

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI**  
**BENCH AT AURANGABAD.**

**DIST. JALGAON.**

**ORIGINAL APPLICATION NO.256/2016.**

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Madhukar S/o Wamanrao Jadhav,  
Age 54 years, Occu. Range Forest Officer,  
R/o Range Forest Office, Yawal West,  
Viravalli Road, Tq. Yawal, Dist. Jalgaon.

-- **APPLICANT**

**VERSUS**

1. The State of Maharashtra  
Through its Secretary,  
Revenue Department,  
Mantralaya, Mumbai-400 032.  
(Copy to be served upon the Chief  
Presenting Officer, MAT Mumbai,  
Bench at Aurangabad).
2. The Chief Conservator of Forest,  
Region Dhule, Tq. & Dist. Dhule.
3. Shri D.G. Pawar, Age 30 years,  
Occu. Range Forest Officer,  
R/o Rojgar Hami Yojana, Chopda,  
Yawal, Dist. Jalgaon.

-- **RESPONDENTS.**

**APPEARANCE** : Shri S.R. Sapkal, learned Advocate for the  
Applicant.

: Shri N.U. Yadav, learned Presenting Officer for the  
Respondents.

: Shri Vivek Bhavthankar, learned Special Council for the Respondents no.1 & 2.

**CORAM** : **Hon'ble Shri JD Kulkarni, Member (J).**

**DATE** : 09.01.2017.

**JUIDGMENT.**

**(Delivered on this 9<sup>th</sup> day of January, 2017)**

1. The Applicant is Range Forest Officer and vide impugned order dated 31.3.2016 he has been transferred from the said post Yawal West, Yawal Division, Dist. Jalgaon to Nawapur Research Centre, Jalna in the vacant post on account of promotion of one Shri R.D. Tawade. According to applicant he was transferred to Yawal from Deola on 19.8.2014 only and therefore, he has not completed his tenure of 3 years at Yawal. In his place the Respondent no.4 Shri D.G. Pawar has been transferred. According to applicant his transfer is mid-tenure since he has not completed 3 years and there was no reason to transfer him. The said transfer order is therefore, with intention to harass him. The applicant was not given opportunity of hearing for transfer. It is therefore, prayed that, the impugned order dated 31.3.2016 issued by the Chief Conservator of Forest i.e. Respondentno.2 be quashed and set aside.

2. The Respondents no.1 & 2 have resisted the claim by filing reply. It is stated that, Yawal West Territorial Range is very sensitive range and illegal encroachments, illegal transportation of minor forest produce, theft of Gum and Bamboo etc. occurred frequently in this areas. The applicant was found in competent and inefficient to control such circumstances. Dy. Conservator of Forest Yawal Forest Division Jalgaon requested Respondent no.2 i.e. Chief Conservator of Forest to appoint directly recruited Range Forest Officer in place of applicant.

3. The respondents further stated that, the applicant is not having knowledge of Forest Act. He is not having capacity to get the work done from sub-ordinates and his relations with sub-ordinate staff is not good. The local people, other public and public representatives have adverse opinion against the applicant and hence it was highly impossible to perform effectively and efficiently office duties and therefore, the applicant has been transferred. In short, it is the case of the respondents that the applicant has been transferred on administrative ground.

4. Heard Shri S.R. Sapkal, learned Advocate for the Applicant, Shri N.U. Yadav, learned Presenting Officer for the Respondents

and Shri Vivek Bhavthankar, learned Special Council for the Respondents no.1 & 2. I have perused the application, affidavit in reply and various documents placed on record.

5. The only point is to be considered is whether the impugned order of transfer dated 31.3.2016 in respect of applicant is legal and proper ?

6. The learned Advocate for the applicant has invited my attention to Section 3 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005, which states about the tenure of posting. There is no dispute that the applicant is entitled to a tenure of 3 years in a particular post. Admittedly the applicant has been transferred to Yawal vide order dated 12.8.2014 and therefore, he has not completed his tenure at Yawal and he was not due for transfer. In such circumstances, it is only to be seen as to whether the order is in administrative convenience and whether the provisions of Transfer Act has been followed.

7. Learned Advocate for the applicant invited my attention to Section 4 (5) of the Transfer Act, 2005. He submits that, as per Sub

Section 4 (5) it was necessary for the transferring authority to obtain sanction of higher authority or immediate superior authority for the transfer of the applicant.

8. The learned P.O. Shri N.U. Yadav for the respondents however, submits that, no sanction of higher authority is required when the transfer is as per Section 4 (1) to (5) of the Transfer Act, which reads as under :-

“4. Tenure of transfer.

- (1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.
- (2) The competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year.
- (3) Transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalized by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be:

Provided that, any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.

- (4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May:

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:-

- (i) To the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;
  - (ii) Where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority;
- (5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior (approval of the immediately superior) Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post.”

9. The plain reading of the aforesaid provision shows that, an employee can be transferred at any time in a year in the circumstances referred in Section 4 (4) of the Transfer Act, 2005. However, sub section (5) is an embargo for such transfer. Sub Section (5) is notwithstanding anything contained in Section 3 or Section 4 and therefore, it says that, if the transfer order is issued for special reasons, recording a reason in writing for such transfer is necessary, so also the prior approval of immediate superior authority.

10. In the present case the impugned order of transfer has been issued by the Chief Conservator of Forest Division. The applicant is

a Group-1 Officer and therefore, the approval of Head of the Department was necessary but is not obtained.

11. It seems from the letter Exh.R1 at paper book page nos.21 & 22 that the Dy. Conservator of Forest Yawal Division, Jalgaon has written one letter to Chief Conservator of Forest Dhule and made complaint against the applicant about his way of working and on the basis of that recommendation the applicant has been transferred. The documents filed along with reply affidavit shows that from time to time some notices have been issued to the applicant and therefore, it was thought necessary to transfer the applicant. In the impugned order of transfer it has been mentioned that the applicant has been transferred on administrative ground, however, from the documents filed along with the reply affidavit as well as from the contents of the reply affidavit it seems that the applicant has been transferred because he is incompetent. It is material to note that, the applicant has been transferred from the post of Range Forest Officer Yawal to the post of Range Forest Officer at Nawapur. It is therefore, not known as to how the applicant can become competent and will competently work at Nawapur on the same post when he is incompetent of discharging his duties on the same post at Yawal.

12. In my opinion, if the applicant is incompetent the only way out to deal with situation is to take departmental action against him and if he is found incompetent he can be removed from service, but transfer can not be way out to adjust incompetent employees. Transfer on the ground of incompetency is definitely punitive.

13. The learned counsel for the applicant has placed reliance on the judgment delivered by the Hon'ble High Court of Madras in W.P. No.9599 of 2009, R. Mohanasundaram Vs. The Principal Chief conservator of Forest and Oth. On 10.6.2009. In para no.12 of the said judgment it has been observed as under :-

“12. The above settled principle of law laid down by the Hon'ble Apex Court and this Court is squarely applicable to the facts of the case on hand as in this case also the impugned order revealed that the petitioner was transferred on administrative grounds, but the counter filed by the third respondent made it abundantly clear that the transfer order was passed against the petitioner not on administrative reasons, but the impugned order was passed by way of punishment on the basis of certain allegations and adverse remarks made against the petitioner.”

14. In the present case also it seems that the applicant has been transferred not on administrative ground but on the ground that, he is incompetent and as such it is a punitive transfer. The approval of immediate superior authority has not been taken for such transfer



and therefore, I am satisfied that, the impugned order of transfer dated 31.3.2016 is required to be quashed and set aside. Hence the order.

ORDER.

- i) The O.A. is allowed.
- ii) The impugned transfer order dated 31.3.2016 issued by Chief Conservator of Forest Dhule in respect of applicant is quashed and set aside.
- iii) No order as to costs.

**MEMBER (J)**

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