

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR.**

**ORIGINAL APPLICATION NO.261/2015.**

Subhash Vasantrao Komerwar,  
Aged about 55 years,  
Occ-Service,  
R/o 39, Sneh Nagar, Wardha Road,  
Nagpur.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Forests,  
Mantralaya, Mumbai-32.
2. The Chief Conservator of Forests (Territorial),  
Zero Mile Stone,  
Civil Lines, Nagpur.
3. The Addl. Principal Chief Conservator of Forests (Wildlife),  
East, Zero Mile Stone, Civil Lines, Nagpur.
4. Shri S.N. Mandhalkar,  
R/o Zero Mile Stone,  
Civil Lines, Nagpur.

**Respondents.**

Shri S.P. Kshirsagar, Ld. counsel for the applicant.

Shri D.M. Kakani, Ld. Special counsel for the respondent Nos. 1 to 3.

None for respondent No.4.

**Coram:- S.S. Hingne, Member (J)**

**Dated:- 16<sup>th</sup> March, 2016.**

**Order**

Heard Shri S.P. Kshirsagar, the learned counsel for  
the applicant and Shri D.M. Kakani, the learned Special Counsel for  
respondent Nos. 1 to 3. None appeared for respondent No.4.

2. O.A. is heard at the stage of admission with the consent of both the parties.
3. Taking exception of the order dated 29.5.2015 (Annexure A-1, P. 13), the applicant, an accountant has filed this O.A. by which respondent No.4 is transferred in his place.
4. The grudge and grievance of the applicant is that, he was transferred from Gondia to Nagpur by order dated 11.12.2013 (Annexure A-2, P. 14) and has not completed his tenure. However, respondent No.4 is transferred by impugned order in place of the applicant. This is with a view to accommodate respondent No.4. No interim relief of stay was granted, though sought. But only direction was given that the order of the applicant's transfer is to be issued, should be with the prior approval of the competent transferring authority.
5. Respondents' case is that the transfer order of the applicant was already issued on 22.5.2015 (Annexure R-2, P. 28) before issuing the impugned transfer order of respondent No.4 on 29.5.2015. Further, the respondent department has come with a case that this fact is suppressed in the O.A. Whereas according to the applicant, he was never served with such an order. The respondents have filed on record the copy of an envelope (P. 58 & 59) to demonstrate that the applicant did not claim the said postal envelope.

6. The main attack of the applicant on the transfer order is that, the order is mid-tenure and without prior approval of the competent transferring authority and to favour respondent No.4. Respondents' case is that the transfer order is issued out of administrative exigency. In support of the submission, reliance is placed on the file of approval. It reveals from page 36 that the proposal was made by the Additional Principal Chief Conservator of Forests, Nagpur on 19.5.2015 for effecting transfer of the applicant. The said proposal at Page 37 says that the applicant-Accountant, without prior approval remained absent for a period of 51 days i.e. from 26.2.2014 to 15.4.2014. Then again for 27days i.e. from 9.9.2014 to 4.10.2014 and six days from 17.4.2014 to 22.4.2014. The note further says that he also earlier had availed 101 days' leave and his leave for 253 days was treated as an extraordinary leave, thereby work was hampered and the department has proposed to take action under Rule 10 of the M.C.S. (Discipline and Appeal) Rules, 1979 against him. It further mentions that therefore, the applicant be transferred.

7. The Civil Service Board in its meeting dated 19.5.2015 considered this aspect and proposed the transfer of the applicant on administrative ground. The learned special counsel for the respondents strenuously submitted that if the Accountant remains

absent for such a long period intermittently, thereby the whole important work of accounts suffers. According to the applicant, though he is designated as an Accountant, he was doing the work of Inward and Outward Clerk. Anyhow, fact remains that if an employee remains intermittently absent without intimation, the administrative and official work suffers. The applicant also had not intimated about his absence. There was also a complaint in respect of other employees. The Civil Services Board has unanimously decided to transfer such employees to maintain administrative discipline. The Board consists of high designated officers. No malice or malafides are averred against them. Thus, if the decision is taken by such officers, taking into consideration the administrative interest, it cannot be seen with suspicious eye.

8. Needless to mention that if any decision is taken by the authorities in the interest of administration of the office or administrative requirements, such decision has to be branded as an administrative exigency or need, unless tainted with malice or malafides. No such case is putforth in the case in hand. Moreover, when an employee remained continuously and intermittently absent from duty, it goes without saying that it affects the work not only of the table of that employee but also the whole office work is hampered because, alternate arrangement is to be made by giving additional

charge or some other person is to be deputed, thereby affects his own table work. Moreover, if an employee without intimation remains absent, it accelerates the gravity and affects the work more adversely. Administrative heads are best persons to assess the day to day administration. The Courts / Tribunals cannot have any material on record to test the gravity of the effect on the day to day administration by absence of such employees. The Tribunal cannot sit over as appellate authority to consider the effect in absence of contrary material on record. Anyhow fact remains that it affects day to day administration and, therefore, if such an employee is transferred, it has to be concluded that the transfer is out of administrative need / exigency.

9. According to the respondents department, intimation was given to the applicant that he should not repeat such instances of absence and warning was given to him (P.38 & 40). But there was no improvement. The learned counsel for the applicant urged that the applicant's absence was not unauthorized, but the department has sanctioned it. However, that does not mean that only because the department has sanctioned the leave, the administrative work did not suffer.

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10. Applicant's transfer is effected only for that reason. From the above period of absence of the applicant, it is manifest that due to his act or conduct, official work is being suffered. Prior approval given by the superior transferring authority on that ground can be legal and valid in the eye of law to effect transfer of the applicant.

11. As a next string to the bow, it is urged that prior approval is not by the competent transferring authority. In the instant case, the order is issued with the prior approval of the superior transferring authority. Transfer order of the applicant (P.28) is issued by the Chief Conservator of Forests (Regional), Nagpur. As per the gazette notification (P.30 R.3) dated 23.6.2014, the Chief Conservator of Forests (Regional), Nagpur is the competent transferring authority to effect the transfer.

12. It also shows that the Additional Principal Chief Conservator of Forests, Nagpur is the next superior to the transferring authority. The learned counsel for the applicant further urged that earlier before the amendment, under Section 4 (5) of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as, "Transfer Act"), "prior approval of the immediately competent

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transferring authority” was necessary. However, after amendment, this power is vested with the next superior transferring authority.

13. in the case in hand, the applicant was working with the Additional Principal Chief Conservator of Forests, Nagpur. The applicant being Group-C employee as per Section 6 of the Act, the competent transferring authority is the Chief Conservator of Forests, Nagpur. Therefore, the Additional Principal Chief Conservator of Forests, Nagpur (in whose office the applicant was working) made the proposal to the competent authority i.e. the subordinate officer, Chief Conservator of Forests, Nagpur. Then the matter was placed before the Civil Services Board to consider the aspect in the proceedings on 19.8.2015 (P.32) and approved the same.

14. According to the respondents, as per gazette notification dated 23.6.2014 (P.30), for the Group-C & D employees' transfer, Chief Conservator of Forests, Nagpur the competent transferring authority. The next immediately superior transferring authority is the Additional Principal Chief Conservator of Forests, Nagpur and his approval is taken. This approval is there because the said authority itself has made proposal. Therefore, action to take the same approval from the same authority was redundant and was nothing, but sheer repetition. When the Additional Principal Chief Conservator of Forests, Nagpur had himself made proposal, it

presupposes that his approval is there. There is no reason for the same person to take a contrary view. Thus, it is not open to resist the said approval on technical ground. This submission holds water. Ultimately, the same authority i.e. the Additional Principal Chief Conservator of Forests, Nagpur had issued the order. Therefore, this not only presupposes grant of approval, but it inherently exists therein.

15. The learned counsel for the applicant placed reliance on a decision in **W.P. No. 4019/2005 in Nandkishore V/s Secretary to the Government decided on 2<sup>nd</sup>/5<sup>th</sup> July 2010** and submitted that the applicant is working on the present post and the monetary benefits were given to him. The respondents' case is that, the applicant has himself written his name in his handwriting in the muster roll (P.61) and he is already relieved from the office of transfer on 30.5.2015 vide (Annexure R-2, P. 29). This throws light on various aspects. No relief is claimed on this ground in this O.A. In the above cited case i.e. **Nandkishore**, an employee was relieved and had gone to join the transferred place, but he was not allowed to join because that post was occupied by other employee. Thus, the employee in that case was not at fault.

16. As against this, the learned special counsel for the respondents placed reliance on the observation in the case of **S.C. Saxena V/s Union of India 2006 SCC (L&S) 1890**, wherein their



Lordships of the Apex Court of the land observed that if an employee does not report at the new place of transfer and indulges in other activities and litigation, it needs to be curbed. In the above state of affairs, in the instant case, least said is better about that aspect. In the above state of affairs, this aspect cannot be decided effectively and completely and does not deserve any consideration being a subsequent event and as no such relief as claimed.

16. The learned counsel for the applicant urged that the transfer was issued to accommodate respondent No.4. However, there is no an iota of material on record to hold that there is substance in the submission. On the contrary, material placed on record indicates otherwise that the order is issued to meet the administrative exigency. The learned counsel for the applicant urged that respondent No.4 has made request and this shows that the transfer order is issued to accommodate respondent No.4. If the transfer order of one employee is issued out of administrative need and coincidentally the other employee has made a request and is accommodated, that itself does not mean that the order is issued to favour latter. It does happen that under such situation, the one employee gets benefit, but that does not mean that one employee is transferred at the instance of the other employee. Here, there is a cogent and clinching material that the applicant was transferred because the administrative work was

suffering. If thereby respondent No.4 is accommodated, it cannot be said that all this was done to favour respondent No.4.

17. From the foregoing reasons, it is manifest that the order is issued according to the provisions of the Act, following due procedure. It is neither tainted with malice nor to favour respondent No.4. The order is thus legal and valid. Subsequent intervening events do not affect its legality and validity and the same has no bearing to decide the O.A.

18. In effect, there is no merit in the case propounded by the applicant. Consequently, the O.A. is rejected with no order as to costs.

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(S.S.Hingne)  
Member (J)

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