were entitled to six years tenure as per the proviso to Section 3 of 'Act 2005'. Indeed, there is no such discussion or deliberation on individual basis and only statistics and figures were placed before the PEB stating that they have completed normal tenure and approval was given for their transfer.

24. Needless to mention, since the Applicants were not due for transfer in the eye of law, they could not have been transferred without compliance of Section 4(5) of 'Act 2005' which inter-alia mandates that there has to be a special reasons for such mid-tenure transfer and it needs to be approved by immediately preceding Competent Authority as mentioned in the table of Section 6 of 'Act 2005'. In present case, the Respondent No.1 is declared as Head of the Department for general transfers only and he was not competent for mid-tenure transfers which are contemplated under Section 4(5) of 'Act 2005'.

25. The totality of the aforesaid discussion leads me to sum-up that the Applicant in O.A.No.677/2020 needs no interference and the said O.A. deserves to be dismissed. However, insofar as the transfers of Applicants in remaining three Original Applications are concerned, those are unsustainable in law, it being in blatant violation of provisions of 'Act 2005'. Impugned transfer orders are, therefore, required to be quashed. Hence, the following order.

ORDER

- (A) The Original Application No.677/2020 is dismissed with no order as to costs.
- (B) The impugned transfer orders qua the Applicants and private Respondent No.2 in O.A. Nos.678, 679 and 680/2020 are quashed and set aside.
- (C) The Applicants in O.A.Nos.678, 679 & 680/2020 be reposted on a post, they were transferred from within two weeks from today.
- (D) Respondent No.1 is at liberty to pass suitable transfer and posting orders of Respondent No.2 as he deems fit. If possible, the Respondent No.1 may call for options of Respondent No.2 and considering vis-à-vis vacancy position shall pass suitable order so that minimum inconvenience is caused to them.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 10.08.2021
Dictation taken by : V. S. Mane

