

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.144/2000.

Thursday, the 30th day of March, 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

Surendra Kumar Bali,
16/1, Civil Lines,
Nagpur.

...Applicant.

(By Advocate Mr.P.M.Pradhan along
with Mr.S.S.Karkera).

Vs.

1. The State of Maharashtra,
through the Secretary,
Revenue and Forests Dept.,
having his office at Mantralaya,
Mumbai - 400 032.
2. Joint Secretary,
Revenue and Forests Dept.,
having his office at Mantralaya,
Mumbai - 400 032.
3. Union of India, through the
Secretary, Ministry of Environment
and Forests, having their office at
C.G.O. Complex, Lodhi Road,
New Delhi - 110 001.
4. Sunil Kumar Mitra,
presently posted as Chief
Conservator of Forests (Development),
having his office at Nagpur, residing
at Civil Lines Nagpur,
5. Shri A.N.Ballal,
Principal Chief Conservator of
Forests, having his office at Nagpur,
residing at Civil Lines,
Nagpur.

...Respondents.

(By Advocate Mr.V.S.Masurkar)

: O R D E R (ORAL) :



(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by the applicant challenging the order of transfer dt. 25.2.2000. The Respondents No.1 to 3 have filed their reply opposing the application. The Respondent No.4 is served, but he has not appeared before this Tribunal. The

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5th Respondent has filed an affidavit in reply, but he has not appeared to day. I have heard Mr.P.M.Pradhan along with Mr.S.S.Karkera, counsels on behalf of the applicant and Mr.V.S.Masurkar, counsel on behalf of the Respondents No.1 to 3.

2. The applicant ~~who~~ is of the rank of Chief Conservator of Forest working as Managing Director of Forest Development Corporation of Maharashtra at Nagpur. By ^{an} impugned transfer order he has been transferred as Chief Conservator of Forest (Production) at Nagpur in the place of Mr.B.Mujumdar who has been transferred and posted as Chief Conservator of Forest (Development). Mr.S.K.Mitra, R-4 who was holding that post has been transferred in the place of the applicant.

3. The applicant is alleging that the order of transfer is mala fide and punitive in nature. It is also the case of the applicant that there was no consultation with the ^{Principal} Chief Conservator of Forest for this transfer.

4. The official respondents 1 to 3 have taken the stand that the transfer of the applicant was approved at the highest level and he was transferred in public interest. They have denied the allegation of malafides or the transfer being punitive in nature.

The Respondent No.5 Mr.A.N.Ballal, who is currently Principal Chief Conservator of Forest has stated in reply that he has not been consulted for transfer of the applicant under the impugned order.

5. The learned counsel for the applicant first attacked the order of transfer being mala fide on the ground that the Secretary of Forest Mr.Satish Tripathi has some grudge against the applicant. As rightly argued on behalf of the R-1 to R-3, these allegations of mala fide against Mr.Satish Tripathi cannot

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be made when Mr. Satish Tripathi is not made a party and he has no opportunity to meet the allegations made against him. Therefore, the plea of mala fides has to be summarily rejected.

Even otherwise, after hearing the applicant's counsel and going through the materials on record, I do not find that the transfer is mala fide. The only point made out is that Mr. Satish Tripathi wanted separate telephone connection as Vice-Chairman of the Corporation and applicant did not provide it. On the other hand, the applicant has written a letter and the Board has passed a Resolution to the effect that the Vice-Chairman can be provided telephone and the matter is sent to the Government for orders. Therefore, the question of Mr. Satish Tripathi being aggrieved by the action of the applicant does not arise since the applicant has agreed that the Vice-Chairman can be provided telephone and that the Board has passed Resolution to that effect. Even otherwise, it is too small a matter to allege that for this Mr. Satish Tripathi would take the applicant to task by transferring him.

6. Then, it is argued that it is a case of punitive transfer. The fact that there was large scale felling of trees in the forest area is not disputed. In fact, the applicant himself admits that he has told the Government and reported the matter and he has also stated ^{ask} ~~that~~ what action is to be taken. It has also come on record that Mr. B.C. Pal who is also Chief Conservator of Forest was asked to make a spot enquiry and find out the causes of felling of trees. The felling of trees is not in dispute at all. It is nobody's case, that the applicant was personally responsible for felling of trees. The applicant is the head of the organisation. The Government receives reports

that there are large scale felling of trees in the forest area and if in the interest of administration they make some reshuffle and change the Head of the institution, it cannot be called as an order being punitive in nature. It cannot be said that in every case, when some allegations or complaints are made, the officer should not be touched unless a charge sheet is issued and disciplinary enquiry is held and he is found guilty and punished. That ^{enquiry} Courts may take ^{long time} on ~~for 12 years~~ and even if an order is passed by the disciplinary authority, the officer can still say that he has a right of appeal even if he is found guilty. Then, ^{he may} approach the Tribunal and the Tribunal may say that the matter is subjudice. Therefore, if this theory is accepted and then till the matter is decided by the Highest Court of the land, the officer cannot be touched irrespective of allegations against him. I cannot accept this extreme argument which was addressed at the bar. On the other hand, the learned counsel for the official respondents brought to my notice a Judgment of the Division Bench of the Bombay High Court Arun Damodar Veer Vs. State of Maharashtra and Ors. (1999 (4) SLR 125), where it has been held that if there are some allegations against some officer, there is nothing wrong in transferring him in the interest of efficient administration and some times also in the interest of the officer.

It cannot be said that if a complaint is received, the officer must be suspended or a charge sheet should be issued and he should not be transferred. Further, we may point out that even if an officer is found guilty he can be punished under the CCS (CCA) Rules which does not provide ^{transfer as a punishment.} ~~punishment as a transfer.~~

In this case, when admittedly large scale felling of

trees has taken place and if the Government feels that the Management is to be changed in public interest, it cannot be said that the order is punitive in nature. The order of transfer is simpliciter order of transfer in public interest. No allegations are made against the competence of the applicant in the order of transfer.

7. The learned counsel for the respondents also placed before me the original file under which the applicant came to be transferred. I find that the matter has gone through all concerned officers including the Chief Secretary, the Minister of Forest and ultimately the order of transfer is approved by the Hon'ble Chief Minister. Therefore, the decision is taken at the highest level and not either by the Principal Chief Conservator or by the Secretary of Forest. The applicant is not alleging any mala fides against ^{Forest} ~~officers~~, Minister or Chief Minister. In my view, this is a simple case of applicant being transferred in the administrative interest or public interest.

8. We must also bear in mind that the applicant has been transferred from one office to another in Nagpur and if really it is intended to be a punitive transfer, the applicant could have been transferred to a far off place where there is no facility etc. Applicant had completed three years tenure in the present post. He has been given a posting at Nagpur only and not disturbed his Headquarters. In these circumstances, the applicant's allegation that the order of transfer is mala fide or punitive cannot be accepted.

Another submission was made that the Secretary of Forest was a class-mate or school-mate of R-4 Mr.S.K.Mitra. When I asked the counsel for the applicant as to when was this, he was

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not able to say that. It may be about 20 or 25 years back when they were studying. This itself shows that the applicant's allegation that since R-4 was class-mate about 25 years back and he has now transferred R-4 to applicant's place and applicant was transferred to another post at Nagpur. *is a flimsy ground.*

9. On the contention that the Principal Chief Conservator of Forest was not consulted about the transfer of applicant, the applicant's counsel did not bring to my notice any statutory rules or departmental rules that such consultation is a pre-condition for transferring an IFS Officer. When the matter has been considered at the highest level including the Chief Secretary, Minister of Forest and Chief Minister, the fact that the Principal Chief Conservator of Forest is not consulted will not make the order of transfer bad unless there is statutory rule to that effect that no IFS Officer should be transferred without consulting the Principal Chief Conservator of Forest. Since no such rule or law is brought to my notice, the order of transfer which has been approved by the highest executive of the state cannot be said to be bad in law.

10. It is well settled ^{and} that there is no dispute that a Tribunal cannot sit in appeal over the administrative order of Respondents. The scope of judicial review is very limited to find out whether the transfer order is mala fide or is in violation of statutory rules. I have already rejected the allegations of mala fide, both on merits and also on the ground that the person against whom mala fides are alleged viz. Mr. Satish Tripathi is not made a party respondent. As already stated, applicant's counsel has not brought to my notice any statutory rule that has been violated by transferring the

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applicant from one office to another office in the same Headquarters at Nagpur. Therefore, I find there is no merit in the application and is liable to be rejected.

11. In the result, the application is rejected at the admission stage. The ex-parte interim status quo order dt. 6.3.2000 is hereby vacated. In the circumstances of the case, there will be no order as to costs.


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.