

O.A. No.415 of 2016 –

(Ramesh Sitaram Lohabare Vs. State of Maharashtra & 4 ors.)

**Coram :- Hon'ble Shri S.S. Hingne,
Member (J).**

Dated :- 19-10-2016.

ORDER -

The order dated 22-6-2016 (A-5,P-19) is challenged by the applicant /Forest Guard by which he is transferred from Chalna-2 Bit (Adyal Range) to Khamba Bit (Sakoli Range).

2. Heard Ms. K.K.Pathak, Id. counsel for the applicant and Shri M.I. Khan, Id. P.O. for R-1 to 4. None for R-5. The O.A. is heard finally at the admission stage with consent of Id. counsel for parties.

3. The applicant challenged the impugned order on the ground that he was not due for transfer and the order is issued in June. Thus the order is a mid-term and mid tenure without any special reasons.

4. As against this the respondents' case is that the applicant is trouble some and creates hurdles in day to day office works. The Govt. has allotted the forest land Bit No. 860 to him being ex-serviceman, but the applicant creates obstruction to carry out the work in the forest land Bit No. 861 which is adjoining to his land. It is also the respondents' case is that there are several complaints

against the applicant and hence the matter was referred to the higher authority for approval and for this special reasons the approval is given by the higher authority and the transfer order is issued which is legal and valid after compliance of provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short 'Transfer Act').

5. At the outset the learned counsel for the applicant urged that the general transfers are issued on 27-5-2016 (A-6,P-20) but the applicant is not transferred. On the contrary, Mr. D.P. Meshram (R/5) was transferred from Pathari to Khapa-I (Range Lendezari). However, when the applicant returned from Training and made some inquiries and found that the work was not done, but the bills were prepared and he raised that point and therefore the officers are annoyed and they have subjected him to transfer.

6. The applicant's case is that to favour R/5 the applicant is transferred from Chalna and R/5 is posted there. However, there is no shred of material to hold that the order is issued to favour R/5. The learned counsel for the applicant urged that there was no reason to transfer R/5 when he was already transferred vide order dated 27-5-2016 and this shows to favour R/5 and applicant is transferred. However by any stretch of imagination only because R/5 is transferred for second time, it cannot be said that the second order

is issued to favour him, particularly when there is no material on record.

7. Secondly it is urged that the applicant is ex-serviceman and his stand is that he raised the voice against corruption. The object is very laudable and therefore if he be transferred on that ground, the order cannot be proper. However, the matter does not end there.

8. The respondents' case is that some land is allotted to the applicant, i.e., Bit No. 860 which is adjacent to forest land and the applicant wants that no plantation work should be done on forest land near to his field and therefore he creates trouble. Thus the allegations against each other are made and it becomes a rope walking test to reach to concrete conclusion.

9. However fact remains that when the official work is not going on smoothly, it affects the administration and the public interest at large. It reveals from the record that Dy. Conservator of Forest, Bhandara has sent the proposal to transfer the applicant and considering all these facts and documents on record, in turn, the Chief Conservator of Forest vide approval dated 18-6-2016 has considered the aspect and granted the approval (R-2,P-39) to transfer the applicant. Thus prior approval of the immediately superior transferring authority / next higher authority is taken.

10. This leads to consider whether the said reasons make out a special case or exceptional circumstances to transfer the applicant mid-term and mid tenure. It reveals from the record that several forest labours (P-32,33,34,36,37) have made the complaints to the higher authorities to the effect that the applicant does not allow them to work, creates hurdles in their works and for that the Tahsildar has called their explanations. Not only that but the Bit Guard namely Mr. Nardenge (P-27) and the Assistant Range Forester Mr. Tembhornikar (P-28) have written to the higher authority that the applicant does not allow to work on the forest land (Gut no.861) only because his land (Gut no.860) is abutting to that, he even threatens to call the News Reporters, threatens the labours and it has become very difficult to work with such employee. The Chief Conservator Forest has considered all these aspects and granted the approval.

11. As observed earlier if the object of the applicant is sincere then it is worth appreciating however if his act is tainted with to serve the self interest that the Forest Department should not work near his land then it cannot be said that there is substance in his stand. Anyhow fact remains that due to such incident the official work hampers and it is not proper that the official work and public interest would suffer for such reasons. In the light of this if the approval granted by the higher authorities same can be sufficient and special

reasons and can be a special case. Paramount consideration is to be given to the public interest, general administration of department and not to a personal interest and if the former suffers and for that reasons the approval is given that can be valid and sufficient. The Chief Conservator of Forest is the higher authority it has considered these aspects, no malice or malafides are alleged against the authorities so as to doubt the prior approval. Having regard to this material, the action of the respondents cannot be said to be illegal and invalid.

12. The learned counsel for the applicant urged that the action is punitive and no inquiry is held and no show cause notice is issued to the applicant. The learned P.O. submits that the D.E. is in offing. Moreover, when the public work suffers for such miscellaneous acts going on daily, it is not necessary to hold every time D.E. for such action. If the transfer order is issued to maintain the administrative interest it cannot be termed as a punitive and no explanation from the employee every time is necessary.

13. The learned counsel for the applicant relied on the observations made by Their Lordships of the Apex Court in a case **Somesh Tiwari Vs. Union of India & Ors. (2009) 2 SCC 592** . In the said case there was non-application of mind by authority the action was punitive in nature, malafides were alleged. It is also held that the transfer of the employee on non existence facts is a malice in law. In

the case in hand the complaints from several forest labours, Bit Guards and Assistant Range Forester. Not only that but it is also alleged that the applicant pressurised the forest labours to change their statements and the forest labours have given statements to that effect to the forest authorities. Under such circumstances, it cannot be said that allegations are on non existence facts. On the contrary, in the above state of affairs to maintain the official discipline and smooth working the transfer can only be the panacea. In the cited case the complaint was anonymous whereas, in the case in hand the details are given in the complaints and several complainants have signed the same.

14. Having regard to the above discussion, it has to be concluded that the respondents have made out a special case to effect the mid-term and mid tenure transfer and there are exceptional circumstances and special reasons to grant the prior approval.

15. Thus, the case propounded by the applicant is devoid of merit. Consequently, the O.A. is rejected with no order as to costs.

**(S.S.Hingne),
Member (J).**