

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:859/99

THURSDAY the 14th day of OCTOBER 1999.

CORAM: Hon'ble Shri R.G.Vaidyanatha, Vice Chairman.

Bhaskar Shankar Thengdi
Residing at Allapalli
Taluka Aheri,
Dist.GadchiroliApplicant.

By Advocate Shri A.J.Chaugule.

V/s

1. The Principal Secretary (Forest)
Government of Maharashtra
Revenue & Forest Department
Mantralaya, Mumbai.
2. The Principal and Chief
Conservator of Forest,
Nagpur, Maharashtra State,
Nagpur.
3. Shri S.B. Limaye
Deputy Conservator of Forest.
Kolhapur Division, Kolhapur.
4. Shri Ashok N. Khadse
Director, Dadasaheb Chaudhari
Forest Ranger's Training School
At Pal, District Jalgaon.Respondents.

By Advocate Shri V.S.Masurkar for respondent No.1 and 2.

Shri R.R.Shetty for respondent No.3

ORDER(ORAL)

{Per Shri R.G.Vaidyanatha,Vice Chairman}

This is an application challenging the order of transfer dated 21.9.1999. Shri V.S.Masurkar counsel for respondent No.1 and 2 have filed reply opposing the application. Shri R.R.Shetty appears on behalf of respondent No.3 orally opposed the application. Though respondent No.4 has been served, he has not appeared. I have heard both sides on admission and interim relief.

2. By impugned order the applicant has been transferred from Sironcha to Pal, District Jalgaon. The applicant is challenging the transfer order on the ground of personal hardships, wife's illness, mid-term transfer affecting the education of his children etc. The applicant is also challenging the impugned order alleging malafides stating that the applicant is transferred to oblige and accommodate respondent No.3 and 4.

3. The respondents in their reply have justified the order of transfer due to administrative interest. It is stated that order of transfer is purely in accordance with rules. They have also pointed out that the limitation of the Tribunal in interfering with the transfer by referring number of authorities of the Supreme Court. There was a delay in issuance of the transfer order in view of the General Election coming in between. The transfer order has been issued after code of conduct came to expire. It is also stated that personal difficulties are not the grounds for interference by Tribunal in view of the law laid down by the Apex Court.

4. The learned counsel for the respondents argued that the personal difficulties like wife's illness or education of children cannot be accepted since it is well settled that administrative order of transfer cannot be interfered with by a Court or Tribunal. The officer can make representation to the competent authority explaining the personal difficulties and it is for the competent authority or higher authority can cancel or

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modify the order of transfer. But it is not under the jurisdiction of the Court or Tribunal to interfere with transfer order on the ground of personal difficulties or education of children or illness of member of family.

5. Now it is clear from number of recent judgements of Apex Court that interfering with the transfer order by a Court or Tribunal not to be done unless it is contrary to statutory rules or suffer from malafides. It is also the view of the Supreme Court that Courts or Tribunal should not interfere with administrative order of transfer since it may affect the smooth running of the administration. In this case there is no allegation of violation of statutory rules.

- (Vide i) Union of India V/s S.L.Abbas AIR 1993 SC 2444
ii) Rajendra Roy V/s Union of India AIR 1993 SC 148
iii) Srichand V/s Union of India (1992) 20 ATC 474
iv) State of M.P. V/s S.S.Kaourav JT 1995(2) SC 498
v) Kamlesh Trivedi V/s ICAR Vol.I page 80 Full Bench Judgement of CAT.
vi) Abani Kanta Ray V/s State of Orissa 1995(8) SLR (sc) 687.
vii) Arun D.Veer V/s State of Maharashtra 1999 (4) SLR BOM 125.)

It was argued that the applicant's transfer was recommended for the posting as Divisional Conservator of Forest, Kolhapur but it has been turned down to accommodate respondent No.3 and 4 and therefore the order suffers from malafides. Even if we accept this argument I cannot say that the order of transfer suffers from malafides.

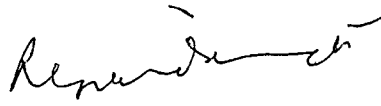
6. The learned counsel for the respondents submitted that the Hon'ble Minister for Forest reviewed the work of Forest Department, specifically the work of forest protection and directed the Principal Chief Conservator of Forests, Nagpur to improve the administration by reshuffling some of the officers. On 16.6.1999 the Principal and Chief Conservator of Forest has submitted the proposal of transfer of 7/8 persons including the applicant. The Principal Chief Conservator of Forests suggested the name of the applicant to Kolhapur. Since the applicant is an All India service of High Rank of Deputy Conservator of Forest, transfer will have to be considered first by the Minister of Forest and then it has to go to the Chief Minister for approval. The Principal Conservator of Forest placed the proposal before the Hon'ble Minister of Forest. After discussion the Minister suggested two, three changes including one change which pertains to the applicant, instead of Kolhapur he has been transferred to Pal. The matter was placed before the Chief Minister who is the final authority to issue transfer order of Senior officers. The Chief Minister has given approval for the transfer of applicant to Pal. After going through the material on record I do not find that the allegation of malafide has any merit.

At this stage the learned counsel for the applicant states that the applicant may be continued till the present academic term upto Diwali holidays. If the learned counsel for the applicant gives an undertaking on behalf of the applicant that he is agreeing to be relieved on 30.11.1999, then it can be considered. The learned counsel for the applicant agreed with this suggestion and made a statement that applicant will get relieved on 30.11.1999.

7. In view of the above discussion I hold that no case is made out for admitting the application. Therefore the application is liable to be rejected at the admission stage.

8. In the result OA is rejected at the admission stage. The applicant shall not be relieved from the present posting at Sironcha Division till 30.11.1999 in view of undertaking given by counsel for the applicant. No order as to costs.

Copy of the order be furnished to the counsel for both sides.


(R.G.VAIDYANATHA)
VICE CHAIRMAN

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