

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4357 of 2007

Vijay Waman Chahakar,
Age : 46 years, Occ. Service,
r/o. Lane No.5, Moglai,
Dhule

..Petitioner

Vs

1. The State of Maharashtra,
Through Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai
2. Conservator of Forest,
Dhule Circle,
Dhule, Distl Dhule
3. Deputy Conservator of Forest,
West Dhule Division,
Dhule, Dist. Dhule
4. Deputy Conservator of Forest,
North Dhule Division,
Shahada, Dist. Dhule
5. Upper Principle Chief Conservator
of Forest (Human Resource
Development and Administration),
Maharashtra State,
Fourth Floor,
Dr. Babasaheb Ambedkar Bhavan,
Near T.V. Tower,
Seminari Hills,
Nagpur

..Respondents

Mr.N.B.Suryawanshi, Advocate for Petitioner
Mr.S.K.Tambe, Assistant Government Pleader for respondents

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

DATE : SEPTEMBER 13, 2017

ORAL JUDGMENT (*PER SUNIL P. DESHMUKH, J.*) :

Heard.

2. The petitioner before this court purports to challenge order dated 07.02.2006 passed by the Maharashtra Administrative Tribunal (hereinafter "M.A.T."). in Original Application (hereinafter O.A.) No.459 of 2001, whereunder the request of petitioner for payment of salary for the period from 01.03.2001 to 03.02.2002 stands turned down. The petitioner also takes exception even to the order passed by respondent no.3 on 09.12.2002 and the order dated 07.11.2003 passed by respondent no.5. The petitioner also requests to expunge adverse observations appearing against him in paragraphs 9, 10, 11 and 12 in the order.

3. The petitioner has been working as a Forest Guard, Dhule Division. He had been transferred in May, 2000 in Jalgaon District. Against said transfer order, he had preferred O.A. No.157 of 2000, wherein operation of order of his transfer had been stayed and

subsequently, the O.A. had been allowed under order dated 19.10.2000 by M.A.T. Thereafter, the petitioner had been directed to go on training for a period of six months, however, under the prevailing circumstances, he could not have been able to join the training. He had, therefore, requested the concerned authorities to exempt him from joining the same. Said request had not been considered, and as such, the petitioner was before the M.A.T. under O.A. No.277 of 2000. While said matter had been pending, the order sending the petitioner on training, had been cancelled and in the circumstances, O.A. No.277 of 2000 had been withdrawn. Salary of the petitioner had not been paid from January, 2001 and was paid after protest by the petitioner in February, 2001. In February, 2001, the petitioner was transferred to North Dhule Forest Division, Shahada from West Dhule Forest Division. It is claimed by the petitioner that he was not given detailed posting order. The petitioner approached the M.A.T. once again against said transfer order under O.A. No.188 of 2001. Said O.A. had been dismissed by the Tribunal on 11.04.2001 and the petitioner had been directed to approach Deputy Conservator of Forests, Shahada. However, for want of detailed posting order, the petitioner had found it difficult and had protested against ex-parte relieving action. The petitioner

had requested for payment of salary and other transfer allowances. The petitioner also filed a representation demanding transfer and salary advances. It is claimed by the petitioner that he visited respondent no.3 personally in May, 2001, however, purportedly, discriminatory treatment was meted-out to him. His repeated requests for payment of salary advance were turned down. In the circumstances, the petitioner had been constrained to request for advance from G.P.F., however, said request too was not granted. In the circumstances, he had been before the M.A.T. in O.A. No.459/2001.

4. Before the Tribunal, it had been the case of the respondents that transfer advance to the petitioner had been sanctioned in May, 2001 and he was intimated about the same by post.

5. It is the contention of the petitioner that the intimation was sent on incorrect address. It is claimed by the petitioner that during pendency of proceedings before the Tribunal, transfer allowance was not paid to him. During pendency of the O.A., it appears that order came to be passed to treat the period of service of the petitioner from 01.03.2001 to 03.02.2002 as without pay.

Said order had not been referred to in the affidavit filed by the respondents before the Tribunal. The petitioner had challenged said order in an appeal. The appeal had been pending and it was intimated to the petitioner that said appeal has been dismissed, petitioner was not heard in the appeal. The Tribunal also has dismissed the O.A. under its order dated 07.02.2006.

6. Mr.Suryawanshi, learned Counsel for the petitioner submits that various circumstances have been there under which, it had been difficult for the petitioner to join duties on transferred place. He further purports to refer to discriminating treatment meted out to the petitioner. While other staff members were being paid requisite allowances and salary, payment of allowances and salary of the petitioner was kept lingering on by concerned respondents. He submits that observations made by the Tribunal that the petitioner is in the habit of litigating and making grievance against the respondents, may be recalled as the Tribunal has not realised the effect and impact of the circumstances, under which the petitioner had been constrained to approach the Tribunal. He further submits that since the order dated 07.11.2003 in the appeal passed by respondent no.5, is an order without following the

principles of natural justice. The petitioner may be allowed to prosecute the appeal by directing respondent no.5 to hear the petitioner. He points out Section 19 of the Administrative Tribunals Act, 1985 and contends that having regard to the same, the order passed during pendency of O.A. No.459 of 2006 is untenable. He submits that the Tribunal has been rather scathing in making observations adverse to the petitioner's interest, which may affect his career.

7. Learned Assistant Government Pleader, Mr. S.K. Tambe, for the respondents contends that it is evident from the past record that the petitioner had been habitually litigating against every action taken by the respondents, be it administrative or any other. The petitioner was reluctant to move away from West Dhule Forest Division to any other division. His initial approach before the Tribunal had been successful. He, however, thereafter approached the Tribunal against each and every action of the respondents. He submits, for frivolous reasons, the petitioner had refused to join at the place of his transfer. In the circumstances, the respondents had been constrained to take action of treating the non-worked period of the petitioner as non-salary period. The learned Assistant

Government Pleader further submits that the action of treating concerned period as non-salary period is in accordance with the relevant procedure and rules and the action cannot be faulted with on that count. He submits exception taken to the orders in that respect is on technical grounds. He further submits that even otherwise, amendment in that respect has been caused and O.A. has been dismissed. As such, the order passed stands merged into the order of the Tribunal. He submits that there is no point in sending back the parties to authority in respect of treating said period as non-salary period. The action of the respondents is not without reason or material. As petitioner had been making repeated approaches on frivolous grounds, in the facts and circumstances observations of the tribunal cannot said to be not justified. He submits that there is no merit in the claims made by the petitioner. The Tribunal has taken a comprehensive and exhaustive view and passed appropriate order.

8. Although it is being so submitted by the learned Assistant Government Pleader, he has been fair enough to leave it to the Court to take decision about the request of the petitioner for expunging the adverse remarks made against him by the Tribunal.

9. The Tribunal, while deciding the O.A., in paragraph 12 has referred that the respondents made a categorical statement in their reply and additional reply, that an amount of Rs.4,200/- was sanctioned on 04.05.2001 by way of advance payment to the petitioner and attempt was made to serve the same on the petitioner, however, he was reluctant to be in touch with the concerned authority. In the circumstances, the Tribunal has observed that the respondents cannot be imputed any lapse in respect of their part of duty. The Tribunal has observed that having regard to that the petitioner had not worked, he would not be entitled to claim salary for the period during which he had obstinately abstained from work. The Tribunal also found that the grievances and claims being made by the petitioner ought to have been made at the place where he was transferred. Thus, the Tribunal found that there had been no error on the part of the respondents to treat the disputed period without salary. Appreciation of the Tribunal in aforesaid respect appears to be with reference to the record placed before it and it does not appear to be improper and perverse. As such, declining the request for payment of salary for concerned period and treating the same as non salary can be hardly faulted with.

10. Extracts of the observations made by the Tribunal in the impugned judgment appearing in paragraphs 9, 10, 11 and 12 read thus : -

“ 9.
 The Range Forest Officer, if the pleadings of applicant are considered in its totality, it appears that he was very technical in saying that, order of detail posting should have been served on him by respondent No.3. As a matter of fact, the applicant is a Forest Guard may be a Class III cadre. He however was not prepared to visit office of respondent No.3, and to collect the order of detail posting.

It appears that, the applicant who belongs to Class III cadre was expecting that, some employees, shall come at his residence and shall serve a copy of detailed posting order on him. The applicant was not prepared to visit the office of respondent No.2 or respondent No.3, and to collect the detailed posting order from them. He did not state to have visited the office of either of the aforesaid officers i.e. respondents nos. 2 and 3 and asked them to supply him the copy of the detailed posting. What I feel is that, the attitude of the applicant was rather adamant and that gave rise to the complications in his non joining at the place of transfer.

10. *It appears from the record that, the applicant is habitual in filing petitions before the Court. He approached*

this tribunal every now and then, and it appears that, he wanted to give answer to the respondents through the process of law only, and not by personal adjustment. Even admittedly he was proposed to be sent on training for four times in past, and for one or the other reason he succeeded to get it cancelled. I feel that, the applicant is a person who wants to take the law in his hands and he intends to see that the respondents who are his superiors have bowed before him. I feel that, the employee of such kind is disease to insect for the department polluting the entire administration and so such employee is not entitled to any accommodation from the court.

11.

.....I feel that, the office of North Dhule forest Division Shahada would be the proper office, who would give him detailed posting where he has to report applicant however, did not care and he was under a false expectation that order of detailed posting should come to his residence.

..... What I feel is that, the applicant had adopted a quite adamant attitude. He wanted to be a master of his own.

12.

.....

As a matter of fact, the applicant being belonging to the class III cadre, it was his bounden duty to visit his office at Dhule, and to accept the amount of advance.

However, he treated himself to be in a superior position and he was rather reluctant enough to visit the office.

.....This is how the applicant was sitting tight in his place and that was reason for these complications.....”

11. Having regard to the background of the case and the circumstances referred to above, observations made by the Tribunal against the petitioner appear to be too subjective and appear to be uncalled for and in the scenario appear to be rather scathing. Those may affect the petitioner's career. On the facts and circumstances on record, we find that those observations would not be necessary and deserve to be expunged.

12. Thus, keeping in view the observations of the Division Bench of this Court in the case of *Sonibai Nathu Kuwar Vs. State of Maharashtra and others*, 2005(6) Bom. C.R. 261, as referred to under head-note 'B' read with paragraph 17 of the judgment, we consider that the prayer of the petitioner to expunge the adverse observations made in the impugned judgment by the Tribunal, requires a positive consideration.

13. In the circumstances, we pass the following order :-

(i) Writ Petition is partly allowed in terms of prayer Clause (B). The extracts from paragraphs 9, 10, 11 and 12 quoted above, shall stand expunged.

(ii) Rest of the prayer clauses under the petition are rejected.

(iii) Rule made absolute partly as aforesaid.

(iv) Writ Petition is accordingly disposed of.

[SANGITRAO S. PATIL, J.]

[SUNIL P. DESHMUKH, J.]