

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

**ORIGINAL APPLICATION NO. 420 OF 2016**

DIST. : AURANGABAD

- |    |  |             |            |
|----|--|-------------|------------|
| 1. | Shivaji Pandurang Nikale,<br>Age. 56 years, Occ. Forester,<br>(Saw Mill Checking), Aurangabad. | }<br>}<br>} | APPLICANT. |
|----|--|-------------|------------|

**VERSUS**

- |    |  |                  |             |
|----|--|------------------|-------------|
| 1. | The State of Maharashtra,<br>Through its Secretary,<br>Revenue & Forest Department,<br>Mantralaya, Mumbai. | }<br>}<br>}<br>} | RESPONDENTS |
| 2. | The Chief Conservator of Forest<br>(Regional), Aurangabad.   | }<br>}           |             |
| 3. | The Deputy Conservator of Forest,<br>Aurangabad Forest Division,<br>Aurangabad.                            | }<br>}<br>}      |             |

APPEARANCE : Shri S.D. Joshi, learned Counsel for  
the Applicant.

: Shri I.S. Thorat, learned Presenting  
Officer for the Respondents.

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**CORAM : Hon'ble Shri J.D. Kulkarni, Member (J)**  
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**JUDGEMENT****{Delivered on 7.9.2016}**

1. The applicant – Shri Shivaji Pandurang Nikale – is a Forester (Saw Mill Checking) at Aurangabad. The applicant is challenging his transfer order dated 29.5.2016, whereby he has been transferred from the post of Forester (Saw Mill Checking), Aragirni, Aurangabad to the post of Assistant Plantation Officer, Social Forestry Department, Aurangabad. The said order has been passed by the res. No. 3 - the Deputy Conservator of Forest, Aurangabad Forest Division, Aurangabad – as per the provisions of Sec. 4 (4) 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’).

2. From the admitted facts, it seems that, earlier to the impugned transfer order dated 29.5.2016, the applicant was transferred from the post of Forester (Saw Mill Checking, Aragirni, Aurangabad to the post of Forester, Range Nagad, Tq. Kannad, Dist. Aurangabad. The said transfer order was also challenged by the applicant by filing O.A. no. 275/2015 before this Tribunal. The said O.A., however, was disposed of since the

applicant's transfer to Nagad was withdrawn by the respondents on 9.6.2015. In O.A. no. 275/2015 with O.A. no. 282/2015 the Hon'ble Tribunal was pleased to pass 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.”**

3. According to the applicant, there was absolutely no reason for the respondents to transfer the applicant, since he has not completed his tenure of 6 years. He being Class-III employee was not due for transfer and, therefore, the impugned transfer order dated 29.5.2016 is contrary to the provisions of the Transfer Act, 2005. It is arbitrary and is midterm and hence liable to quashed and set aside.

4. The applicant further submitted that prior to issuance of this transfer order he has filed a representation on 30.4.2016 after disposal of the O.A. nos. 275 & 282 both of 2015 and brought to the notice of the respondent authorities that he has not completed his tenure and, therefore, he may not be transferred. He has also informed the respondents that he came

to know that he was being transferred with mala-fide intention and that false complaints were being intentionally filed against him. However, by ignoring the said representation the applicant has been transferred vide impugned transfer order dated 29.5.2016.

5. The res. No. 3 in his affidavit in reply submitted that the applicant was indulged in harrising the people by using power of government servant and, therefore, one Shri Dinkar Kapure filed complaint against the applicant before Chief Conservator of Forest and also lodged F.I.R. against him in Kannad Police Station. The applicant has also threatened and pressurized Smt. P.P. Kathar, Adhi Vanmajur. It is further stated that one Shri R.D. Wankhade has already joined in place of the applicant and since 1.6.2016 Shri Wankhade is working in place of the applicant.

6. The applicant has filed rejoinder affidavit and denied the allegations against him. He has placed on record the documents to show that his Annual Confidential Reports were of 'A' category and that his conduct was 'Good'. In reply to the rejoinder filed by the applicant, the respondents came with a case that the

meeting of the competent Board was held on 27.5.2016 and in the said meeting a decision was taken to transfer the applicant. It is further stated that the applicant was served with show cause notices dated 5.3.2016 and 10.5.2016 as regards his conduct.

7. Heard Shri S.D. Joshi, learned Counsel for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondents. I have also perused the affidavit, affidavit in reply filed by res. No. 3, rejoinder filed by the applicant and reply of the respondents to the rejoinder affidavit filed by the applicant and also gone through the various documents placed on record.

8. The only material point to be considered in this case is whether the applicant's transfer is against the provisions of the Transfer Act, 2005 ?

9 From the facts it is clear that the applicant was serving as a Forester (Saw Mill Checking), Aragirni, Aurangabad since 11.6.2012. It is also admitted fact that his earlier transfer order whereby he was transferred on the post of Forester, Range Nagad, Tq. Kannad, Dist. Aurangabad in the year 2015 was

withdrawn by the respondents. It seems that the respondents have taken the benefit of the observations of this Tribunal in the O.A. nos. 275 & 282 of 2015. In para 4 of the said order it was observed that if and when fresh 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.

10. By the impugned transfer order dated 29.5.2016 the applicant has been transferred from the post of Forester (Saw Mill Checking), Aragirni, Aurangabad to the post of Assistant Plantation Officer, Social Forestry Department, Aurangabad and, therefore, it seems that, the applicant has almost completed 4 years on the date of passing of the impugned transfer order.

11. The learned Counsel for the applicant has placed reliance on sec. 3 of the Transfer Act, 2005. The sec. 3 (1) is relevant for this case, which reads as under :-

**“3. Tenure of posting.**

**(1) For All India Service Officers and all Group A, B and C State Government Servants or employees, the normal tenure in a post shall be three years: Provided that, when such employee is from the non-secretariat services, in Group C, such employee shall be transferred from the post held, on his completion of two full tenure at that office or department, to another office or Department:**

**Provided further that, when such employee belongs to secretariat services, such employee shall not be continued in the same post for more than three years and shall not be continued in the same Department for more than two consecutive tenures.”**

12. Admittedly, the applicant in this case is Group – C employee and is from non-secretariat services and that the normal tenure of Group – C employee on a post shall be three years. The employee like the applicant shall be transferred from the post on completion of his 2 full tenures on that post or department and, therefore, prima-facie it seems that the applicant has not completed 2 tenures at Aurangabad.

13. The learned Counsel for the applicant submits that the impugned order of transfer is issued with mala-fide intention since the respondents were required to withdraw their earlier

transfer order to Range Nagad, Tq. Kannad, Dist. Aurangabad. It is admitted fact that in O.A. nos. 275 with 282/2015, the applicant has challenged his transfer at Range Nagad, Tq. Kannad, Dist. Aurangabad and instead of contesting the said matter on merits, the respondents chose to withdraw the said order on 9.6.2015 and, therefore, the said O.As. were disposed of on 10.6.2015.

14. Apprehending the mala-fides the applicant has filed representation on 30.4.2016 before one month of passing of the impugned order of his transfer. In the said representation the applicant has stated that he came to know that some false complaints were being registered against him and that evidence being created to support his transfer. He, therefore, requested that he be retained at Aurangabad.

15. The learned P.O. submits that the applicant was served with a show cause notice and warnings and that his conduct was not good. Along with reply the respondents have placed on record one warning dated 5.3.2016 (paper book page 117) in which it is stated as under :-

“खालील स्वाक्षरीकर्त्यांना लोकप्रतिनिधी आणि वरिष्ठ अधिकारी यांचेकडून असे सांगण्यात आले आहे की श्री. एस.पी.निकाळे, वनपाल, आरागिरणी हे सामान्य लोकांना पैशाच्या अपेक्षेने त्रास देत असतात अशा जनतेच्या तक्रारी आहेत.

या पार्श्वभूमीवर श्री. एस.पी. निकाळे वनपाल, आरागिरणी, वनपाल यांना याद्वारे चेतावणी देण्यात येत आहे की त्यांनी अशा प्रकारच्या गैरकृत्यापासून परावृत्त व्हावे.”

16. He has also invited my attention to another warning dated 6.5.2016 which is at paper book page 118 and it is mentioned therein that the applicant was misbehaving and that one F.I.R. was registered against the applicant. It is material to note that both these warnings have been issued during pendency of O.A. nos. 275 with 282/2015 or after its disposal or till passing of the impugned transfer order. The possibility of these warnings being issued with mala-fide intention cannot be ruled out. The respondents were admittedly aggrieved by the earlier action taken by the applicant in filing O.A. nos. 275/2015 with 282/2015 before this Tribunal. Thus, these warnings may be after thought and may be with intention to counter the applicant's retention at Aurangabad. Even if it is accepted that the warnings are genuine, those cannot be ground for transfer. If it is so, the transfer is punitive.

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 25<sup>th</sup> 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 नसल्याने 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.

21. The learned P.O. submits that the applicant has been transferred from one division at Aurangabad to another division at Aurangabad only and one Shri R.D. Wankhade has been appointed in his place and Shri Wankhade has already taken the charge of the post of the applicant on 1.6.2016 and Shri Wankhade has been paid monthly salary from 1.6.2016. It seems that joining of Shri Wankhade on the post of the applicant on 1.6.2016 and payment of his salary therefrom cannot be a ground to justify the illegal transfer order and at the most, the respondents can very well transfer Shri Wankhade in Social Forestry Department at Aurangabad where the applicant was transferred by the impugned order. It seems from the order passed by Hon'ble High Court in writ petition no. 5848/2016 on 18.7.2016 filed by the applicant that the Hon'ble High Court was pleased to grant interim relief on 7.6.2016 and in spite the fact that this O.A. was pending and thereafter writ petition no. 5848/2016 was also filed, the respondents have allowed Shri

Wankhade to join on the post of the applicant and there is no justification for such haste.

22. In view of the discussion in the foregoing paras I am of the opinion that the impugned transfer order of the applicant dated 29.5.2016 is not legal and proper and it is against the provisions of Transfer Act, 2005. Hence, I pass following order :-

### **ORDER**

- (i) The original application stands allowed.
- (ii) The impugned order of applicant's transfer dated 29.5.2016 vide which the applicant has been transferred to Social Forestry Department at Aurangbaad is quashed and set aside.
- (iii) The respondents are directed to allow the applicant to work on the post where he was working prior to issuance of impugned transfer order dated 29.5.2016

There shall be no order as to costs.

**MEMBER (J)**