

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 1089 OF 2019

DISTRICT: - BEED.

Dadasaheb S/o. Tejrao Yadmal (Joshi),

Age-30 years, Occu. : Service,
R/o. Shriram Nagar,
Jawahar Colony, Nagar Road,
Beed, District Beed.

.. APPLICANT.

V E R S U S

- 1) **The State of Maharashtra,**
Through Additional Principal
Chief Conservator of Forest
(Administration Subordinate Cadre),
Vanbhavan, Nagpur.
- 2) **Chief Conservator of Forest,**
Aurangabad Division, Van Bhavan,
Usmanpura, Station Road,
Aurangabad.
- 3) **District / Divisional Forest Officer,**
Khasbag, Lendhi Road, Beed.
- 4) **District / Divisional Forest Officer,**
Wildlife, Sawarkar Chowk,
Aurangabad.
- 5) **Range Forest Officer,**
Naigaon, Dist. Beed.
- 6) **Chandansinh Chandel,**
Chairman, Forest Development
Corporation of Maharashtra,
F.D.C.M. Bhavan, Ambazari,
Hingna Road, Nagpur.

.. RESPONDENT.

APPEARANCE : Shri M.B. Bharaswadkar, learned Advocate for the applicant.

: Shri V.R. Bhumkar – learned Presenting Officer for the respondent Nos. 1 to 5.

: Shri Amarnath S. Sakhare, learned Advocate holding for Shri Sandeep R. Sapkal, learned Advocate for respondent No. 6.

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

DATE : **24.05.2021**

ORDER

In this Original Application the applicant has challenged the impugned order of transfer dated 13.12.2019 passed by respondent No. 2 i.e. Chief Conservator of Forest, Aurangabad. By the said impugned order the applicant has been transferred from Dhas Pimpalgaon (Wildlife), Naigaon, District Beed to Nanded Division.

2. The applicant came to be appointed as Forest Guard in Class-III cadre on 06.11.2012. Since then he worked at various places. The applicant was posted at Dhas Pimpalgaon, Naigaon, District Beed in the year 2017. He joined at that place on 19.6.2017. The impugned transfer order is dated 13.12.2019, a copy of which is placed on

record at Annexure 'A-1', page-10 of paper book of O.A. In view of the same, it is averred that the impugned order of transfer is midterm and mid-tenure order.

3. The applicant submits that the applicant received the information under Right to Information Act that the proposal for his transfer was forwarded by the District / Divisional Forest Officer, Beed (respondent No. 3) on 7.8.2019 in his capacity as Chairman of Civil Services Board-2. It is based on communication dated 22.7.2019 (Annexure 'A-3', page-14 of paper book of O.A.) from Chairman (Minister Status) Forest Development Corporation, M.S., Nagpur (respondent No. 6). The said communication states that there are allegations of domestic violence and cruelty against the applicant. According to the applicant, the same cannot be said to be exceptional or special cause for his transfer.

4. Incidentally, it is stated by the applicant that the proposal of one L.M. Gade, Forest Guard was also submitted on the basis of complaints. The said proposal however, was not approved by respondent No. 1. In view of the same discriminatory treatment is given by the authorities to the applicant.

5. In view of the above, the impugned order of transfer is challenged on the following grounds: -

(i) It is midterm and mid-tenure transfer order and contrary to the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for sort hereinafter called as “the Transfer Act of 2005”); and

(ii) The allegations regarding criminal case, domestic violence and cruelty cannot be the basis for transfer of the applicant, as it is contrary to the provisions of the Transfer Act of 2005.

6. Affidavit in reply is filed on behalf of the respondent Nos. 1 to 5 by one Shri Ashok Nagorao Kakade, Range Forest Officer, Mobile Squad, Beed. Thereby it is stated that the impugned order satisfies the provisions of Section 3 (2) and Section 4 (4) & 4 (5) of the Transfer Act of 2005. The applicant has been transferred due to exceptional circumstances and special reasons and with prior approval of the immediate higher authority. Hence, it is legal and proper. The case of one L.M. Gade, Forest Guard, cannot be compared with the case of the applicant as the facts are totally different.

7. Heard Shri M.B. Bharaswadkar, learned Advocate for the applicant, Shri V.R. Bhumkar, learned Presenting Officer for the respondent Nos. 1 to 5 and Shri Amarnath S. Sakhare, learned Advocate holding for Shri Sandeep R. Sapkal, learned Advocate for respondent No. 6.

8. Learned Advocate for the applicant strenuously urged before me that pendency of criminal case of domestic violence and cruelty cannot be said to be exceptional circumstances and special reasons to effect the transfer of the applicant under Section 4 (4) & 4 (5) of the Transfer Act of 2005. He also invited my attention to the case of Mr. L.M. Gade. For that purpose he invited my attention to the proposal of Mr. L.M. Gade (page-24 of the paper book of O.A.) and proposal of applicant (page-25 of the paper book of O.A.). He submitted that the said document would show that there are two Chairmen of Civil Services Board namely the respondent No. 3 and the Chief Accountant. The said proposal is dated 7.8.2019. So far as recommendation regarding applicant is concerned, there is mention of criminal case bearing Crime No. 128/2019 under Sections 498 (A), 406, 323, 204, 506 r/w Section 34 of IPC as communicated by letter dated

22.7.2019 by the Chairman of Forest Development Corporation, M.S., Nagpur. At this juncture, he pointed out that the said communication dated 22.7.2019 (Annexure 'A-3' page-14 of paper book) would show that the Divisional Forest Officer, Beed i.e. respondent No. 3, who is Chairman of the Civil Services Board received it on 13.8.2019. According to him, this discrepancy falsifies the proposal made by the Civil Services Board, who is having two Chairmen. He further submitted that the case of Mr. Gade whose transfer was also proposed by the Civil Services Board is based on the allegations that he was abusive and disrespectful towards his superior. Despite that, the same proposal is not accepted by the respondent No. 1 thereby discrimination is caused to the applicant. Learned Advocate for the applicant has placed reliance on the decision dated 17.6.2005 delivered by Hon'ble Acting Chairman of this Tribunal Bench at Aurangabad in O.A. No. 285/2005 in the matter of Shaikh Yunus S/o. Shaikh Yusufuddin Vs. the State of Maharashtra and Others.

9. Learned Advocate for the applicant further submitted that by the judgment and order dated 6.4.2021 in RCC No. 189/2019, the applicant and three others, who were charge

sheeted for the offences punishable under Sections 498-A, 406, 323, 504, 506 read with Section 34 of IPC have been acquitted for want of evidence and matter being compromised and the applicant is cohabiting with his wife.

10. On the other hand, learned Presenting Officer submitted that the impugned order of transfer is falling under the category of exceptional circumstances and special reasons as contemplated under Section 4 (4) & 4 (5) of the Transfer Act of 2005. Further necessary approval of immediate higher authority is also obtained. Some infirmities as regards difference in dates are not fatal, in view of admitted facts that the applicant and his family members were prosecuted for the offences punishable under Sections 498-A, 406, 323, 504, 506 read with Section 34 of IPC.

11. In the background of rival submissions as above the chronology of events emerges as follows: -

(a) Admittedly this is midterm and mid-tenure transfer by the impugned order dated 13.12.2019, as the applicant is working on the present post since 19.6.2017;

(b) The impugned order dated 13.12.2019 needs to be considered as per the provisions of Section 4 (4) and 4 (5) of the Transfer Act of 2005;

(c) Perusal of the impugned transfer order dated 13.12.2019 (Annexure 'A-1', page 10 of the paper book) would show that the transfer is made by exercising administrative powers by respondent No. 2, Chief Conservator of Forest, Aurangabad Division, Aurangabad, and after seeking due approval of the immediate higher authority i.e. respondent No. 1.

(d) There was a proposal for transfer of the applicant by Civil Services Board-2, as per its resolution dated 7.8.2019, a copy of which is placed on record at Annexure 'R-1', page Nos. 23 & 25. By the same resolution Shri L.M. Gade working as Forest Guard in Beed Division and who had completed only six months of tenure was also recommended for transfer, a copy of which is placed on record at page-24.

(e) The reason for transfer of the applicant is that a case was registered against the applicant under Domestic Violence Act, as well as, proceedings under Section 125 of Cr.PC and also registration of Crime No. 128/2019 under Sections 498 (A), 406, 323, 204, 506 r/w Section 34 of IPC and the said fact was communicated to the respondent No. 4 i.e. District / Divisional Forest Officer, Wildlife, Aurangabad, vide letter dated 22.7.2019 (Annexure 'A-3', page 14 of paper

book) from the Chairman of Forest Development Corporation, Nagpur.

(f) Both these proposals are signed by Shri Amol Satpute, Divisional Forest Officer, Beed cum Chairman of Civil Services Board-2, Shri S.D. Bhange, Chief Accountant, Divisional Forest Officer cum Chairman of Civil Services Board-2, Shri S.P. Magar & Shri K.M. Gite as Members of the said Civil Services Board-2. It is not explained by the respondents as to how there was two Chairmen of the said Board at the relevant time.

(g) The transfer of Shri L.M. Gade, Forest Guard was recommended in view of various complaints received by the Lady Forest Officer in Aurangabad Division that the said Forest Guard was in habit of using abusive and un-parliamentary language and to give false information to the newspaper reporters and also threatening her life and limb by chasing her.

(h) The communication dated 22.7.2019 from Chairman of Forest Development Corporation, Nagpur is at Annexure 'A-3', page-14 of the paper book and the endorsement of receipt by the respondent No. 3 i.e. the District / Divisional Forest Officer, Beed shows the date of 13.8.2019.

(i) In resolution dated 7.8.2019, the said communication dated 22.7.2019 reflects that in fact it was received by the office of respondent No. 3 on 13.8.2019.

(j) The discrepancy as regards constitution of the Civil Services Board-2 having two Chairmen is not explained by the respondents, as well discrepancy as regards as to how it was receipt of communication dated 22.7.2019 was referred in resolution dated 7.8.2019. Even if these discrepancies are not assumed to be fatal, it was for the respondents to give plausible reasons if any mistake or error happened in that regard.

12. So far as merit of the case is concerned, it can be seen that the administrative ground for transfer is based on the domestic violence and cruelty alleged against the applicant and his family members by the wife of the applicant. It is pertinent to note that the said Crime No. 128/2019 was resulted into filing of RCC No. 189/2019 by the State through Shivaji Nagar Police Station, Beed against the applicant as accused No. 1 and the accused Nos. 2 to 4 being his family members. The applicant has placed on record the copy of final order dated 6.4.2021 passed by the learned Judicial Magistrate First Class, Court No. 1 at Beed. Perusal of the said order would show that all the accused including the applicant were acquitted as the offences lodged against them were not proved by the prosecution. It was also noted in that order that the applicant and his wife are now cohabiting with

each other after having settlement of their matrimonial dispute.

13. Upon perusal of the allegations against the applicant of domestic violence and cruelty, it is not clear as to how it has adversely affected discharge of duties by the applicant in his day-to-day life causing inconvenience to the administration of the respondents. The applicant also alleges discrimination stating that one Shri L.M. Gade, Forest Guard, though recommended for transfer on the allegation that he was abusive towards his superior lady officer and was also threatened. The said proposal for transfer of Shri Gade was not approved by the respondent No. 1 stating that there is no sufficient reason for giving approval for his transfer i.e. reflected in approval letter dated 12.12.2019 issued by respondent No. 1, a copy of which is at Annexure 'A-4', page-15 of paper book. That apart the applicant has to make out his case on his own footing, but incidentally, rejection of the proposal of transfer of Shri Gade would be relevant to some extent while considering the grievance of the applicant. In the circumstances, as above, when there is no material on record to show that allegations of domestic violence and

cruelty made against the applicant by his wife are not causing any inconvenience of any sort to the administration or affecting the discharge of the duties by the applicant, it cannot be said that the respondents have made out exceptional circumstance or special reason for causing this midterm and mid-tenure transfer as contemplated under Section 4 (4) & 4 (5) of the Transfer Act of 2005. I, therefore, find substance in the contentions raised by the applicant assailing the impugned transfer order dated 13.12.2019. Consequently, I hold that the impugned transfer order is not sustainable in the eyes of law and is liable to be quashed and set aside. Hence, the following order: -

ORDER

- (i) The present Original Application is allowed.
- (ii) The impugned transfer order dated 13.12.2019 passed by the respondent No. 2 i.e. the Chief Conservator of Forest, Aurangabad is hereby quashed and set aside.
- (iii) The interim order dated 18.12.2019 is merged in this order.
- (iv) There shall be no order as to costs.

MEMBER (J)

PLACE : AURANGABAD.

DATE : 24.05.2021

O.A.NO.1089-2019(SB-Transfer)-HDD-2021