

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH**

**ORIGINAL APPLICATION NO.170/00243/2020**

**DATED THIS THE 09<sup>TH</sup> DAY OF JULY, 2020**

**CORAM:**

**HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)**

(On video conference from Central Administrative Tribunal, Bangalore Bench, Bangalore)

**HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)**

(On video conference from his residence at New Delhi)

Shri M.V. Amarnath, I.F.S

Aged bout 58 years,

S/o Late Muniyappa,

Deputy Conservator of Forests,

R/at, DCF Quarters, Belagavi,

Karnataka

Was Working as Deputy Conservator of Forests,

Territorial Division, Belagavi,

Belagavi District, Karnataka

....Applicant

(By Advocate Ms. Prutha Bharathi - through video conference)

Vs.

1. State of Karnataka

Represented by its Principal Secretary,

Department of Personnel and Administrative Reforms,

Vidhana Soudha, Bengaluru 560 001

2. State of Karnataka,

Represented by its Principal Secretary,

Forest, Environment & Ecology Department,

Muti Storied Building, Bengaluru 560 001

3. The Principal Chief Conservator of Forest (HoFF)

Aranya Bhavan, 18<sup>th</sup> Cross,

Malleswaram, Bengaluru 56003

4. Mr. Ashok R Patil, SFS,

Deputy Conservator of Forest,

Belagavi Division, Belagavi, Karnataka.

.....Respondents

(By Shri T.S. Mahanthesh, Standing Counsel for the State Government and Shri A. Vishwanath Bhat, Counsel for Respondent No.4 - through video conference)

**ORDER****PER: SURESH KUMAR MONGA, MEMBER (J)**

Factual matrix emanating from record of the case is that the applicant herein is an officer of the Indian Forest Service. He was promoted from State Forest Service and was allotted 2008 as his year of appointment. It has been averred that he has been discharging his duties as Deputy Conservator of Forest since the year 2008. He was transferred to Belagavi Division (Territorial) as Deputy Conservator of Forest (Territorial) on 04.01.2018 and since then he has been serving in the said division. It has further been averred that while he was discharging his duties lawfully, the State Government issued a Notification dated 30.04.2020 transferring Ashok R Patil (Respondent No. 4) from Vijayapura Division, Vijayapura to Belagavi Division, Belagavi and consequent thereto, the applicant has been transferred to Vijayapura Division, Vijayapura. It is the applicant's case that the impugned order dated 30.04.2020 (Annexure-A2) is in direct violation of the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966 (hereinafter called as the 'Cadre Strength Regulations') and the provisions of the Indian Forest Service (Cadre Rules), 1966 (hereinafter called as the 'Cadre Rules'). It has been stated that the forest falling under Belagavi Division forms part of one of the 39 territorial forest divisions in the State of Karnataka. As provided in the schedule for the State of Karnataka in the 'Cadre Strength Regulations', the senior duty posts such as Deputy Conservator of Forest in such 39 territorial forest divisions fall under the Indian Forest Service cadre and by virtue of the said schedule such senior duty posts can be filled only by eligible Indian Forest Service officers.

Respondent No. 4 being a State Forest Service officer is not eligible and he is not a suitable cadre officer to man the post of Deputy Conservator of Forest, Belagavi Division, Belagavi. It has further been stated that the Respondent No. 4 is not even eligible to hold the post of Deputy Conservator of Forest, Vijayapura Division, Vijayapura as the same is also an Indian Forest Service cadre post. The applicant has further averred that the impugned order dated 30.04.2020 is also in violation of the Government's Notification dated 11.01.2016. Aggrieved by the said order, the present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985.

2. Pursuant to notices issued by this Tribunal, Respondent No. 1 and Respondent No. 4 have filed their separate replies opposing the applicant's claim set up in the Original Application.

3. Respondent No. 1 while filing its detailed reply has submitted that the applicant has been transferred to the post of Deputy Conservator of Forest, Vijayapura Division, Vijayapura in public interest and for better management of services as he is a suitable officer to hold the cadre post at Vijayapura. Earlier the said post was held by one Ashok B Basarkod, IFS from 30.05.2007 to 15.06.2009 and thereafter it was manned by the State Forest Service officers. As the said post was not filled up by a cadre officer for a long duration, therefore, the Government felt it appropriate to fill up the same by posting a suitable IFS officer. The applicant has been posted to a cadre post of Deputy Conservator of Forest, Vijayapura Division, Vijayapura

for better management. It has further been averred that the Notification dated 11.01.2016 was issued by the Government as per the provisions of Rule 9 (2) of the 'Cadre Rules'. The said Notification was based on the Select List 2013 and 2014 containing the names of eligible State Forest Service officers. It has further been averred that, as per the interim directions of the Hon'ble Supreme Court in Civil Appeal No. 2368/2011, B.K Pavithra vs. Union of India and Others with regard to reservation in promotion, the gradation list of Assistant Conservator of Forest was revised and the final gradation list was published on 10.01.2018. The State Government has passed "The Karnataka Extension of Consequential Seniority to Government Servants Promoted on the basis of Reservation (to the posts in the civil services of the State) Act, 2017". It has been stated that as per the final order passed in B.K. Pavithra's case by the Hon'ble Supreme Court, the gradation list of Assistant Conservator of Forest is yet to be revised by the administrative department viz. Forest, Ecology and Environment Department. It has further been stated that the administrative department has sent the proposal of all eligible officers with select lists of 2013 to 2017 to consider them for promotion to the cadre of Indian Forest Service as per the gradation list published on 10.01.2018. The Respondent No. 1 has maintained that the name of Ashok R. Patil (Respondent No. 4) is also included in the Select List of 2017. While justifying the posting of Respondent No. 4 as Deputy Conservator of Forest, Belagavi Division, Belagavi, it has further been stated that at present there are 35 vacant cadre posts to be filled up against the promotion quota of Indian Forest Service

from State Forest Service. The eligible State Forest Service officers are being posted against the cadre posts of Indian Forest Service based on the Select List issued by the administrative department and as per sub para 4 of para 34 of the judgment rendered by this Tribunal in OA No. 237/2012. With all these assertions, the Respondent No. 1 has prayed for dismissal of the Original Application.

4. Respondent No. 4 while filing his separate reply has stated that the applicant who was working as Deputy Conservator of Forest, Belagavi Division, Belagavi has been transferred as Deputy Conservator of Forest, Vijayapura Division, Vijayapura and in turn the Respondent No. 4 has been transferred from Vijayapura Division, Vijayapura to Belagavi Division, Belagavi. The applicant has completed his minimum tenure of service at Belagavi as prescribed under the Rules. It has further been averred that, while alleging violation of Rule 8 of the 'Cadre Rules', the applicant has failed to appreciate the fact that Rule 9 (1) of the 'Cadre Rules' confers power upon the State Government to post a non cadre officer on a cadre post. It has further been averred that the notification dated 11.01.2016 (Annexure-A3) demonstrates that the list contained therein is for the vacancies pertaining to the years 2013 and 2014 and it furnishes the particulars of 13 officers. Out of those 13 officers, 5 officers were already holding the cadre posts for want of cadre officers. The first respondent further prepared a list of State Forest Service officers who are eligible for promotion to the cadre of Indian Forest Service in the order of their seniority as on 01st January of the select year 2017. In the said list, Respondent No.4

finds place at Sl. No. 22; whereas, the applicant finds place at Sl. No. 19. The applicant has already been promoted to Indian Forest Service cadre. The name of Respondent No. 4 has been included in the list of eligible officers for consideration of promotion to the cadre of Indian Forest Service for the select year 2017. With these assertions, the Respondent No. 4 has submitted that there cannot be any bar for the first respondent to transfer Respondent No. 4 from the post of Deputy Conservator of Forest, Vijayapura to Deputy Conservator of Forest, Belagavi and he has also prayed for dismissal of the Original Application.

5. While filing his rejoinder statement to reply filed by Respondent No. 1, the applicant, apart from reiterating his assertions made in the Original Application, has further submitted that though the select list includes the name of Respondent No. 4, the impugned order is still illegal as the promotion of Respondent No. 4 to Indian Forest Service cadre is not effected as on the date of the impugned order. The Respondent No. 4 is not a suitable cadre officer to hold the post of Deputy Conservator of Forest, Belagavi Division, Belagavi. It has further been averred that digitalized office note of Respondent No. 1 regarding transfer of Respondent No. 4 to a cadre post has corroborated the fact that there is no provision for posting a State Forest Service officer to an Indian Forest Service cadre post. Promotion of an officer from State Forest Service to Indian Forest Service involves various steps like determination of vacancies for a particular select year, preparation of eligible officers' list as per their seniority and forwarding the same to UPSC, determination of officers' records and eligibility by the

selection committee, concurrence of minutes, issuance of order of confirmation of selection list and issuance of notification of select list for appointment to Indian Forest Service. It has further been averred that mere inclusion of Respondent No. 4's name in the select list does not, in any way, confers upon him promotion/appointment to Indian Forest Service.

6. While filing a rejoinder statement to reply filed by Respondent No. 4, the applicant has further submitted that his transfer order is not in public interest. He is due for retirement in the month of June, 2021. Thus the impugned order of transfer is illegal and the same cannot be sustained.

7. Heard learned counsels for the parties.

8. Ms. Prutha Bharathi, learned counsel for the applicant, while drawing our attention towards the provisions of Rule 8 (1) and Rule 2 (a) of the 'Cadre Rules' submitted that a cadre post in the Indian Forest Service can only be filled up by a cadre officer. She, while further referring to the provisions of Rule 9 of the 'Cadre Rules', submitted that in exceptional circumstances a cadre post can be filled up by a non-cadre officer if a suitable cadre officer is not available to fill up the vacancy. Since the Respondent No. 4 is not a cadre officer, therefore, he cannot be posted as Deputy Conservator of Forest, Belagavi Division, Belagavi and, therefore, the impugned order dated 30.04.2020 (Annexure-A2) is liable to be quashed. Learned counsel further submitted that pursuant to a judgment

rendered by this Tribunal in OA No. 237/2012, the State Government came up with a Notification dated 11.01.2016 notifying therein the list of eligible and competent State Forest Service officers for posting them against Indian Forest Service cadre posts at DCF level. Furthermore, a separate list of candidates was notified through the said notification enumerating therein the names of 4 State Forest Service officers according to their seniority for posting them against the vacant Indian Forest Service cadre posts at DCF level. Learned counsel thus submitted that since the Respondent No.4's name did not find mention in both the lists notified vide Notification dated 11.01.2016, therefore, he cannot be posted as Deputy Conservator of Forests, Belagavi Division, Belagavi which is an Indian Forest Service cadre post. Learned counsel while drawing our attention towards the office note sheets, obtained by the applicant under the provisions of Right to Information Act, 2005 further submitted that in the administrative department, while processing the case of Respondent No. 4, it was recorded that there is no provision for posting a State Forest Service officer in place of an Indian Forest Service officer and, therefore, there was no occasion for the competent authority to issue the impugned order dated 30.04.2020 (Annexure-A2).

9. Per contra, Shri Mahanthesh, learned counsel representing the State Government, submitted that the applicant has been transferred as Deputy Conservator of Forests, Vijayapura Division, Vijayapura in public interest and for better management of services as he has been found to be a suitable officer to hold the cadre post at Vijayapura. Earlier the said post was



held by one Ashok B. Basarkod, an Indian Forest Service officer from 30.05.2007 to 15.06.2009 and thereafter no IFS cadre officer remained posted on the said post. Since the cadre post at Vijayapura was not filled up by a cadre officer for a long duration, therefore, it was felt appropriate by the Government to post a suitable IFS cadre officer to man the said post. Learned counsel further submitted that as per the interim directions of the Hon'ble Supreme Court in B.K. Pavithra's case, the gradation list of Assistant Conservator of Forest was revised and final gradation list was published on 10.01.2018. As per the final order passed in B.K. Pavithra's case, the said gradation list is yet to be revised. The administrative department has already sent the proposal of eligible officers with the select lists 2013 to 2017 to consider them for promotion to the cadre of Indian Forest Service and the name of Respondent No. 4 has also been included therein. Learned counsel still further submitted that since the name of Respondent No. 4 has been included in the select list of 2017, therefore, his posting as Deputy Conservator of Forest, Belagavi Division, Belagavi does not contravene any provision of the notification dated 11.01.2016 (Annexure-A3) and the judgment rendered by this Tribunal in OA No. 237/2012. While referring to a judgment rendered by the Hon'ble Supreme Court in Shilpi Bose vs. State of Bihar reported (AIR 1991 SC 432), learned counsel submitted that this Tribunal should refrain itself from interfering with the transfer order issued in public interest.

10. Toeing almost the similar line of argument, Shri Vishwanath Bhat, learned counsel representing Respondent No. 4, further submitted that the

name of Respondent No. 4 was included in the list of eligible officers for consideration of his promotion to the cadre of Indian Forest Service. In the said list, the applicant's name was placed at Sl. No. 19 and the Respondent No. 4 was placed at Sl. No. 22. Respondent No. 4 being an eligible officer for promotion to IFS cadre, therefore, there cannot be any bar for the State Government to transfer him from Vijayapura Division to Belagavi Division. Learned counsel further submitted that the post of Deputy Conservator of Forest, Vijayapura Division, Vijayapura is also a cadre post and the Respondent No. 4 had been working against the said cadre post before issuance of the impugned order dated 30.04.2020 (Annexure-A2). Learned counsel further submitted that the Respondent No. 4 has now been transferred from one cadre post to another cadre post and there is no fallacy in the impugned order dated 30.04.2020.

11. Considered the rival contentions of learned counsels for the parties and perused the records.

12. Indisputably the applicant herein who is an Indian Forest Service cadre officer has been transferred from a cadre post (Belagavi Division, Belagavi) to another cadre post (Vijayapura Division, Vijayapura) vide order dated 30.04.2020 (Annexure-A2). There is no dispute with regard to the fact that earlier the cadre post at Vijayapura was held by one Ashok B. Basarkod, an Indian Forest Service cadre officer from 30.05.2007 to 15.06.2009. Thereafter the said cadre post was manned by the State Forest Service officers (non-cadre officers). As the said post was not filled up by a

cadre officer for a long duration, it was felt appropriate by the State Government to post a suitable Indian Forest Service cadre officer. The specific assertions made by Respondent No. 1 in its reply with regard to the fact that the applicant has been found to be a suitable officer to hold the cadre post at Vijayapura for better management, has not been disputed by the applicant while filing his rejoinder statement.

13. The argument of learned counsel for the applicant that he cannot be replaced by a non-cadre officer and, therefore, his transfer order to Vijayapura Division, Vijayapura cannot be sustained, does not find favour with us. Rule 8 of the Cadre Rules though makes a provision that every cadre post is required to be filled up by a cadre officer but at the same time an exception has been carved out in Rule 9 of the said rules making out therein a provision that if no suitable cadre officer is available, a cadre post can be filled up by a non-cadre officer. A further provision has been made that if it is proposed by the State Government to continue a non-cadre officer on a cadre post beyond a period of 3 months, the State Government shall obtain the prior approval of the Central Government for such continuance. Rule 9 (2) (a) further makes a provision that if there is a select list in force, the appointment or appointments can be made in the order of names of the officers in the select list.

14. The aforesaid provisions of 'Cadre Rules' were considered by this Tribunal while rendering judgment dated 28.06.2013 in OA No. 237/2012. Allowing the said OA, the following directions were given to respondents:

- 1) Annexure A10 and Annexure A11 must be reviewed.
- 2) Following the spirit of Rule 9 (2) (a) & (b) as many DCF level posts may be manned by Conservator level officers, who can be spared and for the balance vacancies.
- 3) Following the dictate of Rule 9 (2) (a) & (b) if at all it is felt that there are going to be vacancies at the DCF level and non-cadre officer is to be appointed, it shall be done only by appointing them in their respective order in the select list if any first being first and for the balance.
- 4) If above persons/individuals are also not sufficient to fill up the vacancy, then the government is free to prepare a list of competent eligible persons, draw up a further list among them according to seniority and then only on the basis of such seniority can non-cadre officers be posted into cadre posts.
- 5) It is the duty of the Government to ensure integrity of the cadre as it is one of the main components of federal structure.
- 6) As far as possible non-cadre officers shall not be appointed to cadre posts and only in the exceptions and in the method noted above such posts can be filled up by State Government even in case of necessity. This shall be so since the Forest Act and other connected legal matrix imposes heavy responsibility in the level of DCF and above as they are quasi judicial authorities also under the Act such posts shall not be held by persons selected on the basis of personal

whims or other immeasurable criteria.

15. The issue was contested uptill the level of Hon'ble High Court of Karnataka and finally, the Government came out with a Notification dated 11.01.2016 (Annexure-A3) enumerating therein the list of eligible and competent State Forest Service officers for posting against the Indian Forest Service cadre posts at DCF level. A further list of 4 State Forest Service officers was also notified through the very same Notification according to their seniority for posting them against the vacant IFS cadre posts at DCF level. It appears that as per the interim directions of the Hon'ble Supreme Court in Civil Appeal No. 2368/2011 B.K. Pavithra vs. Union of India with regard to reservation in promotion, the gradation list of Assistant Conservator of Forest was published on 10.01.2018. The administrative department of the State Government has already sent a proposal of eligible officers with the select lists 2013 to 2017 to consider them for promotion to the cadre of Indian Forest Service and in the select list of 2017, the name of Respondent No. 4 has been included. Since the Respondent No. 4 has been considered to be an eligible officer and his name has been included in the select list of 2017, therefore, we do not see any reason that he cannot be posted against a cadre post of Indian Forest Service. Thus the argument of learned counsel for the applicant that the applicant's transfer order is contrary to Rule 8 and 9 of the 'Cadre Rules' and the Government Notification dated 11.01.2016 deserves to be repelled.

16. We cannot ignore the fact that before issuance of the order dated

30.04.2020 (Annexure-A2), the Respondent No. 4 was holding an IFS cadre post at Vijayapura and at that time, throughout his posting at Vijayapura, nobody had felt aggrieved. The State Government in its wisdom opted to post Respondent No. 4 against a cadre post at Vijayapura and now when it is found that the said post is being manned by a non-cadre officer since the year 2009, therefore, it is considered appropriate to post there a cadre officer for its better management. The applicant who has been found to be a suitable officer to hold the cadre post at Vijayapura, cannot complain that the order of his transfer is bad because he is now being replaced from Belagavi Division by a non-cadre officer. He cannot question the posting of a non-cadre officer on the post vacated by him.

17. In *Shilpi Bose (supra)* the Hon'ble Supreme Court has held that the Court should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer order is made in violation of any mandatory statutory rule or on the ground of malafide. In any case, the applicant has failed to establish on record as to how his transfer from Belagavi Division to Vijayapura Division is contrary to any mandatory statutory rule. Neither he could establish on record that the order impugned herein suffers from vice of malafide. In our considered view, a government servant holding a transferable post has no vested right to remain posted at one place or the other. He can always be transferred by the competent authority in exigencies of service.

18. In the conspectus of discussions made herein above, we do not find

any merit in the present Original Application and the same deserves to be dismissed.

19. Accordingly, the OA is hereby dismissed. However, there shall be no order as to costs.

**(RAKESH KUMAR GUPTA)**  
**MEMBER (A)**

**(SURESH KUMAR MONGA)**  
**MEMBER (J)**

/ksk/

**Annexures referred to by the applicant in OA No. 170/00243/2020**

Annexure A1 Copy of the Notification dated 04.01.2018

Annexure A2 Copy of the Notification dated 30.04.2020

Annexure A3 Copy of the Notification dated 11.01.2016

**Annexures referred in reply statement by Respondent No. 4**

Annexure R1 Copy of the list of state forest officers

**Annexures referred in rejoinder**

Annexure A4 Copy of the information received from Government under RTI

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