IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI
MISCELLANEOUS APPLICATION NO.17 OF 2016
IN
MISCELLANEOUS APPLICATION NO.186 OF 2015
IN
ORIGINAL APPLICATION NO.378 OF 2016
WITH
MISCELLANEOUS APPLICATION NO.186 OF 2015
IN
ORIGINAL APPLICATION NO.378 OF 2016
AND
ORIGINAL APPLICATION NO.378 OF 2016

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MISCELLANEOUS APPLICATION NO.17 OF 2016
IN
MISCELLANEOUS APPLICATION NO.186 OF 2015
IN
ORIGINAL APPLICATION NO.378 OF 2016

DISTRICT : RAIGAD

1. The State of Maharashtra,)
Through the Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai 400032)

2. The Chief Conservator of Forest,)
Microwave Towers, Bara Bungalow Area,)
Thane (E))..Applicants
(Orig. Respondents)

Versus

Shri Vivek Raghunath Jadhav,)
R/at Sunanda Niwas, Sainagar,)
Taluka Mangaon, District Raigad)..Respondent
(Orig. Applicant)

Shri A.J. Chougule – Presenting Officer for the Applicants-original Respondents

Smt. Lata Patne – Advocate for the Respondent-original Applicant

WITH

MISCELLANEOUS APPLICATION NO.186 OF 2015
IN
ORIGINAL APPLICATION NO.378 OF 2016
AND
ORIGINAL APPLICATION NO.378 OF 2016

DISTRICT : RAIGAD

Shri Vivek Raghunath Jadhav,)
Driver, Class-III, Protection & Encroachment)
Eradication, Alibaug)
R/at Sunanda Niwas, Sainagar (E),)
Taluka Mangaon, District Raigad)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai 400032)

2. The Chief Conservator of Forest,)
Microwave Towers, Bara Bungalow Area,)
Thane (E))

3. Deputy Conservator of Forest,)
Roha, Taluka Roha, District Raigad)

3a. Deputy Conservator of Forest,)
Alibaug, District Raigad)

4. Assistant Conservator of Forest,)
Protection & Encroachment Eradication,)
Roha, District Raigad)

5. Assistant Conservator of Forest,)
Protection & Encroachment Eradication,)
Alibaug, District Raigad)

6. Shri D.D. Bakade, Driver, Class-III,)
Protection & Encroachment Eradication,)
Roha, District Raigad)..Respondents

Smt. Lata Patne – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for Respondents No.1 to 5

Shri K.R. Jagdale – Advocate for Respondent No.6

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 27th April, 2016

JUDGMENT

1. Heard Shri A.J. Chougule, the learned Presenting Officer for the Applicants-original Respondents and Smt. Lata Patne, the learned Advocate for the Respondent-original Applicant in MA No.17 of 2016 in MA No.186 of 2015 in OA No.378 of 2016. Also heard Smt. Lata Patne, the learned Advocate for the Applicant, Shri A.J. Chougule, the learned Presenting Officer for Respondents No.1 to 5 and Shri K.R. Jagdale, the learned Advocate for Respondent No.6 in MA No.186 of 2015 in OA No.378 of 2016 and OA No.378 of 2016.

2. MA No.186 of 2015 is filed by the Applicant seeking condonation of delay of 313 days in filing the OA. By order

dated 15.2.2016, this Tribunal directed that MA will be heard along with the OA. The Registry is directed to register this OA.

3. In this MA, the Applicant is challenging his transfer from Roha Forest Division to Alibaug Forest Division by order dated 31.5.2013. The Applicant was posted to Roha by order dated 30.5.2009. Learned counsel for the Applicant argued that the Applicant met with a serious accident on 27.12.2012 and was admitted to M.G.M. Hospital, Navi Mumbai. He was on leave from 28.12.2012 to 31.7.2013. During his leave period, he was transferred by the Respondent No.2 from Roha to Alibaug and he was relieved ex parte by order dated 5.6.2013. Learned counsel for the Applicant argued that the Applicant joined duty on 1.10.2013, but he had not recovered fully. The Applicant was declared unfit for the post of Driver and he requested for clerical work. The Applicant was all along under the impression that he has completed his tenure of 3 years when he was transferred by order dated 31.5.2013. Only in March, 2015, he came to know that a Group 'C' employee is eligible to have tenure of six years and, therefore, he filed the present OA. Learned counsel for the Applicant argued that MA for condonation of delay be allowed.

4. Learned Presenting Officer (PO) argued on behalf of the Respondents that the Applicant had admittedly joined duties after his transfer by order dated 31.5.2013 on

1.10.2013. He has not explained the delay in filing this OA which is filed on 15.6.2015. Learned PO stated that this MA is liable to be dismissed.

5. The reasons given by the Applicant for filing this OA belatedly are not very convincing. Ordinarily, such an MA is liable to be dismissed. However, the present case is not a simple matter of transfer. It appears that issues regarding application of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to Act of 1995) etc. are also required to be considered while deciding the OA. On this ground and in the interest of justice, delay in filing OA is condoned and MA No.186 of 2015 is allowed.

6. Learned counsel for the Applicant argued that the Applicant has challenged his transfer from Roha to Alibaug by order dated 31.5.2013 mainly on the ground that the Applicant had not completed his six years tenure at Roha, which he was entitled to as a Group 'C' employee. This no doubt is correct. In the affidavit in reply filed by the Respondent Nos.1 to 5 on 12.2.2014, the order dated 31.5.2013 is justified on the ground that the Applicant was on long leave from 27.12.2012 to 31.7.2013 and it was not possible to keep the post of Driver in Roha vacant. In my view no useful purpose will be served by

examining the validity of transfer order dated 31.5.2013 at this stage. The facts as they now emerge are as follows:-

The Applicant has been declared unfit for performing duties as a Driver by Medical Certificate issue by Civil Surgeon, Alibaug dated 12.11.2013. By representation dated 31.3.2015, he has requested the Respondents to absorb him in the post of Clerk, which is also a Group 'C' post. Principal Chief Conservator of Forests, Maharashtra State, Nagpur by letter dated 16.10.2015 had informed the Respondent No.2 as follows:

> "२.० सदर प्रकरणी श्री विवेक रघुनाथ जाधव, वाहन चालक यांच्या अपंगत्वामुळे निर्माण झालेली अपवादात्मक परिस्थिती व माज अपंग आयुक्त, पुणे यांचे कार्यालयाने चर्चे दरम्यान दिलेल्या निर्देशांचे अनुषंगाने तसेच अपंग व्यक्ती (समान संधी हक्काचे संरक्षण आणि संपूर्ण सहभाग) अधिनियम, १९९५" मधील तरतूदी प्रमाणे श्री जाधव यांना शासन सेवेत ठेवणे आवश्यक आहे. यास्तव श्री विवेक रघुनाथ जाधव, वाहनचालक यांनी विनंती केल्यानुसार त्यांना लिपिक वर्गीय सेवेत सामावून घेण्याकरीता त्यांचेजवळ अर्हता आहे काय? याची तपासणी करुन सविस्तर प्रस्ताव शासनाला सादर करण्याकरीता या कार्यालयास सादर करावा.

३.० उपरोक्त प्रस्ताव शासनाकडून मंजूर होईपर्यंत श्री जाधव यांना त्यांचे वाहन चालक पदावरच ठेवावे व त्यांचे सध्याचे क्षमतेनुसार जी कामे शक्य होईल तेवढी कामे त्यांचेकडून करुन घ्यावी. व त्यांना सद्य:स्थितीत देण्यात येत असलेले वेतन सुरु ठेवावे."

In the light of these instructions, no further directions are required to be given by this Tribunal to the Respondents. In the affidavit in reply dated 12.2.2016, it is stated that the Applicant has been sanctioned leave on medical ground prior to 25th May, 2013. His leave for 25th May, 2013 to 31st July, 2013 was also sanctioned. The Applicant was on earned leave from 2.8.2013 to 30.9.2013 and joined duties at Alibag on 1.10.2013. His salary from October 2013 to February 2014 was paid. Salary from March 2013 to November 2015 was also paid.

7. As adequate directions have already been issued by the Principal Chief Conservator of Forests, MS, Nagpur, this OA is disposed off with the directions to take action accordingly. There will be no order as to costs.

8. As regards MA No.17 of 2016, the reasons for delay in filing affidavit in reply in MA No.186 of 2015, no satisfactory explanation is given for failing to file the same in time. Learned PO had promised to file the affidavit during the course of the

day during the hearing on 17.11.2015. It was not filed on 17.11.2015 and also on the next date which was 15.12.2015. The cost of Rs.5,000/- each was imposed on the Respondents No.1 and 2. The reply was filed on 21.12.2015. There appears to be no reason to reconsider the order imposing costs. The MA is, therefore, rejected.

Sd/-

(Rajiv Agarwal)
Vice-Chairman
27.4.2016

Date : 27th April, 2016

Dictation taken by: S.G. Jawalkar.

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