

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 883 of 2024
WITH CIVIL APPLICATION No.412 of 2024 (S.B.)

Uttam Mahadeo Phad,
aged about 34 years, Occupation: Service (Divisional Forest Officer),
R/o Akhada Ward Forest colony, Kelapur, Dist. Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
through it's Principal Revenue & Forest Department,
Mantralaya, Mumbai- 32.
- 2) The Principle Chief Conservator of Forest (Hoff),
M.S., Van Bhavan, Civil Lines, Nagpur.
- 3) The Conservator of Forest & Field Director,
Melghat Tiger Reserve, Amravati, Camp Amravati.
- 4) Shri Kiran Patil,
Aged about Adult, Occu. Service,
O/o Divisional Forest Officer, Vigilance, Amravati Circle,
Chief Conservator of Forest (Territorial), Amravati.

Respondents.

S/Shri R.N. Ghuge, S.N. Gaikwad, Advocates for the applicant.

Shri M.I. Khan, learned P.O. for respondent nos.1 to 3.

Shri R.S. Kalangiwale, Advocate for respondent no.4.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 07/10/2024.

J U D G M E N T

Heard Shri R.G. Ghuge, learned counsel for the applicant,
Shri M.I. Khan, learned P.O. for respondent nos. 1 to 3 and Shri R.S.
Kalangiwale, learned counsel for respondent no.4.

2. The O.A. is heard and decided finally.
3. The case of the applicant in short is as under –

The applicant was transferred to Pandharkwada Wildlife Division (Tipeshwar). He has joined at Wildlife Pandharkwada Division on 08/08/2023. Since then, he is working at Pandharkwada. The applicant was not due for transfer. On the recommendation / complaint of M.L.A. Dr. Sandip P. Dhurve, the respondent authorities have transferred the applicant and respondent no.4 is posted in place of applicant. It is the case of applicant that it is a mid-term transfer. The applicant's transfer is malafide, therefore, prayed to quash and set aside the impugned transfer order dated 05/09/2024 (P-23).

4. The respondent authorities have filed reply. As per the submission of the respondent authorities there is a compliance of Section 4 (4) and 4 (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short "The Transfers Act, 2005"). The applicant is not discharging his duties properly. M.L.A. Dr. Sandip P. Dhurve is one of the member of the State Wildlife Board. He has made complaint about the work of the applicant, therefore, applicant is transferred and respondent no.4 is posted in place of applicant. It is further submitted that there is no malafide on the part of the respondents. The respondent authorities have complied the provisions

of Sections 4 (4) and 4 (5) of the Transfers Act, 2005. The applicant is already relieved by the respondent authorities on 06/09/2024. The respondent authorities have already initiated departmental inquiry against the applicant for his misconduct and therefore the O.A. is liable to be dismissed.

5. During the course of submission the learned counsel for applicant has pointed out the complaint made by the M.L.A. Dr. Sandip P. Dhurve. In the complaint itself the name of respondent no.4 is suggested to post him in place of applicant. Hence, it is a malafide transfer. The applicant was not due for transfer, therefore, impugned transfer is liable to be stayed. In support of his submission pointed out following decisions –

(i) Judgment of the Hon'ble Bombay High Court in the case of the Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance & Development Corporation, Mumbai & Ors., 2013 (3) Mh.L.J.,463.

(ii) Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in the case of Shriprakash Maruti Waghmare Vs. State of Maharashtra and others in Writ Petition No.5652/2009, decided on 16/10/2009.

(iii) Judgment of Hon'ble Bombay High Court Bench at Nagpur in the case of Pradeepkumar S/o Kothiram Deshbhratar Vs. State of Maharashtra and Others in Writ Petition No.2665/2011, decided on 25/07/2011.

(iv) Judgment of Hon'ble Bombay High Court in the case of S.B. Bhagwat Vs. State of Maharashtra & Ors., 2012 (3) Mh.L.J.,197.

(v) *Judgment of Hon'ble Bombay High Court in the case of Ravindra Nivruttinath Gajame Vs. State of Maharashtra, through the Secretary, Department of Tribal Development and others, 2014 SCC online Bom 2087.*

(vi) *Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in the case of Kishor S/o Malayya Sandry Vs. State of Maharashtra & Ors., 2022 (4) Mh.L.J., 201.*

6. Heard learned P.O. Shri M.I. Khan. He has pointed out the proceedings of Civil Services Board and the approval given by the Competent Authority for the impugned transfer. As per his submission, the Civil Services Board has taken into consideration the complaint made by the M.L.A. Dr. Sandip P. Dhurve. The approval is given by the Chief Minister for transfer of applicant and posting of respondent no.4.

7. The learned P.O. has submitted that the Hon'ble Supreme Court in the recent Judgment in the case of the ***Sri Pubi Lombi Vs. the State of Arunachal Pradesh & Ors. in Civil Appeal No.4129/2024, decided on 13/03/2024*** has held that the transfer on complaint of the MLA cannot be said to be illegal. Hence, the O.A. is liable to be dismissed.

8. The learned counsel for respondent no.4 has pointed out the Judgment of the Hon'ble Bombay High Court in the case of

Sanjeev B. Kokil Vs. State of Maharashtra & Ors., 2012 in W.P. (Lodg.) No.1677 of 2012, decided on 09/10/2012.

9. There is no dispute that applicant was not due for transfer. The applicant was posted at Wildlife Division Pandharkawada (Tipeshwar) as per transfer order dated 04/08/2023. Since then the applicant is working at Pandharkawada (Tipeshwar). The respondent authorities have issued the impugned transfer order dated 05/09/2024. The applicant is transferred from Tipeshwar (Pandharkawada) to Amravati in place of respondent no.4. Except the recommendation / complaint of M.L.A. Dr. Sandip P. Dhurve nothing is placed on record to show that there are other complaints against the applicant. The letter of M.L.A. Dr. Sandip P. Dhurve is reproduced below –

“प्रती,

मा. ना. श्री. सुधीरभाऊ मुनगंटीवार साहेब

वने व सांस्कृतिक कार्य मंत्री, महाराष्ट्र राज्य, मंत्रालय, मुंबई-३२

विषय :- टिपेश्वर पैनगंगा अभयारण्याचे विभागीय अधिकारी श्री. उत्तम फड यांची बदली करण्याबाबत.
महोदय,

आपणास सविनय नम्र विनंती आहे की, टिपेश्वर पैनगंगा अभयारण्याचे विभागीय वनअधिकारी श्री. उत्तम फड हे मागील दिड वर्षापासून प्रस्तुत ठिकाणी कार्यरत आहे. मात्र हे वनअधिकारी आल्यापासून टिपेश्वर अभयारण्याची कोणत्याही प्रकारची प्रगती झालेली नाही.

महोदय, आपणास कळविण्यात अत्यंत आनंद होतो की, टिपेश्वर अभयारण्यात सद्यसिस्थीत बावीस वाघ वावरत असल्याची माहिती मिळत आहे. मात्र त्याच वेळी या वाघांचे संरक्षण व संवर्धन करण्याबाबत कोणत्याही प्रकारचा आराखडा उपलब्ध नाही.

टिपेश्वर अभयारण्याचे क्षेत्रफळ जवळपास १५० वर्ग किमी असून या क्षेत्रात आठ ते दहा वाघांची वास्तव्याची क्षमता आहे. मात्र, त्याच वेळी त्रुणभक्षी प्राण्यांची संख्या वाढविण्याचे दृष्टीने कोणत्याही प्रकारच्या उपाययोजना करण्यात आलेली नाही.

संरक्षणाचे दृष्टीने ठोस अशी कोणत्याही उपाययोजना केलेल्या नाहीत. तसेच वनसंवर्धन, जलसंवर्धनाचे द्वारा कामे या ठिकाणी केले नसल्यामुळे या ठिकाणी असलेले त्रुणीभक्षी प्राणी वनक्षेत्र सोडून शेतात व गावाच्या दिशेने जात असून मानव वन्यजीव संघर्ष निर्माण झालेला आहे.

महोदय टिपेश्वर अभयारण्य हे पर्यटनाचे दृष्टीने अत्यंत प्रसिद्ध क्षेत्र म्हणून नावारुपात आले असून त्या ठिकाणी पर्यटकांना यथा योग्य सोयीसुविधा उपलब्ध नाहीत. पर्यटनांमुळे परिसरातील व लगतचे क्षेत्रातील तरुणांना रोजगार उपलब्ध होण्याची पूर्ण संधी असून या कुचकामी अधिका-यामुळे बेरोजगारांची संख्या वाढत आहे. परिणामी अशा अधिका-यासाठी शासनाची बदनामी होत आहे.

करीता आपणास विनंती आहे की, श्री. उत्तमराव फड विभागीय वन अधिकारी टिपेश्वर यांची तात्काळ बदली करून त्याचे ठिकाणी श्री. किरण दिनानाथ पाटील विभागीय वनअधिकारी अमरावती यांची त्यांचे ठिकाणी पदस्थापना करावी हि नम्र विनंती आहे.

आपला

डॉ. श्री. संदिप प्रभाकरराव धुर्वे

वि.स.स

10. From the perusal of the letter, it nowhere shows that what type of misconduct was committed by the applicant. As per this letter, M.L.A. Dr. Sandip P. Dhurve has made grievance because of the applicant some development work are not done. What type of development works are not done by the applicant is not stated in the letter / complaint by M.L.A. Dr. Sandip P. Dhurve. Though the MLA is one of the members of the Wildlife Board, if he wanted to make any complaint against the applicant, then he should have written details about the misconduct committed by the applicant. He should have mentioned in the letter what type of work is not done by the applicant. The letter only shows that the applicant is not doing the development work. The M.L.A. has suggested the name of respondent no.4 to transfer him in place of applicant. It shows that the M.L.A. has interest to get transferred respondent no.4 in place of applicant. Therefore, it

appears that there is malafide on the part of respondent authorities. The recommendation was made by the Civil Services Board because of the letter of M.L.A.

11. In reply it is stated that transfer was made on the administrative ground, but in the recommendation of the Civil Services Board it is mentioned that transfer was made on complaint and on administrative ground. On 06/09/2024 the applicant approached to this Tribunal. On the very day, this Tribunal has granted stay to the impugned order. The respondent authorities have filed relieving letter. It appears that on 06/09/2024 he was relieved, but nothing is on record to show that whether the applicant has handed over charge of his post to respondent no.4 or any other person. Therefore, it is clear that impugned transfer is made only to satisfy the will of M.L.A. Dr. Sandip P. Dhurve. There are many officers working in the Wildlife Division in Maharashtra in the Forest Department. Respondent no.4 is not only competent to post in place of applicant. Now the question is as to why M.L.A. Dr. Sandip P. Dhurve has suggested the name of respondent no.4. The respondent authorities / transferring authority could have transferred any other competent officer in place of applicant. Why respondent no.4 is posted on the recommendation of M.L.A. Dr. Sandip P. Dhurve. Therefore, it appears that it is a transfer

only to adjust respondent no.4 on the recommendation of M.L.A. Dr. Sandip P. Dhurve. Therefore, it is a malafide transfer order.

12. The learned P.O. has pointed out the Judgment of the Hon'ble Supreme Court ***Sri Pubi Lombi Vs. the State of Arunachal Pradesh & Ors. (cited supra)***. Para 10 of the Judgment is reproduced below –

“(10) In view of the foregoing enunciation of law by judicial decisions of this Court, it is clear that in absence of (i) pleadings regarding malafide, (ii) non-joining the person against whom allegation are made, (iii) violation of any statutory provision (iv) the allegation of the transfer being detrimental to the employee who is holding a transferrable post, judicial interference is not warranted. In the sequel of the said settled norms, the scope of juridical review is not permissible by the Courts in exercising of the jurisdiction under Article 226 of the Constitution of India.”

13. In the cited Judgment, the Hon'ble Supreme Court has made it clear that If the transfer is not malafide, then it cannot be interfered. In the present case prima facie it appears that the impugned transfer is malafide because the applicant is transferred only to adjust respondent no.4. No any complaints are filed on record to show that there are other complaints against the applicant for not discharging his duty properly. Therefore, cited Judgment of the Hon'ble Supreme Court is not applicable to the case in hand.

14. The learned counsel for respondent no.4 has pointed on the Judgment in the case of **Sanjeev B. Kokil Vs. State of Maharashtra & Ors. (cited supra)**. The fact in the cited Judgment is very much different. Sanjeev B. Kokil was one of the Police Officer. There were many complaints against him and therefore he was transferred to Mumbai.

15. In the present matter nothing is placed on record to show that there are any other complaint except the letter by M.L.A. Dr. Sandip P. Dhurve. It appears that the transfer of applicant is only to adjust respondent no.4 as per the will of M.L.A. Dr. Sandip P. Dhurve. Nothing is pointed out by the respondent authorities to show that no any other Officers are competent to work at Pandharkawada Wildlife except respondent no.4. The letter / complaint of M.L.A. Dr. Sandip P. Dhurve itself shows that respondent no.4 shall be posted in place of applicant. This itself shows that M.L.A. has interest to get posting of respondent no.4 in place of applicant.

16. The learned P.O. has submitted that the respondent authorities have initiated departmental inquiry. The respondent authorities are at liberty to conduct the departmental inquiry, if the applicant has committed any misconduct.

17. The letter of M.L.A. Dr. Sandip P. Dhurve dated 29/06/2024 nowhere shows that what type of misconduct is committed

by the applicant. The material part of the letter shows that because of the inefficient Officer, people are not getting the employment. What type of works are pending is not mentioned in the complaints / letter of M.L.A. Dr. Sandip P. Dhurve. The M.L.A. has taken benefit of his position because he is member of State Wildlife Board and therefore the respondent authorities / transferring authority has transferred the applicant and fulfilled the wish of the M.L.A. by transferring respondent no.4 in place of applicant.

18. Prima facie it appears that the transfer of applicant is made by the Transferring Authority only because of the letter of M.L.A. Dr. Sandip P. Dhurve. This letter nowhere shows that any serious misconduct is committed by the applicant. Letter itself suggested the name of respondent no.4 Shri Kiran D. Patil to be posted in place of applicant. By the impugned order, the respondent authorities have posted respondent no.4 Shri Kiran Patil in place of applicant. Therefore, this is a malafide transfer. Only to comply the provisions of Section 4 (4) and 4 (5) of the Transfers Act,2005, the respondent authorities have pointed out the recommendation of Civil Services Board. The recommendation of the Civil Services Boards is also doubtful. It is stated that the recommendation is made on the complaint and on administrative ground. The reply of respondent nos.2 and 3 shows that the transfer is only on administrative ground,

whereas, learned counsel for respondent no.4 has submitted that the applicant is transferred on complaint. Prima facie it appears that the impugned transfer order is malafide. Therefore, the interim stay was granted by this Tribunal on 06/09/2024. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned order dated 05/09/2024 in respect of applicant and respondent no.4 only is hereby quashed and set aside.
- (iii) The C.A. is also disposed of.
- (iv) No order as to costs.

Dated :- 07/10/2024.

(Justice M.G. Giratkar)
Vice Chairman.

*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 07/10/2024.