

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO.420 of 2016.

DIST. AURANGABAD.

ORIGINAL APPLICATION NO. 420/2016.

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Shivaji Pandurang Nikale, }

Age. 56 years, Occ. Forester, }

(Saw Mill Checking), Aurangabad. }

APPLICANT.

V E R S U S

1. The State of Maharashtra, }

Through its Secretary, }

Revenue & Forest Department, }

Mantralaya, Mumbai. }

2. The Chief Conservator of Forest }

(Regional), Aurangabad. }

3. The Deputy Conservator of Forest, }

Aurangabad Forest Division, }

Aurangabad. }

4. Rajendra s/o daulatrao Wankhede, }
Age 54 years, Occu. Service, R/o N.7, }
Sector F, House No.11, Ayoda Nagar }
CIDCO, Aurangabad. }

RESPONDENTS

APPEARANCE : Shri SD Joshi, learned Advocate for Applicant.

: Shri I.S.Thorat, Learned Presenting Officer for the Respondents no.1 to 3.

: Shri A.S. Shelke, learned Advocate for the Respondent no.4.

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

DATE : 29.11.2016.

JUDGMENT

(Delivered on this 29th day of November, 2016)

1. Heard Shri SD Joshi, learned Advocate for the Applicant, Shri I.S. Thorat, learned Presenting Officer for the Respondents no.1 to 3 and Shri AS Shelke, learned Advocate for Respondent no.4.

2. The applicant – Shri Shivaji Pandurang Nikale – is a Forester (Saw Mill Checking) at Aurangabad and has challenged his transfer on the post of Assistant Plantation Officer, Social Forestry Department, Aurangabad. The said impugned order has been

passed on 29.5.2016 by the res. No. 3 - the Deputy Conservator of Forest, Aurangabad Forest Division, Aurangabad. Earlier in this O.A. this Tribunal was pleased to pass judgment and order on 7.9.2016 and the impugned order of applicant's transfer dated 29.5.2016 has been quashed and set aside and the respondents were directed to allow the applicant to work on the post where he was working prior to issuance of impugned order dated 29.5.2016.

3. Being aggrieved by the aforesaid order Shri Rajendra Daulatrao Wankhede, who was transferred in place of applicant has approached the Hon'ble High Court by filing Writ Petition No.9751/2016. The Hon'ble High Court of judicature at Bombay, Bench at Aurangabad in the said W.P.No.9751/2016 has passed the order on 22.9.2016 as under :-

"9. The impugned order is quashed and set aside and the parties are relegated before the Maharashtra Administrative Tribunal, Aurangabad. The parties shall appear before the Tribunal on 03rd October, 2016. The respondent No.1 shall array the present petitioner as respondent in the Original Application No.420 of 2016. As date for appearance is already given, fresh notices to parties are not necessary. The petitioner shall file his say within a period of ten (10) days from the date of appearance before the Tribunal. Considering the fact that, it is a case of transfer and the matter is remitted

back from this Court, we request the Tribunal to dispose of the proceedings as expeditiously as possible and preferably within a period of one month from the date of filing say by the petitioners.”

4. In view of the order passed by Hon'ble High Court as aforesaid, Shri Rajendra Daulatrao Wankhede was added as Respondent no.4 in the O.A. The Respondent no.4 Rajendra Daulatrao Wankhede appeared and has filed reply affidavit on 14.10.2016. According to Respondent no.4 the applicant as well as the Respondent no.4 have completed their normal tenure of 3 years and have been transferred to the respective places. Both were due for transfer and the Respondent no.4 justified the transfer order. It is stated that the conduct of the applicant was not up to mark and that he has misused the powers of the Govt. servant and there were number of complaints against the applicant. It is further stated that, the respondent no.4 has already joined as Forestry at Aurangabad in place of applicant on 1.6.2016 and he is also receiving monthly salary from June, 2016. He was transferred from Fulambri in place of applicant since he was due for transfer and therefore, the impugned order is legal and proper.

5. According to applicant, he has not completed his tenure of six years and he being Class III employee was not due for transfer and

therefore, the transfer is illegal and against the provisions of of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short referred to as 'the Transfer Act, 2005'). It is arbitrary and midterm and hence required to be quashed.

6. It is to be noted that vide earlier order dated 29.5.2016 the applicant was transferred from the post of Forestry, (Saw Mill Checking), Aragirni, Aurangabad to the post of Forestry, Range Nagad, Tq. Kannad, Dist. Aurangabad and the said transfer was challenged by the applicant by filing O.A. No.275/2015. However, the respondents withdrew the order on 9.6.2015. In view of that in OA No.275/2015 with OA No.282/2015 the Tribunal was pleased to pass the following order:-

“ORAL ORDER: -

O.A. NO. 275/2015

Heard Shri J.B. Choudhary – learned Advocate for the applicants in both these matters and S/Shri D.T. Devane – & Sham Patil learned Chief Presenting Officer & learned Presenting Officer for respondent Nos. 1 to 5. None appears for respondent No. 6 in O.A. No. 275/2015.

2. The learned Chief Presenting Officer has placed on record a copy of communication dated 9.6.2015 and reported and prayed as follows: -

(a) The transfer orders in both these matters are withdrawn in the background of certain anomalies and deficiencies;

(b) The competent authority may be granted liberty to re-decide the matter of transfer on its own merits and in accordance with law.

3. The OAs are disposed with liberty as sought.

4. If and when fresh transfer orders are passed, needless to observe that aggrieved parties are always free to make suitable representation/application before the competent authority or file O.A., if grounds exist and in case their concerned is so advised.

5. Accordingly, both these OAs are disposed of with no order as to costs.”

7. From the record it seems that, after aforesaid order was passed the applicant has filed representation on 30.4.2016 and requested that, he may not be transferred as he came to know that, he was being transferred with mala fide intentions and on the basis of false complaints. However, his representation has been ignored and the impugned order came to be passed.

8. From the affidavit in reply filed by respondent no.3 it seems that, some allegations are made against the applicant that he was indulged in harassing the people and by misusing power of Govt. servant. It is stated that one Dinkar has filed complaint against the applicant before Conservator of Forest and has also lodged F.I.R. against applicant in Kannad Police station and further that the applicant was threatened and pressurized Smt. P. P. Kathar.

9. The applicant has filed rejoinder claiming that his conduct was good and all his C.Rs. were of "A" category and therefore, the transfer was mala fide.

10. The learned Advocate for the Respondent no.3 submitted that, the applicant as well as the Respondent no.3 have completed their tenure of three years and therefore, they are due for transfer, being Group "C" employee. As against this, the learned Advocate for the applicant submits that the applicant can not be transferred till completion of two tenure of three years each.

11. From the aforesaid arguments it will be clear that, according to applicant he is not due for transfer as well as his transfer on the

basis of complaints is not legal. The learned Advocate for the Respondent no.4 Shri A.S. Shelke placed reliance on judgment reported by Hon'ble High Court Bombay in "2016 (1) Mah.L.J. 45 in the case of Santosh Nandalal Dalal Vs. State of Maharashtra". It has been observed by Hon'ble High Court in para no.12 of the said judgment as under:-

"12. The combined reading of provisions of sections 3(1) and 4(1) shows that the normal tenure in a post of a Government servant shall be 3 years. The first proviso to section 3(1) of the Act shows that an employee of Group C from non secretariat service may be retained at that office or department for two full tenures (one full tenure consists of 3 years). The proviso does not give right to the employee to get two full tenures at that office or department but it only allows the employer, competent authority, to continue the Group C, non secretariat employee to continue at the office or department for six years. The second proviso shows that if the employee of Group C is from secretariat service he can not be continued in the same post for more than 3 years and he shall not be continued in the same department for more than two consecutive tenures. The plain reading of section 3(1) and both the provisos shows that Group C employee who is not from secretariat service can be kept at that office or department for six years but if he belongs to secretariat service he cannot be kept in the same post for more than three years though he can be kept in the same department for two consecutive tenures. These restrictions are in public interests. These provisions on one hand, show that

the State, competent authority can use these provisions for keeping one employee at the same station for two full tenures but the State is not expected to continue him after completion of two full tenures. Thus, the provision of section 3(1) with the two provisions, does not show that any right is conferred on Group C employee from non secretariat service to work at one station for six years.”

12. The learned Advocate for the Respondent no.4 thus submitted that the impugned order of transfer is against the provisions of Transfer Act is not legal since the applicant has admittedly completed more than 3 years and as such was due for transfer. However, the R-4 cannot take advantage of this.

13. Even for the sake of argument it is accepted that, it is the discretion of the competent authority to post a particular employee on a particular post for more than one tenure of three years, the question in this O.A. is “whether the impugned order of transfer of applicant has been issued on the basis of complaints? There are number of Circulars in the field whereby guidelines have been issued to the competent authority not to act upon false complaints or unproved complaints and the directions are that, D.E. can be initiated against the employee, if they are found to have committed

misconduct or illegalities and that the transfer can not be the only remedy in cases of complaints.

14. Coming to the history of the case, it is clear that, the applicant was earlier transferred to Nagad, Tq. Kannad and the said transfer order was challenged by the applicant by filing O.A. No.275/2015 and the said O.A. was heard along with O.A.No.282/2015. The said order of transfer was withdrawn and thereafter, the impugned order has been issued. According to the applicant, he was apprehending mala fides and has filed representation on 30.4.2016 one month before passing of impugned order of transfer, and in the said representation he has stated that some false complaints have been filed against him, in order to create evidence to support transfer and therefore, he requested for his retention at Aurangabad. His apprehension seems to be correct as one warning was issued to the applicant on 5.3.2016. The copy of which is at paper book page no.117, and the applicant was warned thereafter another warning was issued to the applicant on 6.5.2016. The copy of which is at paper book page no.118 wherein it is mentioned that the applicant was misbehaving and that FIR was registered against the applicant. Both these warnings have been issued during the pendency of the O.A. No.275 with 282 of 2015. The possibility that these warnings

might have been issued with some ulterior intention can not be ruled out.

15. The learned Advocate for the applicant placed reliance on the judgment in OA No.420 of 2016 dated 7.9.2016. The para nos.17 to 20 of the said judgment are reproduced as under :-

“17. The learned Counsel for the applicant placed reliance on the judgment delivered by this bench of the Tribunal in **O.A. no. 266/2014 {POPAT BIJU MORE VS. THE STATE OF MAHARASHTRA & ORS.}** on 17.1.2015. In the said O.A. the case decided by the Hon’ble Supreme Court reported at **2009 STPL (LE) 41183 SC {SOMESH TIWARI VS. UNION OF INDIA AND OTHERS}** is referred and para 16 of the said judgment of Hon’ble Supreme Court reads as under :-

“16. The High Court by reason of the impugned judgment and order dated 25th September, 2006 while opining that the order of transfer could not be passed on the basis of an anonymous complaint, which on enquiry having been found to be incorrect, held: -

“Though, when individually considered, the impact of the incorrect mention of the fact that the petitioner belongs to Madhya Pradesh and does not know English in the order rejecting the petitioner’s representation, except for indicating the extent of absence of application of mind by the respondents, is not fatal. However, the transfer of the petitioner on the ground that he apparently gave an impression that he worked on caste-biased ideology, in spite of the fact of recording a finding in the negative in the discreet inquiry

conducted into the anonymous complaint would shock the conscience of any reasonable man to say the least.”

18. If the respondents are justified in passing the impugned order of transfer on the basis of some complaints filed against the applicant, such order can be said to be punitive, since there is nothing on record to show that the applicant was given any opportunity to counter the allegations made against him. If the conduct of the applicant is really actionable, the department will be at liberty to take departmental action against the applicant but that cannot be a ground to transfer the applicant.

19. It is the case of the respondents that the applicant's case for transfer was considered in the meeting of the Board establishment for transfers of the employees. The minutes of said meeting are placed on record at Exh. R.1(B) and R.1(C) and these are at paper book pages 111 to 116 (both pages inclusive). Exh. R.1(C) is a chart of the Officers considered for transfer by the Establishment Board in which the applicant's name is at sr. No. 11. In the remark column of the said chart in respect of the applicant it has been mentioned as under :-

“श्री. एस.पी. निकाळे यांनी त्यांचा सेवाकाळ ६ वर्षे झालेला असल्याने बदली करू नये अशी लेखी विनंती केली आहे. तथापी महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडताना होणा-या विलंबास प्रतिबंध अधिनियमन २००५ चे कलम ३(१) नुसार वर्ग क च्या कर्मचा-यांचा एका पदावरील नेमणुकीचा पदावधी सर्वसाधारणपणे तीन वर्षे राहिल. जर त्यास (एकाद्या कारणास्तव) सर्वसाधारण नेमणुकीच्या पदावधीपेक्षा अधिक काळ त्याच पदावर ठेवण्यात आले असेल तर एकाच पदावर असा वाढीव पदावधी सहा वर्षांपेक्षा अधिक नसावा. तसेच शासन परिपत्रक दिनांक ११ फेब्रुवारी २०१५ मध्येही शासनाने दिलेल्या आदेशानुसार नेमणुकीचा पदावधी (३ वर्षांचा कालावधी) पूर्ण झाला असल्यास कर्मचारी बदलीस पात्र ठरतो. श्री निकाळे यांनी तीन वर्षांचा नेमणुकीचा पदावधी (Normal Tenure) पूर्ण केलेला असल्याने ते बदलीस पात्र आहेत. त्यांना वाढीव नेमणुकीचा पदावधी देण्याचे

प्रयोजन नाही. त्यांचेविरुद्ध जनतेच्या आणि लोकप्रतिनिधींच्या तक्रारी आल्या आहेत. ते आपल्या पदाचा दुरुपयोग करून लोकाना धमकावतात आणि लाच मागतात अशा तक्रारी आहेत. या वर्तणुकीबद्दल त्यांना दिनांक ५.३.२०१६ आणि ६.५.२०१६ ला लेखी समज देण्यात आली आहे. त्यामुळे, व्यापक जनहीत लक्षात घेउन श्री. निकाळे यांना या पदावर वाढीव कार्यकाळ देणे प्रशासकीय दृष्टीने उचित होणार नाही. आर. डी. वानखेडे, सहायक लागवड अधिकारी, फुलंब्री यांच्या बदलीने रिक्त होणा-या पदावर करणे बाबत शिफारस करण्यात येत आहे.’’

20. Perusal of the said remark clearly shows that the applicant has been considered for transfer on the basis of some complaints received against him and if so is the fact, the applicant's transfer is punitive. The transfer cannot be a proper action against the complaints against an employee. It is material to note that in the minutes of the meeting at paper book pages 111 to 113 (both pages inclusive), the name and case of the applicant has not been referred at all.”

16. On conspectus of discussions in foregoing paragraphs it will be thus crystal clear that, the applicant has completed three years at his post of Forester (Saw Mill Checking) at Aurangabad and as per the provisions of Section 3 (1) & 4 (1) coupled with the provisions of Section 3 (1) with the two provisions show that no right is conferred on Group “C” employee from non-secretariat service to work at one station for six years. It is the discretion of the Respondent authority only whether to continue the employee for a tenure to another three years. In the present case, the applicant's case has not been considered for continuation, the possibility that he might not have been considered due to earlier litigation filed by him and also on the

basis of after thought complaints can not be ruled out, but the position in this case has become more precarious since the Respondent no.4 has already joined in place of applicant. The learned Advocate for the applicant also admits that, at present the applicant is nowhere since he is not working as Forester (Saw Mill Checking) at Aurangabad nor as an Assistant Plantation Officer in Social Forestry Department, Aurangabad since he has not joined on that post till today. The respondents can properly address this situation or even may treat this period as compulsory waiting period.

17. The learned Presenting Officer submits that, the Respondent no.4 (R-4) has joined the post in place of applicant on 1.6.2016 and his salary has been drawn since then as a Forester (Saw Mill Checking) at Aurangabad. It seems that, since the applicant was not protected he has filed W.P.No.5848/2016 before Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad. In the said writ petition interim relief was granted on 7.6.2016, but till that time the Respondent no.4 has already joined in place of applicant on 7.6.2016. The fact therefore, remains that the Respondent no.4 is now serving in place of applicant as Forester (Saw Mill Checking) at Aurangabad and the applicant is nowhere. It is however, admitted

fact that, the place where the applicant has been transferred i.e. Assistant Plantation Officer, Social Forestry Department, Aurangabad is still vacant. In such peculiar circumstances, I do not find any cause for interfering with the impugned transfer order of the applicant and therefore, I pass the following order.

O R D E R

- (i) The original application stands dismissed.
- (ii) There shall be no order as to costs.

MEMBER (J)

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