

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.762 OF 2021**

**DISTRICT : RATNAGIRI**

Shri Kishor Jaysingrao Patki. )  
Age : 54 Yrs., Working as Forester in the )  
Office of Range Forest Officer, Chiplun (T), )  
A/P/T Chiplun, District : Ratnagiri and )  
Residing at Chiplun, District : Ratnagiri. )...**Applicant**

**Versus**

1. The Divisional Forest Officer. )  
Ratnagiri [Chiplun], having office )  
At Markhandi, Prabhat Road, )  
Chiplun, District : Ratnagiri. )

2. Shri Daulat R. Bhosale. )  
Aged : Adult, Transferred as Forester )  
Chiplun [T], Forest Range, Chiplun )  
in place of Applicant from )  
Mandangad [R], Range Forest, )  
Dapoli, District : Ratnagiri. )...**Respondents**

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

**Mrs. K.S. Gaikwad, Presenting Officer for Respondent No.1.**

**Mr. M.D. Lonkar, Advocate for Respondent No.2.**

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

**DATE : 11.02.2022**

**JUDGMENT**

1. The Applicant has challenged transfer order dated 05.05.2021 whereby posting was given to Respondent No.2 in his place and also

challenged transfer order dated 07.05.2021 whereby he is transferred from the post of Forester, Chiplun [Territorial] to Forester, Social Forestry, Dapoli 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 serving as Forester, Chiplun [Territorial]. Being Group 'C' Government employee, he claims to have 6 years' tenure in a post as Forester, Chiplun in terms of 1<sup>st</sup> proviso to Section 3 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' for brevity). However, by transfer order dated 05.05.2021, Respondent No.1 - Divisional Forest Officer transferred Respondent No.2 in his place as Forester, Chiplun, and thereafter, by order dated 07.05.2021 transferred the Applicant as Forester, Social Forestry, Dapoli, District : Ratnagiri. The Applicant has, therefore, challenged both these transfer orders *inter-alia* contending that his transfer order is mid-term and mid-tenure and being contravention of Section 4(5) of 'Transfer Act 2005', it is bad in law amongst other grounds.

3. Shri A.V. Bandiwadkar, learned Advocate for the Applicant sought to assail the impugned transfer order dated 07.05.2021 on the following grounds :-

(i) The Applicant being Group 'C' employee is entitled to 6 years' tenure in terms of 1<sup>st</sup> proviso to Section 3 of 'Transfer Act 2005'. Therefore, it being mid-tenure transfer in absence of special case and compliance of Section 4(5) of 'Transfer Act 2005', it is unsustainable in law.

(ii) Respondent No.1 - Divisional Forest Officer (DFO) himself referred Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' in impugned

transfer order dated 07.05.2021, which itself indicates that his transfer order is treated as mid-tenure transfer and it being not with the approval of next superior authority, the same is bad in law.

(iii) Even if, the Applicant's tenure is considered as 3 years, in that situation also, Respondent No.1 – D.F.O. is not competent transferring authority and on that count, the impugned transfer order is bad in law.

(iv) The Applicant has submitted his option of Sangameshwar as Option No.1 but the said post was given to one Taufiq Ramjan with the recommendation of Ministers and Politicians.

(v) The recommendations made by Civil Services Board (CSB) are biased since Respondent No.1 – DFO Shri Khade himself acted as head of CSB.

4. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer sought to justify the impugned transfer order *inter-alia* contending that in view of decision of Hon'ble High Court **(2016) 1 Mh.L.J. 45 [Santosh N. Dalal Vs. State of Maharashtra]**, Group 'C' employee's tenure is 3 years in a post and he cannot claim 6 years' tenure as of right. She has pointed out that this Tribunal in Bunch of O.As.(O.A.Nos.575 to 576 of 2021) decided with connected O.As, by order dated 13.01.2022 relying on the Judgment in **Santosh Dalal's** case held that the tenure of Group 'C' employee in a post is 3 years. In this behalf, she further submits that before posting of the Applicant as Forester, Chiplun [Territorial], he worked for 3 years at Chiplun in Mobile Squad and as such, he has already completed 6 years' tenure at Chiplun. As regard competency of Respondent No.1 – DFO, she submits that in view of Notification dated 23.06.2014 as well as dated 11.01.2018, the Respondent No.1 is the competent authority for general transfers and in pursuance of it, the DFO rightly exercised his powers. Thus, the sum and substance of the

submission of learned P.O. is that the Applicant was due for transfer and it being general transfer, he is rightly transferred by the competent authority.

5. Whereas, Shri M.D. Lonkar, learned Advocate for Respondent No.2 sought to justify transfer of his client in place of the Applicant and supported the submission advanced by the learned Presenting Officer on the point of competency of Respondent No.1 to effect transfers. He has further pointed out that initially, the Applicant has given option of only one post viz. Sangameshwar which was given to one Taufiq Ramjan as per station seniority, and thereafter, he gave 10 options which was considered and he was transferred at Dapoli which was option No.10. On this line of submission, he prayed to dismiss the O.A.

6. Shri Bandiwadekar, learned Advocate for the Applicant sought to place reliance on the decision of Hon'ble High Court Bench at Aurangabad in **Writ Petition No.10330/2019 [Sachin Raut Vs. State of Maharashtra] decided on 08.11.2019** contending that Group 'C' employee in non-secretariat service has right to complete two full tenures in a post.

7. **As to Ground Nos.(i) and (ii) :-**

Indeed, the issue as to whether Group 'C' employee belonging to non-secretariat service is entitled to 6 years' tenure in a post is recently decided by this Tribunal in Bunch of O.As (O.A.Nos.575 to 578 of 2021) decided with connected O.As. on 13.01.2022 wherein the Tribunal has considered the Judgment in **Santosh Dalal's** case well as **Sachin Raut's** case extensively and relying upon the ratio in **Santosh Dalal's** case held that Group 'C' employee from non-secretariat post have no such legally vested right to work at one station for 6 years. In this Judgment, the Tribunal dealt with interpretation of proviso in reference

to law of interpretation. It would be, therefore, apposite to reproduce Para Nos.19 to 26 of the said Judgment, which are as under :-

**19.** This issue of tenure of 3 years or 6 years to Group 'C' Government servant of non-secretariat post has come up for deliberation in **Santosh Dalal's** matter (cited supra). Wherein Hon'ble High Court in concurrence with the findings of Division Bench in O.A.No.376/2007 concluded the issue stating that provision of Section 3(1) with two provisos, does not show that any right is conferred on Group 'C' employee from non-secretariat service to work at one station 6 years. It was a matter of transfer of Inspectors of weight and measures in Group 'C' non-secretariat service in Legal Metrology Department and on completion of 3 years, they were transferred. True, in the said matter, the provisions of Section 4(5) of 'Transfer Act 2005' were also invoked in view of the direction given by the Minister that it was not desirable to continue such Inspectors on the same post for more than 3 years.

**20.** Shri S.S. Dere, learned Advocate for the Applicants sought to distinguish the decision in **Santosh Dalal's** case *inter-alia* contending that the facts are distinguishable since in that matter, Section 4(5) of 'Transfer Act 2005' was invoked. The learned Advocate for the Applicants appearing in the matter also adopted the submission advanced by the learned Advocate Shri S.S. Dere. The learned Advocates for the Applicants further sought to contend that the subsequent decision of Hon'ble High Court in **Sachin Raut's** matter (cited supra), it being subsequent decision holds the field. In this behalf, they referred Para No.10 of the Judgment in **Sachin Raut's** case.

**21.** As pointed out by Shri A.V. Bandiwadekar, learned Advocate for the Applicants where there are conflicting decisions of coordinate Benches, the Court should follow the one which in its view is better in point of law. Therefore, one needs to see which Judgment in the opinion of Tribunal is better in point of law.

**22.** In the present matter, the question is about interpretation of Rule 3(1) in the light of provisos appended to it. Needless to mention, the intention of legislature is primarily to be gathered from the scheme of enactment. The general rule of construction of enactment/section containing proviso is to construe them together without making either by them redundant or otiose. It is only in a case where enacting portion of Section is not clear or ambiguous, the proviso appended to it may give indication as to its true meaning. Where main provision is clear, its effect cannot be cut down by the proviso, since a proviso does not travel beyond the provisions to which it is appended to. In other words, where on fair construction of provision, there is no ambiguity, a proviso cannot expand or limit it. Suffice to say, as a general rule, proviso is added to a Section to qualify or create exception to what is in the enactment and ordinarily a proviso is not interpreted as stating general rule.

**23.** Now reverting back to the provisions of Section 3(1) of 'Transfer Act 2005', it specifically provides that for All India Service Officers and for all Group 'A', 'B' and 'C' State Government servants, the normal

tenure in the post shall be 3 years. Whereas 'Post' means the job or seat of duty to which Government servant is assigned or posted as defined in Section 2(g) of 'Transfer Act 2005'. It is thus manifest that the tenure of Government servants 'A', 'B' and 'C' Group in a post shall be 3 years. It appears that the tenure of 3 years is fixed in public interest since if Government servant is continued on some post for a more period, there is likelihood of creation of vested interest and it would certainly affect public administration. As such, from the point of transparency, fairness and for impartial functioning, three years' tenure seems to have been fixed. Undoubtedly, now transfers are governed and regulated by 'Transfer Act 2005' and it is not left to the whims and caprice of the Government or competent authority. Suffice to say, keeping in mind public interest and to keep interference of executive or politicians at bay, three years' tenure is guaranteed under the 'Transfer Act 2005'. At the same time, the exception is carved out by Section 4(5) of 'Transfer Act 2005' for mid-tenure in special cases after recording reasons in writing with the approval of competent transferring authority. As stated above, in Section 3(1) of 'Transfer Act 2005' for all Government servants of Group 'A', 'B' and 'C', the normal tenure is fixed 3 years. In so far as 1<sup>st</sup> proviso is concerned, all that it speaks that when such employee is from non-secretariat services in Group 'C', such employee shall be transferred from the post held on completion of two full tenures at that Office or Department to another Office or Department. As such, it can be said as enabling proviso which may allow a Government servant for two tenures in that Office or Department in one post or together. But in any case, he is transferable on completion of 2 full tenures at that Office or Department to another Office or Department. In other words, such employee can be kept at Office or Department for 6 years, but no such right is conferred on Group 'C' employee from non-secretariat post to have 6 years' tenure in a post. As observed by Division Bench of this Tribunal in O.A.No.376/2007, the legislature in its wisdom has used word 'Office' and not 'Post' in this proviso, which is indicative of the intention of legislature that a Government servant in Group 'C' belonging to non-secretariat services has no vested right of 6 years' tenure in a post. If intention of legislature was to guarantee 6 years' tenure in one go to Group 'C' non-secretariat post, in that event, the legislature would have enacted so in specifically in the enactment, but it is not so. The legislature purposely covered that area by appending proviso. Therefore, the proviso has to be read and interpreted with main Section so as to have purposive construction and to give full effect to the intention of the legislature. As rightly pointed out by Shri Chandratre, learned Advocate for the Respondents in reference to **AIR Online 2014 SC 10 [Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu]**, the law is trite that when the main enactment is clear and unambiguous, a proviso can have no effect so as to exclude from the main enactment by implication what clearly falls within its express terms. As such, it will have to be held that provision of Section 3(1) of 'Transfer Act 2005' with its proviso, does not confer any legal right much less legally vested right upon Group 'C' employee from non-secretariat post to work at one station for 6 years.

**24.** Indeed, this issue is no more *res-integra* in view of decision of Hon'ble High Court in **Santosh Dalal's** case where on examination of scheme of Act in Para No.12, Hon'ble High Court held as under :-

**“12.** The combined reading of provisions of sections 3(1) and 4(1) shows that the normal tenure in a post of a government servant shall be 3 years. The first proviso to section 3(1) of the Act shows that an employee of Group ‘C’ from non-secretariat service may be retained at that office or department for two full tenures (one full tenure consists of 3 years). The proviso does not give right to the employee to get two full tenures at that office or department but it only allows the employer, competent authority, to continue the Group ‘C’ nonsecretariat employee to continue at the office or department for six years. The second proviso shows that if the employee of Group ‘C’ is from secretariat service he cannot be continued in the same post for more than 3 years and he shall not be continued in the same department for more than two consecutive tenures. The plain reading of section 3(1) and both the provisos shows that Group ‘C’ employee who is not from secretariat service can be kept at that office or department for six year but he belongs to secretariat service he cannot be kept in the same post for more than three years though he can be kept in the same department for two consecutive tenures. These restrictions are in public interests. These provisions on one hand, show that the State, competent authority can use these provisions for keeping one employee at the same station for two full tenures but the State is not expected to continue him after completion of two full tenures. Thus, the provision of section 3(1) with the two provisos, does not show that any right is conferred on Group ‘C’ employee from non-secretariat service to Work at one station for six years.”

**25.** In so far as **Sachin Raut’s** case is concerned, in Para No.10, Hon’ble High Court has held as under :-

**“10.** In the present case, admittedly, the petitioner is a Class-III (Group-C) employee. He is in a non secretariat service. As such, he has right to complete two full tenures at the office. The petitioner, it appears is transferred on 01.07.2015 from Savali Vihir, Tl. Rahata to M.P.K.V. Rahuri. His two full terms would be completed on 30<sup>th</sup> June, 2021. We may not consider at this stage the transfer order dated 17.07.2018 from one department to another at M.P.K.V. Rahuri.”

**26.** The perusal of the Judgment in **Sachin Raut’s** case reveals that indeed, it was a case of mid-term transfer. The Petitioner therein was an employee of Mahatma Phule Krushi Vidyapith and was transferred by order dated 01.08.2019 from Rahuri University to Agriculture College, Dhule and not general transfer which are to be effected in the month of April or May in terms of ‘Transfer Act 2005’. In the present case, the Applicants have admittedly completed three years’ tenure in a post. In view of Covid-19 pandemic situation, the Government of Maharashtra by G.R. dated 29.07.2021 had extended the period of issuance of transfer orders of Government servants who have completed normal tenure upto 9<sup>th</sup> August, 2021. As such, the present matter does not pertain to mid-tenure transfer, as was a case in **Sachin Raut’s** matter. It appears that the decision in **Santosh Dalal’s** case rendered in 2015 was not brought to the notice of Hon’ble High Court while deciding **Sachin Raut’s** case. Be that as it may, with due respect in my humble opinion, it will have to be concluded that a Government servant of Group ‘C’ from non-secretariat service have no such legally vested right to work at one station for six years.”

8. As such, in view of decision in **Santosh Dalal's** case, the Applicant cannot claim 6 years' tenure in a post as a legally vested right. His tenure in a post is 3 years though in the discretion of Department, he can be continued at one station for 6 years maximum. But at any rate, no right is conferred upon Group 'C' employee from non-secretariat service to work at one station for 6 years.

8. Indeed, pertinent to note that Applicant himself admits in his application dated 22.04.2021 (Page No.73 of P.B.) that in general transfers of 2021, he is due for transfer since having completed 3 years' tenure. In the said letter, he requested for his transfer to Sangameshwar (territorial) on the ground of illness of mother who is staying at Kolhapur and Sangameshwar would be convenient to take care of his mother. As such, the Applicant himself admits that he was due for transfer having completed normal tenure. That time, he did not give any other option except Sangameshwar. As per the minutes of CSB (Page No.177), Sangameshwar was given to Mr. Taufiq Ramjan as per his option No.1, he being senior-most as per station seniority in terms of G.R. dated 09.04.2018.

9. Furthermore, here it would be apposite to note that before posting of the Applicant as Forester at Chiplun, he worked for 3 years from 2015 to 2018 as R.F.O. (Forester) in Mobile Squad and Chiplun also comes within the jurisdiction of Mobile Squad. This factual position is not disputed by the Applicant. However, Shri Bandiwadekar, learned Advocate for the Applicant sought to distinguish these two posts viz. Forester (Mobile Squad) and Forester at Chiplun by filing his Rejoinder stating that the duties and responsibilities of these two posts are different and jurisdiction of Mobile Squad extend throughout District. Whereas jurisdiction of post of Forster at Chiplun is only limited to some part of Chiplun Taluka. The Headquarters of both the posts is at Chiplun. As such, there is no denying that Applicant had worked as Round Forest Officer for 3 years in Mobile Squad having Headquarter at



Chiplun and thereafter also, worked as Forester (Territorial) at Chiplun for 3 years. Thus he worked for 6 years on the same post i.e. RFO-Forester though in two different capacities. Indeed, as per Affidavit-in-reply of Respondent No.1, throughout career, the Applicant has worked in territorial branch of Forest Department, and therefore, in terms of G.R.15.03.2017 (Page No.97 of P.B.), he was required to be shifted to other Branch. Forest Department have Branches viz. (i) Territorial, (ii) Wild Life, (iii) Social Forestry, (iv) Research/Training Working Plant Evaluation and others. In terms of G.R. dated 15.03.2017, directions were issued to interchange the Sections of employees who have completed normal tenure in one Section. It is on this background, the Applicant was transferred as Forester in Social Forestry Branch of Forest Department. As such, it is explicit that Applicant has completed more than 6 years' tenure in one Branch, and therefore, he has no vested right to ask for continuation for another 3 years. In other words, he was overdue for transfer. Consequently, Section 4(5) of 'Transfer Act 2005' which requires special case for transfer and approval of next preceding competent transferring authority does not survive.

10. Shri Bandiwadekar, learned Advocate for the Applicant tried to make much capital of reference of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' in impugned transfer orders. Adverting to this aspect, he tried to contend that Department itself treated Applicant's transfer as mid-term and mid-tenure. In this behalf, he sought to draw support from the decision of Hon'ble Supreme Court in **(1978) 1 SCC 405 [Mohinder Singh Gill Vs. Chief Election Commissioner]**, wherein it has been held that "when statutory functionary makes order based on certain grounds, it's validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of Affidavit or otherwise. Otherwise, an order bad in the beginning, may by the time it comes to the Court on account of challenge get validated by additional grounds later brought out." Whereas, Shri Lonkar, learned Advocate for Respondent No.2 referred to **(2011) 2 SCC 654 [Kedar S. Deshpande**

**Vs. Bhor Municipal Council].** In Para No.59 of the Judgment, Hon'ble Supreme Court held "In catena of decisions, this Court has held that merely quoting wrong provisions of the statute while exercising powers would not validate the order passed by the authority, if it is shown that such order could be passed under the provisions of statute." This aspect sought to be countered by Shri Bandiwadekar, learned Advocate for the Applicant stating that when two statutory provisions operates in two different fields requiring compliance with different pre-requisites, the principle that mentioning of wrong provision in the order will not validate the order, would not apply. In this behalf, he referred **(2003) 6 SCC 545 [Chandra Singh & Ors. Vs. State of Rajasthan]** and placed reliance on Para No.37 which is as under :-

*"37. This takes us to the question as to the whether the action of the High Court in making the assessment of the performance of the appellants prior to 31.3.1999 stand the scrutiny of Rule 53 of the Rajasthan Civil Service (Pension) Rules, 1996. In a given case, the said rule may be taken recourse to but the High Court never took any stand that its action was justified thereunder. Ex facie, the said rule is not applicable inasmuch as it has never been the contention of the respondents that the impugned order had been passed in public interest or other pre-requisite therefor, namely, giving of three months' notice in writing to the Government servant before the date on which he is required to retire in public interest or three months' pay and allowances in lieu thereof, had been complied with. Compliance of pre-requisites of such a rule, it is well-settled, is mandatory and not directory. Such a plea has expressly been negatived by this Court. (See Rajat Baran Roy's case (supra) - paras 13 to 16). It is fairly well-settled that the legality or otherwise of an order passed by a statutory authority must be judged on the face thereof as the reasons contained therein cannot be supplemented by an affidavit. (See Mohinder Singh Gill v. Chief Election Commr.). It may be true that mentioning of a wrong provision or omission to mention the correct provision would not invalidate an order so long as the power exists under any provision of law, as was submitted by Mr. Rao. But the said principles cannot be applied in the instant case as the said provisions operate into two different fields requiring compliance of different pre-requisites. It will bear repetition to state that in terms of Rule 53 of the Pension Rules, an order for compulsory retirement can be passed only in the event the same is in public interest and/or three months' notice or three months' pay in lieu thereof had been given. Neither of the aforementioned conditions had been complied with.*

11. True, in impugned orders, there is reference of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'. But at the same time, one needs to see the

entire factual matrix of the matter. It is explicit from the reply of Respondent No.1 that the impugned transfer was processed as general transfer. The Applicant has completed 3 years' tenure as Forester at Chiplun and before his posting as Forester at Chiplun (Territorial), he worked for 3 years in Mobile Squad and the Headquarter of Office is at Chiplun though jurisdiction of Mobile Squad extend the entire District. The Applicant in his application also admits that he was due for transfer having completed normal tenure. Therefore, reference of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' is insignificant. In other words, it would not change pith and substance of the matter that it was general transfer. In this behalf, reference of minutes of CSB is inevitable which further strengthen that Department has treated it as general transfer. Initially, the Applicant has claimed only on place viz. Sangameshwar which was given to Taufiq Ramjan as per station seniority, and thereafter only, he submitted 10 options. The meetings of CSB were taken twice. Firstly, on 27.04.2021 and in that meeting, except Sangameshwar, no other options were given, and therefore, the said place was given to Taufiq Ramjan. Thereafter, again CSB meeting was held on 07.05.2021 and considering the options given by the Applicant, he was posted at Dapoli. Suffice to say, Applicant's case was all the way considered as a general transfer. This being the factual position, mere reference of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' in transfer order ipso-facto cannot be construed that it was a case of mid-term or mid-tenure transfer. What is material is the file noting and record which culminated into transfer order and not mere some reference from impugned transfer order out of context. Suffice to say, the submission advanced that it was a case of mid-term and mid-tenure transfer is totally misconceived and fallacious. The principle laid down in **Mohinder Singh Gill's** case and **Chandra Singh's** case (cited supra) have no application to the facts and circumstances of the present matter, since there is no requirement of compliance of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' as concluded above.

12. **As to Ground No. (iii) :-**

The learned Advocate for the Applicant sought to contend that even if Applicant's tenure is held 3 years and he was considered due for general transfer, in that even also, the impugned transfer order passed by Respondent No.1 – DFO is without jurisdiction and competence in absence of Notification to that effect as required under Section 7 of 'Transfer Act 2005'. Whereas learned P.O. has pointed out that Respondent No.1 – DFO, Ratnagiri (Chiplun) was empowered as competent transferring authority on the basis of G.R. dated 11.01.2018 (Page No105 of P.B.) issued by Revenue and Forest Department. An attempt was made by learned Advocate for the Applicant to show that G.R. dated 11.01.2018 pertains to special transfers only and has no relevance with general transfers.

13. The perusal of record reveals that in the matter of transfer, the Revenue & Forest Department had issued various G.Rs. from time to time. Initially, Revenue & Forest Department had issued Notification dated 24.09.2013 (Page No.242 of P.B.) thereby notifying certain authorities as competent authority for general transfers as contemplated under Section 7 of 'Transfer Act 2005' which *inter-alia* provides for preparation of list of competent authorities and Notification of the same. As per Clause 3 of the said G.R, for Group 'C' and Group 'D' post, the DFO (कार्यात्मक) (Functional) is declared as competent authority for general transfers of Group 'C' and Group 'D' employees. Thereafter, Revenue & Forest Department had issued another Notification dated 23.06.2014 in supersession of earlier Notification and importantly, in Notification dated 23.06.2014 also for Group 'C' and Group 'D' with which we are concerned, the DFO (Functional and Wild Life) amongst other authorities were declared competent authorities for general transfers.

14. Then it comes G.R. dated 11.01.2018, which is at Page No.105 of P.B. The perusal of G.R. dated 11.01.2018 reveals that it was issued in

view of questions or doubts raised by the Tribunal in O.A.No.399/2017 decided on 09.12.2017 as to whether Government has declared competent authority for special transfers. It is in that context, the Government had issued this G.R. dated 11.01.2018 for notifying competent authorities for special transfers under Section 4(4) and 4(5) of 'Transfer Act 2005'. Here pertinent to note that this Notification is not restricted to notify competent authorities for special transfers, but it also includes Notification of competent authorities for general transfers. In Column No.3, the names of competent authorities for general transfers are mentioned and in Column No.4, names of competent authorities for special transfers are mentioned. Notably, in this G.R. dated 11.01.2018 also, the DFO (Functional/Wild Life) is declared as competent transferring authority. Suffice to say, the submission advanced by the learned Advocate for the Applicant that G.R. dated 11.101.2018 pertains to special transfers only, hold no water. Significant to note that in Notification dated 23.06.2014 as well as 11.01.2018, some authorities viz. DFO (Functional/Wild Life) is declared as competent transfer authority for general transfer. As such, there is no inconsistency about the competent transferring authority.

15. The learned Advocate for the Applicant tried to pick hole in the competency of Respondent No.1 – DFO *inter-alia* contending that in Notification dated 23.06.2014 and G.R. dated 11.01.2018, the competent authority is RFO (Functional/Wild Life) but Mr. D.P. Khade who issued the transfer order has shown his designation as DFO only and there is no suffix that he is Functional or Wild Life. True, in impugned transfer order, the designation is shown as DFO, Ratnagiri (Chiplun) and there is no such suffix as Functional or Wild Life. It is nowhere the case of Applicant that there is any other such specific post by name Regional Forest Officer (Functional). In common parlance, 'Functional' means who works on that post in that capacity. Mr. D.P. Khade is admittedly functioning as DFO. I, therefore, see no substance in the submissions advanced by the learned Advocate for the Applicant. It is nothing but

hairsplitting exercise. The record clearly spells that DFO was notified as competent transferring authority for general transfers under Section 7 of 'Transfer Act 2005'.

16. Shri Bandiwadekar, learned Advocate for the Applicant raised one more point that if it was general transfer, then why the approval of Chief Conservator of Forest (Territorial), Kolhapur was taken. True, as seen from impugned order, there is reference that Chief Conservator of Forest (Territorial), Kolhapur had approved the transfers done by DFO. In this behalf, letter at Page No.117 dated 28.04.2021 reveals that DFO has only informed about the transfers he effected to Chief Conservator of Forest (Territorial), Kolhapur for administrative purpose and that was approved by him. This aspect itself cannot be stretched to contend that it was mid-term and mid-tenure transfer. It was routine official correspondence and by no stretch of imagination, it can be construed in the manner learned Advocate for the Applicant suggested.

17. **As to Ground No.(iv) :-**

The criticism levelled by the Applicant's Advocate that the transfers are influenced by the interference or recommendations of Minister and other Departments or Politicians also holds no water. True, the perusal of record (Page Nos.180, 183, 184, 185, 186, 187, 188 and 194 of P.B.) reveals that Department has received recommendations of Politicians about the transfers of various Foresters including applicant Mr. Taufiq Ramjan and others. Material to note that Chief Conservator of Forest, Kolhapur by letter dated 19.04.2021 (Page No.181 of P.B.) has forwarded all those recommendation letters to DFO, Chiplun with specific caution to pass orders in transfer matters as per Rules. As such, only because there were recommendations received by the Department, one cannot jump to the conclusion that the transfers were influenced or biased. The Applicant has already completed his normal tenure and there is nothing

on record that transfer orders were influenced by the interference of Politicians in the present case.

18. **As to Ground No.(v) :-**

Shri Bandiwadekar, learned Advocate for the Applicant further made feeble attempt to contend that the recommendations were made by CSB were bias, since Mr. Khade, DFO who was issued transfer order himself acted as Chairman of CSB. True, the perusal of minutes of CSB reveals that he acted in dual capacity. Ideally, CSB should be headed by some other independent authority. However, in my considered opinion, unless there is substantial material to show bias or prejudice only because Mr. Khade acted in dual capacity that *ipso-facto* would not render transfer order invalid. The perusal of minutes of CSB shows that meeting was taken through Video-conferencing and unanimous recommendations were made for transfers.

19. Shri Bandiwadekar, learned Advocate for the Applicant made reference to decision in ***Writ Petition No.7977/2012 [State of Maharashtra Vs. Purushottam Pandhare] decided on 22.08.2012, O.A.No.643/2010 [Anil Pulekar Vs. Additional Commissioner of Sales Tax] decided on 06.12.2010*** which pertain to mid-term and mid-tenure transfer, and therefore, those are not relevant in the present case, since here matter pertains to general transfer. Similarly, reference made to decision rendered by this Tribunal in ***O.A.No.514/2018 [Nilkanth Gaikwad Vs. Joint Director], decided on 13.02.2019*** is on the point of absence of Notification and delegation of powers. Whereas in the present case, there is no question of delegation of powers or absence of Notification. Therefore, this decision is also of no help to the Applicant.

20. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned transfer order is devoid of merit and O.A. deserves to be dismissed. Hence, the order.

**ORDER**

The Original Application stands dismissed with no order as to costs.

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

Mumbai

Date : 11.02.2022

Dictation taken by :

S.K. Wamanse.

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