

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:534/2001

DATE OF DECISION: 3rd September 2001.

Shri Suhas Dinkar Samant Applicant.

Shri G.K. Masand Advocate for
Applicant.

Verses

Union of India and others Respondents.

Shri V.S.Masurkar and Shri S.P. Saxena Advocate for
Respondents

CORAM

Hon'ble Shri S.L.Jain, Member(J)

(1) To be referred to the Reporter or not? yes

(2) Whether it needs to be circulated to no
other Benches of the Tribunal?

(3) Library. yes

S.L.Jain
(S.L.Jain)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO: 534/2001

3rd the day of September 2001

CORAM: Hon'ble Shri S.L. Jain, Member(J)

Suhas Dinkar Samant
Conservator of Forests,
Kolhapur Circle,
Kolhapur.

...Applicant

By Advocate Shri G.K. Masand.

V/s

1. Union of India through
the Secretary,
Ministry of Environment,
Forest & Wildlife
Paryavaran Bhavan,
CGO Complex, New Delhi.
2. State of Maharashtra through
Chief Secretary, General
Administration Department
Mantralaya, Mumbai.
3. State of Maharashtra through
Principal Secretary (Forests)
Revenue & Forest Department
Mantralaya, Mumbai.
4. Principal Chief Conservator of
Forests, Maharashtra State,
MCNL Bldg. CGO Complex.
Seminary Hill, Nagpur.

By Advocate Shri V.S. Masurkar

5. Shri P.P.S. Yaduvendu
Working as Conservator of
Forests, Human Resource
Development, Office of
Principal Chief Conservator
of Forests, Maharashtra State
MCNL Bldg., CGO Complex
Seminary Hill, Nagpur.

...Respondents.

By Advocate Shri S.P. Saxena.

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O R D E R

{Per S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 to quash and set aside the order dated 27.7.2001 (Exhibit A) by which the applicant is transferred from the post of Conservator of Forest Kolhapur Circle, Kolhapur as Conservator of Forests Human Resources in the office of principal chief conservator of Forest M.S. Nagpur.

2. The brief facts are that the applicant was promoted as Deputy Conservator of Forests in September 1998. On his promotion he was posted to Kolhapur circle, Kolhapur where he worked till 5.4.1999. He claims that while working as Conservator of Forest at Kolhapur Circle, Kolhapur, he detected a fraud and misappropriation of Government money by staff of Kolhapur Forest Division and in course of his investigations, senior level as well as junior level officials were involved in the said fraud and misappropriation of Government money. Two officials were kept under suspension namely Salokhe and Mundekar. The applicant submitted detailed report dated 6.3.1999 to Principal Chief Conservator of Forests and requested for immediate action against superior officials namely Shri Sunil Limaye, Dy. Conservator of Forests, Kolhapur and concerned Assistant Conservator of Forests who were beyond the administrative control of the Applicant. It is alleged that on receipt of the said report dated 6.3.1999, instead of initiating appropriate action against the officials named in the report, the applicant was suddenly transferred from Kolhapur Circle on 10.3.1999 on Fax Message and was posted as Joint Director (Social Forestry) in

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the office of Director, Social Forestry. Pune where he worked from 5.4.1999 to 30.8.2000 when the post of Joint Director was abolished. He was transferred as Conservator of Forests, Kolhapur vide order dated 14.6.2000 but the same was cancelled by order dated 20.6.2000. The applicant remained waiting for his new posting from 1.9.2000 to 24.10.2000 and thereafter from 25.10.2000 he was posted as Conservator of Forest, Wild Life, Nasik where he worked till 17.7.2001. Thereafter he took charge of office of Conservator of Forests, Kolhapur Circle, Kolhapur with effect from 18.7.2001 in pursuance of the order dated 16.7.2001. The applicant is transferred by the impugned order dated 27.7.2001 as Conservator of Forests, Human Resources, Nagpur and respondent No.5 is being posted as Conservator of Forests, Kolhapur.

3. The applicant has challenged the transfer order on the ground that the authorities seem to be interested in shielding the culprits who have been involved in fraud and misappropriation of Government funds and whose misdeeds had been reported by the applicant to Respondent No.4 through his report dated 6.3.1999. Within a period of 10 days he is again transferred which shows lack of bonafide in issuing of impugned order dated 27.7.1999. This is a case of frequent transfer. The applicant has to retire on 30.11.2002 on superannuation and in accordance with the guidelines of the Government, an officer is spared from transfer during the last 18 months of his tenure. The transfer order is not in administrative interest but has been issued at the behest of others who are afraid with the applicant taking over the charge of office of Conservator of Forests, Kolhapur Circle, Kolhapur. Hence this OA for the above relief.

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4. The official respondents 2 to 4 have filed separate written statement and Respondent No.5 have also filed separate written statement. The respondent No.2 to 4 resisted the claim of the applicant stating the fact that the applicant is an All India Service Officer and is that he is liable to be transferred to anywhere with the state of Maharashtra. The transfer of the applicant is strictly in public interest. There is neither malafide nor violation of any statutory Rules. The applicant has not made any representation to the Government showing the difficulties or pointing out any serious violation of law but approached the Tribunal directly. This shows that the applicant has no ground to approach the Government for any grievance. The transfer order can be challenged in the Court either the order is malafide or that the service rules prohibits such transfer or that the authorities who issue the order has not the competence to pass the order. Regarding malafide for determination of the same the Court will look into the records only and not inter into the roading enquiry. The applicant enjoyed the posting at Kolhapur Circle as detailed in para 6 of the written statement.

Designation	Period		No. of years
	From	To	
1. Deputy Conservator of Forests, Kolhapur Forest Division.	22.10.93	2.12.96	3 Yrs
2. Deputy Conservator of Forests. Sawantwadi Forest Division.	6.12.96	10.9.98	2 Yrs
3. Conservator of Forest Kolhapur Circle immediately after promotion as Conservator of Forests	11.9.98	26.3.99	1/2 Yrs
Total			5 1/2 Yrs
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The applicant has no vested right to work at Kolhapur Circle. The action taken by the respondents is strictly in the interest of service. In February 1999 because of various complaints received against the applicant the then Secretary (Forests) initiated proposal for his transfer out of Kolhapur. The Forest Secretary pointed out that the applicant's role in a particular company's case was found suspicious and complaints were also received from Central Minister and State Level Ministers and thus the transfer order was issued on 13.3.1999. It is denied that the applicant was transferred from Kolhapur in the year 1999 for taking disciplinary action against the staff involved in fraud and misappropriation. After the applicant's transfer to Kolhapur vide order dated 16.7.2001 serious complaints against the applicant were received by the Chief Minister. The said complaints were from a Minister in Government of Maharashtra, two M.L.As and also one ex-M.L.A. The complaints relates to his posting of 5 1/2 year at Kolhapur and dissatisfaction and resentment amongst the people about him. On receipt of the said complaints the applicant's case was called back by the office of the Chief Minister and on the above facts and the remarks made by the former Secretary of the Forest Department were placed before the Chief Secretary, Ministry (Forests) and Chief Minister, all of whom concurred that the applicant could not be kept at Kolhapur and he should be transferred from Kolhapur to Nagpur. Accordingly, Government had to take an unusual step of transferring the applicant in a short spell of about 11 days as the administrative interest required so. It is for the

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administration to decide who has to be posted and where and applicant is not to guide the Department for the same. Hence prayed for dismissal of the OA alongwith costs.

5. Respondent No.5 resisted the claim of the applicant stating the fact that he was relieved from Nagpur on 28.7.2001 and reached Kolhapur on 30.7.2001 and reported thereon posting, as ordered by the Government of Maharashtra. He has already reached and joined Kolhapur. The applicant has suppressed the information that the answering respondent had already joined at Kolhapur as per the transfer order dated 27.7.2001. In view of the interim relief the answering respondent No.5 is now neither at Kolhapur nor at Nagpur and is presently not given his posting. The applicant has arranged to get his posting at Kolhapur where he has some vested interest. He has worked at Kolhapur as Dy. Conservator of Forest from 22.10.1993 to 2.12.1996, for a period of 3 years and 2 months and thereafter at Sawantwadi from 7.12.1996 to September 1998 and again at Kolhapur from 12.9.1998 to 26.3.1999. The post of Dy. Conservator of Forest at Sawantwadi also carried the additional charge of Kolhapur Circle. Thus the applicant had worked at Kolhapur for a total period from 22.10.1993 to 26.3.1999 (5 1/2 years). At Kolhapur he had committed great irregularities in the matter of recruitment and regularisation of Group 'D' Employees and a number of cases were filed before the Court by the Group 'D' employees. It is learnt that they were even not eligible to be appointed or regularised.

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The cases are about 77 in number pending for investigation. Shri A.K. Saxena, Conservator of Forest had recommended initiation of appropriate action against the applicant. In addition there were large scale of complaints against the applicant. All this resulted in his posting out on transfer from Kolhapur in March 1999 after about his stay of 5 1/2 years at Kolhapur. The applicant has been using political influence for his posting at Kolhapur from time to time. He has managed once again to get orders of his transfer from Pune to Kolhapur which was cancelled. Further he has managed his posting from Nasik to Kolhapur by order dated 16.7.2001 by using undue approach and influence. The commission and omission at Kolhapur will now be exposed, the applicant is making an attempt to remain at Kolhapur with a possibility of tampering and destroying evidence against him. It is in this context that his posting at Kolhapur is not desirable in public and Government interest as well. The answering respondent has not been posted as Conservator of Forests (Territorial) for long years and he is working at Nagpur Office and he also requires to be posted for field work / duties. Two of the M.L.As of Kolhapur area had also written to the Chief Minister by their letters dated 18.7.2001 against the posting of the applicant at Kolhapur. Some other private organisation have also addressed letters to the Chief Minister on 19.7.2001 expressing their fear that by posting of the applicant at Kolhapur, the inquiry in labour recruitment / regularisation of his earlier tenure would be severely affected. It is in this context that the order dated 27.7.2001 was issued posting the

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applicant at Nagpur, in the public interest. The report of the applicant dated 6.3.1999 in respect of alleged fraud at Kolhapur has been considered by principal Chief Conservator of Forests Office and they have found no truth in the allegations contained in the letter.

5. The applicant has filed rejoinder in respect of the written statement filed by official respondent No 2 to 4 and private respondent No.5 separately. In rejoinder the applicant has stated that Exhibit PR 2, 3 and 4 are all addressed to the Hon'ble Chief Minister of Maharashtra dated 18.7.2001 and 19.7.2001. It is surprising as to how respondent No.5 could come into possession of communication addressed to Hon'ble Chief Minister of Maharashtra especially when no reference to these has been made in the written Reply filed on behalf of respondent No.2 to 4. He was not relieved could not be relieved on 28.7.2001 as it was a non working Saturday. On 30.7.2001 the Principal Secretary (Forest) had not permitted respondent No.5 to take charge of the post of Conservator of Forest at Kolhapur Circle at Kolhapur even though respondent No.5 had sought such a permission which is evident from the contents of his letter dated 30.7.2001 (Exhibit PR 1). He has denied of his any attempt to get posted at Kolhapur or any vested interest at Kolhapur. His period of stay at Kolhapur is 3 1/2 years and any irregularities as alleged by respondent No.5 is denied. Complaints against him and the transfer on account of the said complaints is also denied. It is stated that he has never used any political influence for his posting at Kolhapur. The letter dated 19.7.2001 allegedly

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written by Kolhapur Zilla Bhrashtachar Virodhi Jan Andolan is yet another motivated letter issued at the instance of these corrupt officials against whom he had initiated action.

6. In respect of written statement of official respondents the applicant has stated that he was posted as Dy. Conservator of Forest at Kolhapur Division with effect from 22.10.1993 to 2.12.1996 and thereafter he was transferred to Sawantwadi Division in the same post of Dy. Conservator of Forest. There he worked for two years from 16.12.1996 to 10.9.1998. The Kolhapur Circle consists of five districts including three divisions viz. Kolhapur, Sawantwadi and Satara which are being headed by Dy. Conservator of Forest and two sub-divisions viz. Chiplun in Ratnagiri District and Sangli in Sangli District which are headed by Assistant Conservator of Forest. No action was initiated against him or explanation was called for in respects of the complaints alleged. The complaints received after his assuming office at Kolhapur in pursuance of the order dated 16.7.2001 are of no consequence for the reason that after his posting there, the posting was not liked by the concerned.

7. The reliving of the respondent No.5 from the office of respondent No.5 to join the new posting i.e. at Kolhapur is not a relevant fact to decide the transfer order which is challenged by the applicant.

8. In JT 1995 (2) SC 498 State of Madhya Pradesh & Ors. V/s Shri S.s. Kourav & Ors. the Apex Court has held that the Courts or Tribunals are not expected to interdict the working of administrative system by transfer of officers to proper places.

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Decisions of administration shall stand unless they are vitiated either by malafides or extraneous consideration. It is further held that it is for administration to mitigate cases of relative hardship in interest of good and efficient administration.

9. The case of S.S. Tunge and others V/s Union of India and others decided on 5.3.1999 by CAT Mumbai Bench has held that if a decision to transfer has been motivated with a view to confer undue advantage / undue benefits on a particular person, the same cannot be sustained.

10. The defence of the respondent No.5 is that the applicant had committed great irregularities in the matter of recruitment and regularisation of Group 'D' employees, the cases numbering 77 are pending for investigation, large scale of complaints is of no assistance to cancel the transfer order particularly when such defence is not raised by the official respondents and the matter is still under investigation. I hope, that the investigation shall be completed as early as possible and the law shall take its recourse.

11. The stay of the applicant at Kolhapur whether it is for 5 1/2 years or 3 1/2 years is also not material fact which can be considered a relevant fact to cancel the transfer order. However, as explained by the applicant his stay at Kolhapur is with effect from 22.10.1993 to 2.12.1996. His stay at Sawantwadi Division cannot be termed as stay at Kolhapur as explained by him.

12. The official respondents have stated that the applicant's role in a particular company's case was found suspicious and complaints were also received from Central Minister and State

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level Ministers which resulted in transfer order of the applicant dated 13.3.1999. Firstly, the Bench is not considering the cancellation of the transfer order dated 13.3.1999, secondly, even inspite of such situation, the respondents (Official respondents) have not initiated any action against the applicant, his comments were not at all called for, he was posted at Kolhapur vide order dated 14.6.2000 which was later on cancelled on 20.6.2000, the said matter was not taken into consideration again while posting the applicant at Kolhapur in view of order dated 16.7.2001 compells the Tribunal to draw an inference that this is the ground raised as defence being only a face saving statement of facts and has nothing to do with retransferring the applicant vide impugned transfer order dated 27.7.2001.

13. The real cause for issue of the transfer order dated 27.7.2001 is the complaints received by the Chief Minister from Minister and MLAs. Suffice to say that these complaints do state that "his administration is not people oriented and tremendous anger against him amongst the people, anti people decisions, unjust for the staff" without stating any fact, which relates to his earlier posting and not the present posting. The Bench can assume that the Members of Legislative Assembly - some having elevated to Minister are watch dog for the administration, but their opinion deserves to be accepted if based on facts and not their decision without enumerating the facts. If the facts are placed by Minister, MLAs or even by any organisation or individuals, the administration has to take its own decision and not to surrender its decision to some one else. In the present case, the facts were not placed before the administration to

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transfer the applicant from Kolhapur to some other place. Only on the opinion of the Minister, MLAs etc. the action is taken by the administration, thus it can be said that the impugned transfer order dated 27.7.2001 is not in public interest or in the interest of the administration, but it is at the behest of such authorities, which cannot be allowed to stand.

14. It would not be out of place to mention that how respondent No.5 is equipped with all such information when the said complaints - complaint of Minister and MLAs were not even marked to any one else and possessed only by the Chief Minister's office.

15. The guide lines for posting the officials where he is to be superannuated in near future, cannot be at the cost of efficient and honest administration.

16. Regarding territorial posting of respondent No.5 it is suffice to state that his grievance is to be decided by the official respondents (1 to 4) and it cannot be a ground particularly when not raised by the official respondent No. 1 to 4 to be raised defending the transfer order.

17. The official respondents are expected to take necessary actions if they are possessed with facts to take recourse to law for fair, honest and efficient administration but surmises and conjectures do not play any role in it.

18. In the result OA deserved to be allowed and is allowed. Impugned transfer order dated 27.7.2001 (Exhibit A) deserves to be quashed and is quashed. No order as to costs.

S.L. Jain
(S.L.Jain)
Member(J)