

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.85 OF 2020
(Subject:- Transfer)**

DISTRICT:-NANDED

Satwa Nivrutti Sangle,)
Age:- 45 years, Occ. Service as Forest Round Officer,)
R/o. Forest Range, Kinwat,)
Ta. Kinwat, Dist. Nanded.)....**Applicant**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Secretary,)
Revenue and Forest Department, Mantralaya,)
Mumbai- 400001.)
- 2. The Chief Conservator of Forest,**)
Vanbhavan, Usmanpura, Aurangabad.)
- 3. The Deputy Conservator of Forest,**)
Nanded Forest Department, Nanded.)
Ta. And Dist. Nanded.)
- 4. The Range Forest Officer, Kinwat,**)
Forest Range, Kinwat, Ta. Kinwat,)
Dist. Nanded.)...**Respondents**

APPEARANCE : Shri Satish P. Dhobale, learned Advocate for the Applicant.
: Shri V.R. Bhumkar, learned Presenting Officer for the Respondent.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **25.02.2022**

O R D E R

1. By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, challenge in this Original Application is made to impugned transfer order of the applicant dated 20.01.2020 (Annex. 'A-3') issued by the respondent No.3 i.e. the Deputy Conservator of Forest, Nanded Forest Department, Nanded Tq. and Dist. Nanded, thereby transferring the applicant from the post of Forester Kinwat (Jankas), Forest Range, Kinwat to the post of Forester Shivni, Forest Range, Apparaopeth.

2. **The facts in brief giving rise to this application can be summarized as follows:-**

- (i) Initially the applicant was appointed as Forest Guard on 23.06.1993 at Mahur Forest Range by the respondent No.2 i.e. the Chief Conservator of Forest. By order dated 30.01.2016 (Annex. 'A-1'), the applicant was promoted as Forest Circle Officer at Rajgad. Since that date the applicant completed tenure of three years with Rajgad Forest Range. Upon request made by the applicant, by order dated 30.05.2019 he was transferred to Kandhar Forest Range. However, thereafter, the respondent No.2 issued modified transfer order dated 04.06.2019 (Annex. 'A-2'), thereby, the applicant was transferred from the Kandhar Forest Range to Kinwat (Jankas)

Forest Range, Kinwat. Since then, the applicant was working on that post of Forest Circle Officer/Forester.

- (ii) Thereafter, within a period of seven months only, the impugned order of transfer dated 20.01.2020 (Annex. 'A-3') is issued by the respondent No.3 i.e. the Deputy Conservator of Forest transferring the applicant from Kinwat (Jankas) Forest Range Kinwat to Forest Range, Apparaopeth. The respondent No.3 is neither the appointing authority nor the competent transferring authority of the applicant as the earlier transfer order dated 04.06.2019 (Annex. 'A-2') was issued by the respondent No.2. Therefore, the competent transferring authority of the applicant is the respondent No.2 and not the respondent No.3.
- (iii) Moreover, the impugned transfer order was issued in contravention of the provisions of Section 4 (4) (ii) and 4 (5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act, 2005'). In view of same, the impugned transfer order is illegal and bad in law and liable to be quashed and set aside.

3. The affidavit-in-reply on behalf of respondent Nos.1 to 4 is filed by one Shri Abdul Majeed Abdul Razzak Shaikh presently working as an Assistant Conservator of Forest, Kinwat Dist. Nanded, thereby he has denied adverse contentions raised in the

application. It is denied that the respondent No.3 is not the competent transferring authority of the applicant. It is specifically contended that in view of G.R. dated 11.01.2018, the respondent No.3 is declared to be competent transferring authority by delegating the powers to him. The respondent No.3 prepared the proposal of the applicant along with other employees for transfer and placed before the Civil Services Board-2 on 03.01.2020 for approval. There were increasing complaints against the applicant of illegal cutting of teak trees on large scale in village Kamthala. In the view of the said reason, the Civil Services Board approved the proposal of transfer of the applicant. Thereafter, the respondent No.2 who is the immediately superior authority approved the said proposal for transfer of the applicant recommended by Civil Services Board too as contemplated under Section 4 (4) (ii) and 4(5) of the Transfer Act, 2005.

4. In such circumstances, in terms of G.R. dated 11.01.2018, the respondent No.2 is appointing as well as immediately superior authority for approving the transfer as contemplated under Section 4(4) (ii) and 4(5) of Transfer Act, 2005. In view of same, there is no illegality in the impugned transfer order and the Original Application is liable to be dismissed.

5. The applicant filed affidavit-in-rejoinder denying all adverse contentions raised in the affidavit-in-reply and contended that the applicant was serving at Rajgad Range as Forest Circle Officer and he was holding charge of the Chikali circle. After receiving the information of illegal cutting of teak trees and stored near warehouse Kinwat-Nanded Road on 06.08.2018, the applicant along with other Forest officers seized the said trees by drawing the panchanama and possession was given to Forest Guard, Rajgad by making the entry in transportation permission register. On the direction of Range Forest Officer (R.F.O.), Kinwat, the applicant conducted enquiry and as per the report submitted by the applicant, the R.F.O. imposed fine on the land owner namely Shri Shivaji Thore who had made complaints. After the said incident, the applicant was transferred to his earlier posting at Kinwat (Jankas). In this background, the present impugned order came to be passed. It is reiterated that the impugned order is issued by the respondent No.3 without jurisdiction and in contravention of provisions of Section 4(4) (ii) and 4(5) of Transfer Act, 2005.

6. The applicant, thereafter, filed additional affidavit (page No.50 of P.B.) and placed on record the report dated 24.08.2018 submitted by Range Forest Officer, Kinwat in respect of incident

dated 06.08.2018 which would show that the owner cut down the teak trees from his land and in fact the present applicant had initiated the action. In view of that, it is the contention of the applicant that no case of exceptional circumstances or special reason is made out under Section 4(4) (ii) and 4(5) of Transfer Act, 2005.

7. I have heard the argument advanced by Shri Satish P. Dhobale, learned Advocate for the applicant on one hand and Shri V.R. Bhumkar, the learned Presenting Officer for the respondents on other hand.

8. Learned Advocate for the applicant submitted that even if the delegated power of respondent No.3 is considered, the competent transferring authority of Government servant of Group 'C' and Group 'D' is the respondent No.2 i.e. the chief Conservator of Forest and in terms of G.R. dated 11.01.2018 immediately superior authority for approval and more particularly under Section 4(5) of Transfer Act, 2005 is the Hon'ble Minister of concerned department and not the respondent No.2 i.e. the Chief Conservator of Forest. To substantiate the said submission, learned Advocate for the applicant placed reliance on the decisions of this Tribunal at

principal bench in **O.A.No.579 of 2017 in the matter of Sanjay Dadaji Pagare Vs. the State of Maharashtra & Ors. decided on 08.03.2019** and in **O.A.No.1102 of 2018 in the matter of Dilip Navnath Tonde Vs. The State of Maharashtra & Ors. decided on 24.04.2019.**

9. Learned Advocate for the applicant further submitted that the alleged incident mentioned in the meeting of Civil Services Board is of the year of 2018 and it cannot have any effect on the work of the applicant on all together different Forest Range and therefore, the impugned order of transfer suffers from illegality and it is to be quashed and set aside.

10. Learned Advocate for the applicant further submitted that there is nothing on record to show that the allegation levelled against the applicant by the respondents for transferring were objectively looked into as contemplated in paragraph no.8 of circular dated 11.02.2015 issued by the G.A.D. In these circumstances also the impugned order is not sustainable in the eyes of law.

11. Per contra, learned P.O. for the respondents submitted that the respondent No.3 is the competent transferring authority of the applicant, who is the employee of the Group 'C' category in

terms of G.R. dated 11.01.2018 (page no.32 of P.B.) issued by the Revenue and Forest Department and in terms of said G.R., further the respondent No.2 is immediate superior authority in terms of Section 4(4) and 4(5) of Transfer Act, 2005. Moreover, there is due compliance of Section 4(4) and 4(5) of Transfer Act, 2005 as the proposal for transferring the applicant for reasons submitted by the respondent No.2 to Civil Services Board is accepted and the Civil Services Board recommended the transfer and the same is approved by the respondent No.2 in accordance with law. The impugned transfer order is therefore, legal and proper and no interference is caused into it.

12. In the background of the rival submissions if the case of the applicant is considered it seems that the applicant has challenged the impugned order of his transfer dated 20.01.2020 (Annex. 'A-3') issued by the respondent No.3. In the first place the said impugned order of transfer is challenged contending that Competent Transferring Authority of the applicant is the respondent No.2 i.e. the Chief Conservator of Forest, Aurangabad who is the appointing authority of the applicant. In order to demonstrate that, the applicant has placed on record his promotion order dated 28.01.2016 (Annex. 'A-1') which is issued by the respondent No.2. Further in that regard the applicant has

produced on record his earlier transfer order dated 04.06.2019 (Annex. 'A-2') issued by the respondent No.2, whereby the applicant is transferred to Kinwat (Jankas) Forest Range, Kinwat, Nanded Forest Division.

13. Upon perusal of the contention raised in the affidavit-in-reply, it is seen that the respondents have come out with the case that the power of transfer is delegated to the respondent No.3 i.e. the Deputy Conservator of Forest vide G.R. dated 11.01.2018 (page no.32 of paper book). As per the said G.R., the respondent No.1 by invoking the second proviso of Section 6 of Transfer Act, 2005, powers are delegated to the respondent No.3 for the transfer of all the Class-III and Class-IV Government employees except the transfer of Class-III and Class-IV Government employees inter-divisional. As per the said G.R., powers under Section 4(4) and 4(5) of Transfer Act, 2005 are delegated to the respondent No.2 i.e. the Chief Conservator of Forest.

14. It is a fact that the applicant is transferred to his present posting of Forester/Forest Circle Officer, Kinwat (Jankas), Forest Range Kinwat vide order dated 04.06.2019 (Annex. 'A-2'). Thereafter, he was transferred by order dated 20.01.2020 (Annex. 'A-3') from the post of Forester Kinwat (Jankas), Forest Range,

Kinwat to the post of Forester Shivni, Forest Range, Apparaopeth. Hence, the applicant has been transferred within a period of eight months. The impugned order of transfer is issued in the month of January, 2020. As per Section 3 of Transfer Act, 2005, the normal tenure of the Government employees falling under Class III and Class IV is of two tenures of three years each. As observed earlier, the applicant has been transferred within eight months and transfer order is issued in the month of January, 2020 and not in the month of April or May, it is midterm and mid-tenure transfer order.

15. In view of above, it is to be examined as to whether the said impugned transfer order is passed in accordance with the provision of Section 4(4) (ii) and 4(5) of Transfer Act, 2005. In this regard, the respondents have contended that the proposal of transfer of the applicant was placed before the requisite Civil Services Board-2. The copy of the minutes of meeting dated 03.01.2020 is at page no.29 of paper book. It shows that the transfer of the applicant was recommended to Shivni Forest Range, Apparaopeth, in view of the report dated 24.08.2018 of Range Forest Officer, Kinwat contending that there were on large scale of trees cuttings in gut no.28 at Village Kamthala. Thereafter, requisite approval of Chief Conservator of Forest was

taken, who is the next higher authority and immediately superior transferring authority of the Competent Transferring Authority as per Section 4(4) (ii) and 4(5) of Transfer Act, 2005 and in view of G.R. dated 11.01.2018.

16. In this regard, the applicant has filed affidavit-in-rejoinder and has denied the allegation levelled against him in the affidavit-in-reply and more particularly the incident referred and placed before the Civil Services Board (2). It is the contention of the applicant that in fact when the applicant was serving at Rajgad Range as Forest Circler Officer, he was having charge of Chikali Circle also. At that time, after receiving the information of illegal cutting of teak trees and having stored near warehouse Kinwat-Nanded Road on 06.08.2018, the applicant along with other forest employees seized the said trees by drawing the panchanama and the said seized trees were given in the possession of Forest Guard, Rajgad by making the entry in transportation permission register. Pursuant to the application of one Shri Shivaji Gyanu Thore, the Rang Forest Office (R.F.O.) Kinwat directed the applicant i.e. Forest Circle Officer, Rajgad to make an enquiry and submit the report. Accordingly, the applicant made enquiry and recorded the statement of Shivaji Thore and drawn Panchanama. In the statement, Shri Shivaji

Thore stated that the said teak woods were of his land and he was unknown about the permission for cutting the trees. He requested to return the said trees. As such the applicant submitted the report dated 18.8.2018 to R.F.O., Kinwat. The R.F.O., Kinwat forwarded the said matter to the Assistant Conservator (Jankas and Camp) for further action. As such the R.F.O. Kinwat has passed the order on 17.12.2019 (Annex. 'X', page no.46 of paper book) and thereby the said teak wood pieces deposited to the Government and fine of Rs.2000/- was imposed on Shri Shivaji Thore. In fact, the applicant acted according to law, but the said incident was used against him for passing impugned transfer order of the applicant.

17. In view of abovesaid contention raised by the applicant along with the documents as discussed above, it is seen that at the time of alleged incident of 2018, the applicant was working in Rajgad Range and not at Kinwat (Jankas). He was posted in Kinwat (Jankas) only by earlier transfer order dated 04.06.2019 (Annex. 'A-2'). In view of same, *ex-facie*, it appears that the default report used against the applicant is not of the tenure of the applicant at Kinwat (Jankas).

18. So far as the Competent Transferring Authority of the applicant for the transfer is concerned, in normal course the

respondent No.2 i.e. the Chief Conservator of Forest, Vanbhavan, Usmanpura, Aurangabad seems to be the appointing authority of the applicant. In view of the delegated powers, the respondents have relied upon the G.R. dated 11.01.2018 (page no.32 of P.B.) issued by the respondent No.2. As per this G.R, the powers of transfer are delegated to the respondent No.3 i.e. the Deputy Commissioner of Forest and the approval of transferring authority under Section 4(4) and 4(5) of the Transfer Act, 2005 is stated to be the concerned Chief Conservator of Forest. In this case, the respondent No.2 is the Chief Conservator of Forest, Aurangabad. However, earlier transfer order of the applicant dated 04.06.2019 was issued by the respondent No.2 i.e. the Chief Conservator of Forest, Aurangabad despite G.R. dated 11.01.2018 (page no.32 of P.B.) being operational.

19. As per second proviso of Section 6, the Competent Transferring Authority specified in the table may, by general or special order, delegate its powers under this Section to any of its subordinate authority. The said provision does not speak of delegation of powers under Section 4(4) and 4(5) of Transfer Act, 2005. The table under Section 6 listing the Competent Transferring Authority is as follows:-

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

20. As per abovesaid table, Head of the concerned Department is the competent transferring authority of the Government Servants belonging to all Non-Gazetted employees in Group "B" and "C". As per this table, the immediately superior authority as mentioned under Section 4(5) of Transfer Act, 2005 in this case would be Minister in-charge with the Secretaries of the concerned departments. Even if the delegated powers are taken into consideration as per G.R. dated 11.01.2018 (page no.32 of P.B.), still the fact remains as to whether the incident which is not connected with the present posting of the applicant can be considered for midterm and mid-tenure transfer of the applicant being exceptional circumstances and special reasons as mentioned under Section 4(4) (ii) and 4(5) of Transfer Act, 2005. It would be useful to refer to G.R. dated 11.02.2015 issued by the

General Administration Department, State of Maharashtra.

Paragraph no.8 of the G.R. would be relevant which is as

follows:-

“८. एखाद्या प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी/कर्मचाऱ्यांच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधीत अधिकारी/कर्मचाऱ्यांची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधीत अधिकारी/कर्मचाऱ्यांच्या तक्रारीसंबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारीमधील गांभीर्य विचारात घेऊन, संबंधीत अधिकारी/कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे याबाबत बदली प्राधिकाऱ्याने ठोस निर्णय घ्यावा. संबंधीत अधिकारी/कर्मचाऱ्यांच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधीत अधिकारी/कर्मचाऱ्याला त्याच पदावर ठेवून त्याच्याविरूद्ध शिस्तभंगाची कारवाई सुरू करण्याबाबत बदली प्राधिकाऱ्याने निर्णय घ्यावा. मात्र संबंधीत अधिकारी/कर्मचाऱ्याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिकाऱ्याचे मत झाल्यास त्याबाबतची कारणमिमांसा नमूद करून बदली प्राधिकारी संबंधीत अधिकारी/कर्मचाऱ्यांची बदली त्याच्या लगतच्या वरिष्ठ प्राधिकाऱ्याकडे प्रस्तावित करू शकतो. लगतच्या वरिष्ठ प्राधिकाऱ्याकडे असा प्रस्ताव प्राप्त झाल्यास बदली प्राधिकाऱ्याने नमूद केलेली कारणे योग्य आहेत किंवा कसे याची छाननी करून स्वतःचे मत स्पष्ट करून बदली प्राधिकाऱ्याच्या प्रस्तावाला मान्यता द्यावी किंवा बदली प्राधिकाऱ्याचा प्रस्ताव फेटाळून लावण्यात यावा. ज्या प्रकरणात बदली प्राधिकाऱ्याच्या प्रस्तावानुसार गैरवर्तणुकीच्या अनुषंगाने शासकीय अधिकारी/कर्मचारी यांची बदली करण्यात येते अशा प्रकरणात संबंधीत अधिकारी/कर्मचारी यांची बदली केल्यानंतर त्याच्या विरूद्ध शिस्तभंगावची कारवाई सुरू करण्याची दक्षता घ्यावी.”

21. If the present case is examined in the background of the parameters laid down in paragraph no. 8, it is to be demonstrated by the respondents that the allegations levelled against the applicant will be having the substance and the continuation of the Government Servant on the same place when cause administrative inconvenience. In the case in hand, incident relied upon by the respondents is not of the tenure of the applicant in the present posting i.e. at Kinwat (Jankas). It is of Rajgad Forest Range i.e. of earlier posting of the applicant. In

view of same, in my considered opinion, the same does not fit in the requirement of paragraph no.8 of G.R. dated 11.02.2015.

22. So far as competent transferring authority and delegations of powers under Section 6 of the Transfer Act, 2005 is concerned, the learned Advocate for the applicant has placed reliance on the decision of the Principal Bench of this Tribunal at Mumbai in O.A.No.579/2017 dated 08.03.2019. In the said case, the impugned order of transfer of the Forster was challenged. In the said citation case reliance was placed by the respondents on G.R. dated 23.06.2014 issued by the Revenue and Forest Department, Government of Maharashtra, whereby the competent authorities were declared for implementation of provisions of 'Transfer Act, 2005'. As per the said G.R., the competent authorities were notified as per the requirement of Section 7 'Transfer Act 2005'. As per the same, the Divisional Forest Officer was notified as the competent authority for transfer of Group 'C' and 'D' employees for general transfer under Section 3 of 'Transfer Act, 2005.' The respondent No.3 therein i.e. the Divisional Forest Officer and under his signature the transfer order of the applicant was issued. In the said case, the impugned transfer order was midterm and mid-tenure and therefore, there was requirement of approval of next higher authority. In the said case, it was stated

that higher authority of the Respondent No.3 is Additional Principal Chief Conservator of Forest, Mumbai and the said authority has approved the proposal.

23. After having considered circular and the provisions of Section 6 and 7 of 'Transfer Act, 2005' the Hon'ble Co-ordinate Bench held that as per table in Section 6, the higher authority for approval of transfer of employees of Group 'C' and 'D' would be Minister in-charge in consultation with the Secretaries of the concerned departments. The facts in the present case and the citation case are of similar nature. In the case in hand, the approval of Chief Conservator of Forest, Aurangabad i.e. the respondent No.2 is taken and there is no approval of the concerned Minister as laid down in the decision of the Co-ordinate Bench. In the circumstances as above, in my opinion, the impugned order suffers from illegality being not in consonance of requirement of Section 4(4) and 4(5) of 'Transfer Act, 2005' even assuming that the impugned order being issued by the competent transferring authority under delegated powers and approval is given by the higher authority. Reason for transfer of the applicant is totally not connected with the present tenure of the applicant. Therefore, the said administrative reason cannot fall in the category of exceptional circumstances

and special reason as mentioned under Section 4(4) (ii) and 4(5) of 'Transfer Act, 2005'. It is the mandate of the said provisions. The impugned order being in contravention of the said provisions, is not sustainable in the eyes of law and therefore, the same is liable to be quashed and set aside.

24. Record shows that the execution and implementation of the impugned order of transfer is stayed during pendency of the Original Application. Moreover, learned Advocate for the applicant across the bar during arguments submitted that by order dated 09.08.2021 post of Forester Shivni, Forest Range Apparaopeth is filled in and one Shri B.T. Jadhav is posted there. In the circumstances any decision in this matter would not affect any Government employee. In view of same, I proceed to pass following order:-

ORDER

- (a) The Original Application is allowed.
- (b) The impugned order of transfer of the applicant dated 20.01.2020 (Annex. 'A-3') is quashed and set aside.
- (c) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:- Aurangabad
Date :- 25.02.2022
SAS. O.A.No.85/2020. Transfer