
(2007) 01 KAR CK 0028
In the Karnataka High Court
Case No : Writ Petition No. 1244 of 2007

K.B. Bandekar

APPELLANT

Vs

The Principal Chief Conservator of Forest

RESPONDENT

Date of Decision : 31-01-2007

Acts Referred:

Citation : (2007) ILR (Kar) 2611 : (2007) 6 KarLJ 282 : (2007) 4 KCCR 230 SN

Hon'ble Judges : Cyriac Joseph, C.J;B.S. Patil, J

Bench : Division Bench

Advocate : L. Mahesh, for Panchajanya Assts, for the Appellant; A.N. Venugopalagowda, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—The petitioner is a Range Forest Officer in the Forest Department of the Government of Karnataka. While he was working as Range Forest Officer at Raibag in Belgaum District, he was transferred to the Works Project at Shimoga vide Annexure-A1 order dated 15.05.2006. Claiming that the petitioner is due to retire within a period of less than two years, he submitted Annexure-A2 representation dated 15.06.2006 requesting that he may be retained at Raibag. He also filed Application No. 4251 of 2006 in the Karnataka Administrative Tribunal questioning Annexure-A1 order of transfer. But the Tribunal disposed of the said application with a direction to the Cadre Management Authority to consider and dispose of the petitioner's representation dated 15.06.2006. In compliance with the direction of the Karnataka Administrative Tribunal, the Cadre Management Authority considered the matter and decided to post the petitioner to a vacant post in the Works Project at Belgaum vide Annexure-A4 order. Not being satisfied with Annexure-A4 order, the petitioner filed Application No. 6538 of 2006 challenging Annexure-A4 order and praying for a direction to continue him at Raibag itself. However, the Karnataka Administrative Tribunal dismissed the application holding that there is no infirmity whatsoever in Annexure-A4 order. The said order dated 18.12.2006

of the Tribunal (Annexure-B) is challenged in this writ petition.

2. We have heard the learned Counsel for the petitioner and have also considered the materials placed on record.

3. Admittedly, Annexure-A1 order dated 15.05.2006 transferring the petitioner from Raibag to Shimoga was passed during the general transfer in the year 2006. It is also not disputed that at the time of passing Annexure-A1 order, the petitioner had already completed a period of three years at Raibag and was due to be transferred out as per the guidelines contained in Government Order No. DPAR 4 STR 2001 dated 22.11.2001. Hence the petitioner was aware that he was due to be transferred out during the general transfer. If he wanted to avail of the benefit under Clause 5.1 of the said Government Order, he should have made a representation to the competent authority to retain him at Raibag or to post him at any other place of his choice as he is due to retire within two years on attaining the age of superannuation. Admittedly, the petitioner did not make any such representation. Finding that he had already completed three years at Raibag, he was transferred to Shimoga. However, when he made Annexure-A2 representation, it was considered sympathetically by the Cadre Management Authority and Annexure-A1 was modified by giving a posting at Belgaum in a vacant post. It is specifically stated in Annexure-A4 order that though the petitioner has got only less than two years to retire, he had not made any representation seeking retention at Raibag or posting at any other place of his choice and therefore he was transferred out from Raibag as he had completed the period of maximum stay at Raibag. It is also seen from Annexure-A4 order that the petitioner was given a posting at Belgauna taking into account the circumstances stated in his representation Annexure-A2. In such circumstances, we agree with the Karnataka Administrative Tribunal that there is no infirmity in Annexure-A4 order and that the application No. 6538 of 2006 was liable to be dismissed.

4. Learned Counsel for the petitioner submitted that the interpretation given to Clause 5.1 by the Tribunal is not correct. Clause 5.1 of Government Order dated 22.11.2001 reads thus:

A Government Servant, who is due to retire within two years of attaining the age of superannuation may, ordinarily, be transferred to a place preferred by him or to a place nearest to it during the period of transfers.

In the light of the other clauses in the said Government Order, the only interpretation that can be given to Clause 5.1 is that, if a Government Servant is due to retire within two years of attaining the age of superannuation and if he wants a posting at a place of his choice, he may submit a representation to the competent authority containing such a request and if such a representation is submitted, the competent authority is bound to consider the request, though the said Clause 5.1 docs not cast any obligation on the part of the competent authority to grant such request. If such a representation is not made by the

Government Servant, there is no obligation on the part of the competent authority even to consider such a request. Similarly if a Government Servant is due to be transferred out on account of his completing the maximum period of stay at a particular place and if he is interested in continuing at the same station or to be posted at any other place of his choice, he should make an application to the competent authority before the general transfer so that such request can be considered by the competent authority while making general transfers. Unless such a representation is submitted by the Government Servant, he is liable to be transferred out on account of completing the maximum period of stay at the particular station and the competent authority is not under any obligation to retain him at the station only on the ground that he is due to retire within two years on attaining the age of superannuation. The competent authority cannot be expected to be aware of or bear in mind the date of superannuation of every Government Servant, It is for the Government Servant concerned to alert the competent, authority and to invite its attention to Clause 5.1 of the Government Order and claim the benefit under the said Government Order. A Government Servant who does not make such request at the relevant time cannot later complain against the transfer. In this view of the matter, the understanding of Clause 5.1 by the Cadre Management Authority as seen from Annexure-A4 order and the interpretation given by the Administrative Tribunal to the said Clause 5.1 in the impugned order are correct. The petitioner cannot have any legitimate grievance against Annexure-A4 order.

5. It is to be noted that the petitioner hails from Karwar District and not from Shimoga District or Belgaum District. Therefore, the desire of the petitioner to continue at Raibag is not a desire to be posted at his native place or native district. Moreover, in Annexure-A4 order the Cadre Management Authority has reviewed the transfer of the petitioner from Raibag to Shimoga and has re-transferred him to Belgaum District itself. The Cadre Management Authority has also pointed out the reason for not posting the petitioner at Raibag itself. According to the Cadre Management Authority, the substitute who was posted in his place at Raibag had already assumed charge at Raibag and re-posting the petitioner at Raibag would involve disturbance to the said substitute. Therefore, the Cadre Management Authority opted for a more acceptable course of posting the petitioner to a vacant post in Belgaum District itself. The Cadre Management Authority cannot be expected to be more just and fair in the given circumstances.

6. In the above circumstances, we hold that there is no merit in this writ petition and the writ petition is liable to be dismissed. However, we make it clear that the dismissal of this writ petition will not stand in the way of the petitioner making any representation for a posting at a more convenient place and the competent authority considering such request.