

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 1052 OF 2024

(Subject – Transfer)

DISTRICT : HINGOLI

Manohar s/o Kewaldas Gokhale,)
Age : 55 Years, Occ. : Govt. Service,)
(as Divisional Forest Officer [Territorial],)
Hingoli Forest Division),)
R/o : Forest Colony, Railway Station Road,)
Hingoli-431513.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Principal Secretary,)
Revenue and Forest Department,)
M.S. Mantralaya, Madam Cama Road,)
Hutatma Rajguru Chowk, Mumbai- 32.)
2. **The Principal Chief Conservator of**)
Forest (Head of Forest Force), M.S.,)
Nagpur, Vanbhavan, Ramgiri Road,)
Near Police Gymkhana, Civil Line,)
Nagpur-01.)
3. **The Additional Principal Chief**)
Conservator of Forest (Personnel), M.S.))
Nagpur, Vanbhavan, Ramgiri Road,)
Near Police Gymkhana, Civil Line,)
Nagpur-01.)
4. **The Conservator of Forest (Territorial),**)
Chhatrapati Sambhajanagar, Vanbhavan,)
Oppo. Govt. Engg. College, Railway)
Station Road, Chhatrapati Sambhajanagar.)
5. **Mr. Rajendra Pundlik Nale,**)
Divisional Forest Officer,)
Social Forestry Division, Parbhani.)

... **RESPONDENTS**

APPEARANCE : Shri Avinash Deshmukh, Counsel for
Applicant.

: Shri D.M. Hange, Presenting Officer for
respondent authorities.

: Ms. Preeti Wankhade, counsel for respondent
No. 5.

CORAM : **Justice Shri Vinay Joshi, Member (J)**

RESERVED ON : **29.11.2024**

PRONOUNCED ON : **13.12.2024**

ORDER

1. Heard finally with the consent of all learned counsel at the stage of admission.

2. The applicant has approached to the Tribunal by invoking jurisdiction under Section 19 of the Administrative Tribunals Act, 1985 seeking to challenge the impugned order of transfer dated 05.09.2024, by which the applicant came to be transferred from the post of Divisional Forest Officer (Territorial), Hingoli to the post of Divisional Forest Officer, Social Forestry Division, Parbhani. The transfer has been essentially challenged on the count that it is in complete violation of provisions of Section 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties

Act, 2005 (Transfer Act of 2005), in other words the applicant claims to be colorable exercise of power and mala-fides on the part of respondents.

3. The facts in brief are that the applicant while working on his earlier post was came to be transferred on 28.06.2023 on the post of DFO (Territorial), Hingoli. In accordance with the said transfer, he has joined at Hingoli on 04.07.2024. However, he has been again transferred from Hingoli to Parbhani vide impugned transfer order dated 05.09.2024.

4. Applicant's learned counsel would submit that the transfer order has been passed for collateral purpose which is a purely arbitrary exercise of powers in order to adjust one Mrs. Ranjendra Pundlik Nale. Transfer is against the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act, 2005, since it is mid-term and mid-tenure transfer. The transfer order bears cryptic reasons, meaning thereby it does not meet the statutory requirement of spelling out the special case that too by way of recording reasons in writing. Moreover, it is contended that approval of the immediate superior authority has not been obtained. It is submitted that though certain cryptic reasons have been mentioned in the transfer order, however, the

approving authority has not recorded the reasons but simply relied on the recommendations made by the Civil Services Board (the Board). It is canvassed that the order of transfer and the Board recommendation loudly conveys total non-application of mind. One of the reason stated in the reply is about registration of crime, however, it was much earlier than transfer and the said reason has not been reflected in the impugned transfer order. Lastly it is canvassed that the impugned transfer order states omnibus reasons that it is on account of complaints, as well as, request. The order does not specify the particular reason for the transfer of the applicant. With these contentions, the impugned transfer order is sought to be set aside.

5. Per contra, respondent Nos. 1 to 4 endeavored to justify the transfer order by contending that the transferring authority has acted upon the opinion of the Board. There were several complaints against the applicant, which caused the authority to effect the transfer order on administrative reason. Though the transfer order cumulatively states the reasons as complaint and request, however, the Board recommendations are specific about the reasons, which are spelt out against the name of each employee, who was transferred. It is contended that the applicant has not come with clean hands, since he has

suppressed the registration of crime. According to learned Presenting Officer, reason for transfer is of complaints, which need not be elaborated in the order, as it is an administrative act. Since no mala-fides have been shown, the action of transfer cannot be reviewed. Moreover, it is submitted that despite issuance of transfer order dated 05.09.2024 the applicant did not join the new posting and thus his case cannot be considered. It is submitted that the applicant belongs to Group-A and therefore, the Hon'ble Chief Minister being the competent transferring authority, there is no question of obtaining approval of the immediately superior transferring authority. Learned Presenting Officer has tendered original file along with various complaints, though filed by same person, for perusal of the Tribunal. Respondent No. 5 Mr. Nale has appeared and supported the stand taken by the Government. He has categorically stated that he did not request for transfer.

6. Heard both the sides exhaustively and gone through the record and various decisions cited by rival to substantiate the respective contentions. Few facts are not in dispute that the applicant was posted at Hingoli on 28.06.2023, while he has joined the said post on 04.07.2023. Within the period of 14 months, the applicant has been transferred to Parbhani vide

impugned order dated 05.09.2024. Under said transfer order total 05 persons have been transferred. The applicant has been transferred from Hingoli to Parbhani in place of one Mr. Nale (respondent No. 5) whilst *vice versa* transfer was made of Mr. Nale in place of the applicant at Hingoli. The Board meeting report indicates the reason for applicant's transfer as on complaints whilst Mr. Nale was transferred to fill up the vacancy occurred due to transfer of the applicant.

7. The first ground of attack is total non-compliance of statutory provisions of Transfer Act, 2005. It is submitted that the applicant being Group-A Government servant, his normal tenure in a post is of three years. However, he has been transferred before completion of tenure, meaning thereby it is mid-tenure transfer. Secondly, the transfer is made on 05.09.2024. It is a mid-term transfer, which is against the normal rule of effecting transfers in the month of April or May. Basically it is a mid-tenure transfer, meaning thereby the provisions of Rule 4(5) of the Transfer Act, 2005 would apply, which reads as below :-

“4. Tenure of transfer. –

- (1)
- (2)
- (3)
- (4)

(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 1 [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.”*

8. Learned counsel for the applicant would submit that the language employed in Section 4(4)(ii) pertaining to mid-term transfer requires exceptional circumstances or special reasons. However, the mid-tenure transfer requires to make out a special case. It is his submission that the distinct phrase (special case) has been used by the legislature, meaning thereby a cause falling in the category of ‘special case’ has to be made out. In order to impress fine distinction in between Sub-Sections (4) & (5) of Section 4 of the Transfer Act, 2005, the applicant relied on the decision of the Hon’ble Bombay High Court, Bench at Aurangabad in a case of **Purushottam Govindrao Bhagwat Vs. State of Maharashtra and Ors., 2012(3) Bom.C.R. 442**. Particular emphasis is laid on para Nos. 12 and 13 of the decision, wherein the terms impleaded in Sub-Sections has been interpreted by invoking Heydons Rule and the mischief rule.

9. Undoubtedly, the provisions of Sub-Section (5) of Section 4 of the Transfer Act, 2005 carves out an exception to the protection granted in favour of employee in sub-section (i) of said section. Apparently the legislature has made inbuilt

safeguard in Sub-Section 5 by imposing requirement of reasons in writing to be assigned for making a transfer on the premise of special case and approval of the transferring authority. So far as the approval of superior authority is concerned, the applicant's learned counsel fairly conceded that the applicant being Group-A employee, the Hon'ble Chief Minister is the competent transferring authority and it being highest in the State, no approval of the superior authority is required.

10. The entire controversy hinges around the compliance on two counts, i.e. 'special case' has to be made out and secondly 'reasons in writing' have to be recorded. It is argued that transfer order bears cryptic common reasons about complaints and request. It is not expected that the transfer order, which is of formal communication shall bear detail reasoning. Notably under same order in all 05 persons have been transferred and thus it cannot be said that the reason of request relates to the applicant's case. A feeble attempt has been made to state that since Mr. Nale has requested for transfer at Hingoli from Parbhani, to adjust him the applicant has been transferred. However, the applicant is failing short to satisfy as to on which basis such stand has been taken. On the contrary, Mr. Nale, who has been arrayed as respondent No. 05 has categorically stated

that he did not made request for transfer. Learned P.O. would submit that the reason 'request' pertains to candidate at sr. no. 01 and, therefore, it is reflected in the impugned order. In substance, it is the stand of Government that the transfer of the applicant is on complaint, meaning thereby on administrative grounds.

11. In order to find out the reasons, minutes of Board meeting have been placed on record. In this regard, applicant's learned counsel would submit that the Hon'ble Supreme Court in a case of **TSR Subramanian Vs. Union of India & Ors, 2013 DGLS (SC) 885** has emphasized the importance of constituting the Civil Services Board consisting of high ranking serving officers to guide and advise the State Government in the matters relating to transfers, postings etc. The said mechanism was evolved to ensure good governance, transparency and accountability in governmental functions. Applicant's learned counsel would submit that though it appears that the matter was placed before the Board, however, case of Mr. Nale was not placed and the reasons assigned by the Board are cryptic. It is evident from the Board meeting report dated 16.08.2024 that it was presided over by high ranking officers, who have independently considered each case. Specific reason for transfer of each candidate has been

assigned in tabular form. As regards to applicant, it has been stated that the complaints have been received against the applicant, whilst against Mr. Nale it is transfer to fill-up the consequential vacancy which would arise due to transfer of the applicant. Thus, it reveals that the case of Mr. Nale was also for consideration before the Board. Moreover, the report specifically bears reference of complaints received against the applicant.

12. On the ground of assigning reasons, both the parties have relied on the decision of the Hon'ble Bombay High Court in a case of **State of Maharashtra Vs. Ashok Ramchandra Kore and Another, 2009(3) Bom.C.R. 673**, wherein it has been expressed that sub-section (5) requires assigning of reasons to make out a special case. The Court has to examine whether there are reasons making out a special case and would interfere only if the order is issued mala-fide. The reasons may not be elaborate but it shall reflect from the record. A strong case has to be made out to hold that the authority has not applied his mind and mechanically signed the note placed before him.

13. Considered the recommendations of Board coupled with the Government decision which bears similar reasons assigned by the authority. The decision is signed by the Under

Secretary, Dy. Secretary, Chief Secretary, concerned Minister and the transferring authority i.e. the Hon'ble Chief Minister. It is not the case of applicant that there were no complaints, but the applicant reiterates that repeated complaints were filed by the same person. However, the fact remains that there exist various complaints picking up different issues of misbehavior, mala-fides on the part of the applicant. The file disclose that variety of allegations have been made against the applicant in several complaints. Some of the allegation touches to the character of the applicant, supported by certain photographs, which is a part of file. In above scenario looking to the nature of grievance, it is not expected to reflect detail reasons, but those are made available for our satisfaction. After all it is an administrative action for which detailed reasoning is not required. Scrutiny requires whether there exist reasons backing certain material to satisfy judicial mind. In case of **State of Maharashtra Vs. Ashok Ramchandra Kore and Another** (supra) it has been observed that whether the transfer order states the reasons in short, there is no requirement of law to state elaborate reasons in the order, but the elaborate reasons can be in the file of the Government.

14. The applicant's learned counsel relied on the decision of the Hon'ble Supreme Court in case of **Somesh Tiwari Vs. Union**

of India & Ors., 2008 DGLS (SC) 1675 to contend that if the transfer order is passed in lieu of punishment, the same is liable to be set aside. As demonstrated above, the transfer is an administrative order on the complaints, which were placed before the Committee and as per the recommendations, the decision was taken. It is difficult to find out malice in the transfer to brand the same as a punitive action and, therefore, being distinct fact, the said decision would not render any help to the applicant. Learned counsel for the applicant has also relied on the decision of the Hon'ble Bombay High Court, Bench at Aurangabad in a case of **Shriprakash Maruti Waghmare Vs. State of Maharashtra & Ors., 2010 (SUPP.) BOM. CR 615** to emphasis that recording of reasons is statutory mandate. Undisputedly it is requirement of law, which needs to be looked into.

15. Applicant's learned counsel pointed that one Mr. Uttam Mahadeo Phad was transferred under the same impugned order in place of one Mr. Kiran Patil and vice-versa. He would submit that the said transfer was set aside by the Nagpur Bench of this Tribunal in O.A. No. 883/2024. He has brought said aspect to the notice to contend that the entire transfer order was actuated with malice. In response, learned Presenting Officer has produced a copy of said order dated 07.10.2024 passed in the

said O.A. No. 883/2024. It reveals that the said transfer was purely at the behest of MLA. The Tribunal noted that on general allegations transfer of Mr. Phad was made and request also suggested name of Mr. Patil to be posted in his place. Having regard to these peculiarity of facts, the Tribunal has set aside the transfer order of Mr. Phad. Thus the consideration for setting aside those transfers was quite distinct. Hence, the applicant cannot muster any strength from said factual aspect.

16. Learned Presenting Officer would submit that the Court should be loathe from interfering into the transfer order unless mala fides are shown. In this regard reliance is placed on the decision of Hon'ble Bombay High Court in a case of **V.B. Gadekar, Deputy Engineer, Konkan Vs. Maharashtra Housing & Area Development Authority , 2007 (6) BOM CR 579**. In the said decision it has been expressed that unless the order of transfer is in conflict with Rules and is made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. Herein the applicant has failed to demonstrate as to how the order of transfer has been passed for collateral purposes and is patent arbitrary exercise of powers. There is no reason to hold that discretionary power vested in the authority has been exercised in the arbitrary manner. By interpreting the

concept of 'special case' in the light of service jurisprudence, the impugned order cannot be faulted on facts and on law.

17. In conclusion, there are no mala fides or arbitrariness nor non-compliance of statutory rules and thus, the impugned transfer is well sustainable in the eyes of law. In the circumstances, the Original Application carries no merit. Hence, the Original Application stands rejected. There shall be no order as to costs.

(Justice Vinay Joshi)
Member (J)

PLACE : Aurangabad.

DATE : 13.12.2024

KPB S.B. O.A. No. 1052 of 2024 VKJ Transfer