

(Reserved on 21.2.2023)

**Central Administrative Tribunal, Allahabad Bench,
(Circuit Sitting at Nainital)**

T.A. NO.1/2022 in W.P. No. 98/2022

This the 24 th day of February, 2023

Hon'ble Mr. Justice Om Prakash VII, Member (J)

Rajiv Bhartari aged

.....Applicant

By Advocate – Shri Abhijay Negi assisted by Ms.
Snigdha Tiwari

VERSUS

1. Union of India through Secretary, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, Jor Bagh, New Delhi-110003.
2. State of Uttrakhand through Chief Secretary, Govt. of Uttrakhand, Govt. Secretariat, Subhash Road, Dehradun-248001.
3. Principal Secretary/ Additional Chief Secretary (Environment & Forest), Govt. of Uttrakhand, Govt. Secretariat, Subhash Road, Dehradun-248001.
4. Vinod Kumar, presently holding the position of PCCF (Wildlife),

Respondents

By Advocate - Shri T.C. Agrawal for respondent No.1
Shri Sachin Mohan Singh Mehta for
Respondents No. 2 and 3
Sri Aman Rab for respondent No. 4

ORDER

Hon'ble Mr. Justice Om Prakash-VII, Member (J)

This T.A. has been filed by the learned counsel for the applicant for direction in the nature of certiorari to call for all the relevant records of transfer and to quash the

impugned transfer order No. 1989/X-1-2021-14 (22)/2021 dated 25.11.2021 (Annexure No.1 of this petition) and restore the petitioner to the post of PCCF (HOFF) as the said order has been passed in gross violation of IFS (Cadre) amendment Rules 2014, law laid down by Hon'ble Supreme Court in T.S. R. Subramanian case as well as the other well settled law of the land. It is further prayed that direction may be given to the respondents to ensure that all the transfer of IFS officers proposed in future are undertaken in compliance with the IFS cadre rules of 1966 (as amended in 2014) in view of the law laid down by Hon'ble Apex Court in T.S.R. Subramanian and others Vs. Union of India and others AIR (2014) SC 263 as also held by the Hon'ble High Court of Uttrakhand in Pankaj Kumar Vs. State of Uttrakhand case (WPSB NO. 211 of 2018).

2. Initially, applicant has filed writ petition No. 98/2022 before the Hon'ble High Court of Uttrakhand and Hon'ble High Court of Uttrakhand vide order dated 21.3.2022, by way of interim order directed that ***“respondent No. 4, in the interregnum, shall not take any important policy decision with respect to the Forest Department. It was further directed that any Departmental Promotion Committee (DPC) in the interregnum may continue but no final decision shall be taken by the State Govt. till 28.3.2022.”*** Vide order dated 18.4.2022, Hon'ble High Court of Uttrakhand, dismissed the writ petition and transferred the case to Central Administrative Tribunal, Allahabad. Thereafter, the case was transferred to CAT, Allahabad Bench.

3. Learned counsel for applicant has filed SLP (Civil) Dy. No. 39533/2022, which was dismissed by the Hon'ble Supreme Court vide order dated 12.12.2022 with request to CAT to take up the matter, pending before it,

for hearing on the day it is scheduled i.e. on 20.2.2023, and dispose of the same expeditiously.

4. The brief facts of the case are that the applicant is 1986 batch IFS officer and senior most bureaucrat, presently serving in the State of Uttarakhand. Vide order dated 31.12.2020, the applicant was promoted to the post of PCCF/ HoFF and he took the charge w.e.f. 1.1.2021. Letter dated 16.4.2009 of the Central Govt. is the direction given to all the Chief Secretaries of the State/ UTs to follow the guidelines while effecting selection to the post of PCCF/HoFF. Vide order dated 25th November, 2021, applicant was transferred from the post of PCCF (HoFF) to the post of Chairman, Uttarakhand Biodiversity Board, the post normally occupied by the Joint Secretary Level Officer. Applicant has challenged this order before this Tribunal on the ground that transfer of the applicant has been made before the minimum prescribed tenure of 2 years by violating the Rule 2(a) (3) of IFS (Cadre) Amendment Rules, 2014. It is further stated that the transfer of the applicant has been made without getting the recommendation of the Civil Services Board (in short CSB) by violating Rule 2(a)(5) of the IFS (Cadre) Amendment Rules, 2014. It is further stated that impugned order dated 25.11.2021 has been passed against the law laid down by the Hon'ble Apex Court in T.S.R. Subramanian case. It is further stated that against the transfer order, applicant has made representations before the Chief Secretary, Govt. of Uttarakhand but no reply has been given. It is further stated that there is only one sanctioned post of PCCF/HoFF on which applicant was selected and after the transfer of the applicant, the said post remain vacant for the last 3 months.

5. Per contra, learned counsel for the respondents No. 2 and 3 have filed counter reply, through which it is stated that it is admitted that applicant vide order dated

25.11.2021 has been transferred from the post of Principal Chief Conservator of Forest (HOFF) to the post of Chairman, Uttarakhand Biodiversity Board until further orders, against which the respondents have received representation of the applicant dated 6.12.2021 and 27.12.2001. It is further stated that as per Rule 3(1) of Uttarakhand Biological Diversity Rules, 2015, the Chairperson of the Board has to be appointed by the State Govt. from such eminent person having knowledge and experience in the subject of conservation and sustainable use of biological diversity and in the matters relating to equitable sharing of benefits. It is also stated that as per the aforesaid rules, only that person is eligible to be appointed on the post of Chairman, Uttarakhand Biodiversity Board, who is serving on the post not lower than the Joint Secretary or its equivalent under the Govt. of India or has retired from such post. Hence, it is clear that the post of Chairman, Uttarakhand Biodiversity Board is not a lower post as stated by the applicant. It is further stated that as per Rule 5(1) of the Uttarakhand Biological Diversity Rules, 2015, a serving govt. servant who has been appointed as Chairman, Uttarakhand Biodiversity Board shall be entitled to the same salary and other allowances as otherwise would have been admissible to him. Hence, the applicant continues to get the same pay and allowances as were admissible to him on the post of Principal Chief Conservator of Forest (HOFF), therefore, it is clear that the impugned order has not caused any civil consequences to the applicant. It is further stated that applicant has relied on certain case laws mentioned in para 6 and 7 of the T.A., but it is imperative to bring to the knowledge of the court that while the applicant was holding the post of Principal Chief Conservator of Forest (HOFF), certain events had arisen due to which the State

Govt. was required to issue the impugned order. The said events are mentioned at page 141 of the T.A.

6. Learned counsel for the respondent No. 4 has also filed counter affidavit stating therein that it is incorrect to say that applicant has been transferred to a non-cadre and lower post. It is pertinent to mention that as per Rule 3(1)(a) of the Uttarakhand Biological Diversity Rules, 2015, the Chairperson of the Board is appointed on the post of Chairman, who is serving on the post not lower than of Joint Secretary or its equivalent under the Govt. of India or has retired from such posts. As per Rule 5(1) of the Uttarakhand Biological Diversity Rules, 2015, applicant is entitled to the same salary and other allowances as otherwise would have been admissible to him and there is no reduction in the rank or in the pay or allowances of the applicant. It is further stated that as per Indian Forest Service Cadre Rules, 1966 (as amended from time to time), the State Govt. may transfer a cadre officer in case for making temporary arrangement as per rule 7(2). It is further stated that Principal Chief Conservator of Forest (HoFF) is a member of the Civil Services Board and therefore, owing to the doctrine of "*nemo iudex in causa sua*" he cannot be a member of Civil Services Board for his own transfer. It is further stated that when all the activities as mentioned above were being conducted, the applicant was Principal Chief Conservator of Forest (HoFF) and has failed to take appropriate action or stop the illegal activities despite repeated letters sent to him by the Director, Corbett Tiger Reserve, Ramnagar.

7. Heard learned counsel for the parties.

8. Learned counsel for applicant argued that applicant had taken charge of PCCF (HOFF) on 1.1.2021 and was transferred from the post on 25.11.2021 much before the minimum prescribed tenure of 2 years by violating Rule 2(a)(3) of IFS (Cadre) Amendment Rules, 2014. It is also

argued that applicant was transferred without getting the recommendation of the Civil Services Board, which is mandatory before making transfer of IFS cadre officers but applicant has been transferred by violating Rule 2(a)(5) of the IFS (Cadre) Amendment Rules, 2014. Learned counsel for applicant also argued that transfer of the applicant has not been initiated by the CSB and CSB has not sit for transfer of the applicant, but Minister of Forest himself initiated the transfer note which was approved by the Chief Minister. Learned counsel for applicant also argued that transfer of the applicant has been made neglecting the law laid down by the Hon'ble Supreme Court in **T.S.R. Subramanian** Case. Learned counsel for applicant also placed reliance of judgment passed by Hon'ble High Court of Uttrakhand in the case of Pankaj Kumar Vs. State of Uttrakhand and others (WPSB No.211 of 2018), whereby the petitioner was transferred before completing the mandatory period of 2 years and without the recommendation of the Civil Services Board, violating IFS (Cadre) Amendment Rules, 2014. Hon'ble High Court set aside the transfer order of the petitioner. Learned counsel for applicant has also placed reliance of the following case laws:-

- i) Baradakanta Mishra, Ex-Commissioner of Endowments Vs. Bhimsent Dixit 1972 AIR 2466 (Hon'ble Supreme Court)
- ii) Bharat Petroleum Corporation Ltd. And another Vs. N.r. Vairamani and another reported in (2004) 8 SCC 579.
- iii) People's Union for Civil Liberties Vs. UOI and another (2005) 5 scc 363.
- iv) Talluri Srinivas Vs. UOI (W.P. © 8341 /2017 Delhi High Court.
- v) Shri Ishwar Chndra Vs. Shri Satyanarain Sinha and others (1972) 3 SCC 383

vi) SR. Sharat B, IAS Vs. UOI and others (O.A. No. 444/2020 CAT Bangalore Bench decided on 29.3.2021)

9. Learned counsel for official respondents No. 2 and 3 has argued that as per Rule 3(1) of Uttarakhand Biological Diversity Rules, 2015, the Chairperson of the Board has to be appointed by the State Govt. from such eminent person having knowledge and experience in the subject of conservation and sustainable use of biological diversity and in the matters relating to equitable sharing of benefits and only that person is eligible to be appointed on the post of Chairman, Uttarakhand Biodiversity Board, who is serving on the post not lower than the Joint Secretary or its equivalent under the Govt. of India or has retired from such post. It is further argued that the post of Chairman, Uttarakhand Biodiversity Board is not a lower post as stated by the applicant and as per Rule 5(1) of the Uttarakhand Biological Diversity Rules, 2015, a serving govt. servant who has been appointed as Chairman, Uttarakhand Biodiversity Board shall be entitled to the same salary and other allowances as otherwise would have been admissible to him and applicant was also allowed the same pay and allowances as he was getting on the post of Principal Chief Conservator of Forest (HOFF). Learned counsel for respondents No. 2 and 3 have also relied upon the following case laws:-

i) A.K. Gupta, Shri K.S. Parmar Vs. UOI and others decided on 3th January, 2009 (CAT)

ii) S.K. Nausad Rahaman and others Vs. UOI and others 2022 SCC Online SC 298 (Civil Appeal No. 1243 of 2022) decided on March 10, 2022.

10. Submission of Learned counsel for respondent No. 4 is that applicant has not been transferred to a non-cadre and lower post. He was transferred as per Rule 3(1)(a) of the Uttarakhand Biological Diversity Rules, 2015 and the Chairperson of the Board is appointed on the post of

Chairman, who is serving on the post not lower than of Joint Secretary or its equivalent under the Govt. of India or has retired from such posts. It is not correct to say on behalf of the applicant that he has been transferred on a lower post. As per Rule 5(1) of the Utrakhand Biological Diversity Rules, 2015, applicant was granted the same salary and other allowances as otherwise would have been admissible to him and there is no reduction in the rank or in the pay or allowances of the applicant. It is further argued that selection of the respondent No. 4 as Principal Chief Conservator of Forest (HoFF) has been done by the DPC and applicant has failed to challenge the selection proceedings of the applicant. It is further argued that applicant has been transferred because some enquiry was going on against him. It is further argued that since the applicant has himself member of the CSB, hence in the case of his transfer, recommendation of CSB is not required.

11. We have considered the rival submissions made by the parties and have gone through the entire record.

12. In this matter, it is evident from the record that although in the prayer clause, applicant has prayed relief disclosing grievance against demotion and transfer but perusal of the entire record reveals that it is purely a case of transfer from one place to another. Thus, it is cognizable by the Single Bench. Hence, the matter was heard at length.

13. Perusal of the record also reveals that applicant was posted as PCCF (HOFF) on 1.1.2021 and aforesaid post is single post in the State of Utrakhand. Hon'ble High Court of Utrakhand, on the basis of suo-moto PIL directed the applicant to enquire the illegal construction in Corbett Tiger Reserve, Ramnagar and to submit report and on the basis of the aforesaid order, the applicant visited the site. The applicant transfer has been made

from the post of PCCF (HOFF) to the post of Chairman, Uttarakhand Biodiversity Board. Documents annexed with the record also reveals that applicant was posted at Level -17 . He had served on the aforesaid post for about 11 months and total tenure of the aforesaid post was two years. Govt. has protected the pay of the applicant which was available to him on the post of PCCF (HOFF). It is also evident from the record that the aforesaid post is the cadre post, CSB in compliance of the guidelines has been constituted. Applicant was also one of the member of the aforesaid Board. No CSB meeting has been convened in the matter of the applicant. Applicant transfer has been approved by the Hon'ble Chief Minister on the basis of note prepared by the concerned minister. Before entering into the fact of the present case, it would be necessary to deal the composition of Civil Services Board (CSB) which is as follows:-

1. Composition of the Civil Services Board:

Every State Government shall constitute a Civil Services Board which shall of-

- i) Chief Secretary- Chairman
- ii) Senior most Additional Chief Secretary or Chairman, Board of Revenue or Financial Commissioner or an officer of equivalent rank and status- Member
- iii) Principal Secretary or Secretary, Department of Personnel in the State Govt.- Member Secretary.
- iv) Principal Secretary or Secretary, Forest- Member
- v) Principal Chief Conservator of Forest- Member

14. In the similar circumstances, Ernakulam Bench of this Tribunal in O.A. No. 180/00932/2016 (Bransdon S. Corrie Vs. UOI and others) decided on 13.1.2017 has upheld the transfer of PCCF (HOFF) on the ground that transfer has been made on the basis of recommendations made by the Cabinet meeting and approved by the

competent authority. In the aforesaid judgment, Hon'ble Bench has also held that non conducting the CSB meeting will not vitiate the transfer order made in the matter.

15. In the case of Baradakanta Mishra (supra) , Hon'ble Apex Court has held as under:-

"Under [Art. 227](#) of the Constitution, the High Court is vested with the power of superintendence over the courts and tribunals in the State. Acting as a quasi judicial authority under the Orissa Hindu Religious Endowments Act, the appellant was subject to the superintendence of the High Court. Accordingly the decisions of the High Court were binding on him. He could not yet away from them by adducing factually wrong and illegitimate reasons. [In East India Commercial Co. Ltd. Calcutta and Another v. The Collector of Customs, Calcutta](#)(1) Subba Rao J. observed :

"The Division Bench of the High court held that a contravention of a condition imposed by a licence issued under the Act is not an offence under s. 5 of the Act. This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under [Art. 215](#), every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under [Art. 226](#), it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under [Art. 227](#) it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercise jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court. making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer."

16. In the case of Bharat Petroleum (supra), the Apex Court has held as under:

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid’s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated.

Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V.Horton (1951 AC 737 at p.761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

17. In the case of People’s Union for Civil Liberties (supra), the Apex Court has held as under:

“15. It is nextly argued by the learned counsel for the petitioner that there was no proper consultation amongst the members of the Selection Committee. This is based on the fact that one of the members who was then the leader of the Opposition in the House of the People did not respond to the intimation sent to him in regard to the selection of the members since he was in the hospital at that point of time. A perusal of the Act does not show that there is any quorum fixed for the selection nor does it provide for any meeting nor any particular procedure has been provided. Under the Act, consultation by circulation is not impermissible. In such a situation, if one out of six did not respond, it would not vitiate the opinion of the other five Members. On the contrary sub-clause 2 of section 4 specifically says that no appointment of a

Chairperson or a member shall be invalid merely by reason of any vacancy in the Committee. In the instant case the Prime Minister, the Speaker of the House of the People, Minister Incharge of the Ministry of Home Affairs in the Government of India, Leader of Opposition in the House of People and Deputy Chairman of the Council of States having agreed on the appointment of the second respondent, we find no statutory error in the appointment of the second respondent.”

18. In the case of Talluri Srinivas (supra), Hon'ble Delhi High Court has held as under:

“16. The aforesaid quotation refers to two decisions of the Supreme Court in [Ishwar Chandra v. Satyanarain Sinha &Ors.](#) (1972) 3 SSC 383 and [People's Union for Civil Liberties v. Union of India and Anr.](#) (2005) 5 SCC 363. In [Ishwar Chandra](#) (supra) issue arised related to the validity of constitution of the Selection Committee constituted under the statute. It was held that if for one reason or the other, one of the members of the Selection Committee did not attend a meeting, it would not make the meeting of others illegal. This was stated as the correct position in law, unless there was a rule or regulation to the contrary fixing a specified quorum to constitute a valid meeting. Thus, in the absence of a specific stipulation prescribing and fixing a minimum quorum, majority of the members present would constitute a valid quorum. Reference was specifically made to Halsbury's Laws of England, Third Edition (Vol. IX, page 48, para 95), that if a corporate act is to be done by a definite body along or a definite body coupled with an indefinite body, a majority of the definite body must be present.

17. Decision in [People's Union for Civil Liberties](#) (supra) related to appointment of a member of the National Human Rights Commission as per and under the [Protection of Human Rights Act, 1993](#). As per the statute selection was mandated to be by a Committee in which the Leader of Opposition in the House of People was a member. In the selection under question, leader of the opposition was absent and had not responded to the intimation sent to him, for he was hospitalized. The Supreme Court held that the Act in question had not fixed a minimum quorum for selection nor did it provide for a particular procedure to be followed. Therefore in the absence of one member out of six members would not vitiate the opinion of the other five members.”

19. In the case of Ishwar Chandra (supra), the Apex Court has held as under:

“10. This letter clearly negatives the assumption in the High Court’s order that Shinde was trying to keep out Justice Naik from the meeting. On the other hand, Shinde in that letter had requested Justice Naik to suggest names of persons to be considered which prima facie negatives any intention on his part to keep Justice Naik away from the meeting. There is also nothing in the materials on the record to show that the correspondence cited above was perused by the Chancellor either at the time when the show cause notice was given to the appellant or at the time of making the impugned order. IT cannot, therefore, be assumed that the Governor was influenced by the above correspondence. IT is rather unfortunate that the appellant’s Writ Petition was dismissed in limine and without a proper appreciation of all the relevant facts. There is little doubt that the impugned Order made by the Chancellor was based entirely on the legality of the meeting where only two out of three members were present when the name of the appellant was recommended. The High Court delved into the correspondence to sustain the order of the Chancellor on grounds other than those relied upon by him in that order for dismissing the Writ Petition in limine which, in our view, was not justified. IT is also not denied that the meeting held by two of the three members on April 4, 1970 was legal because sufficient notice was given to all the three members. IF for one reason or the other one of them could not attend, that does not make the meeting of others illegal. In such circumstances, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered thereat cannot be held to be invalid.”

20. In the case of OA No. 444 of 2020 Shri Sharat B IAS Vs UOI , Bangalore Bench of CAT has held as under:

“62. Though in the case in hand, apparently, while looking at the first instance, violation of '2014 Amendment Rules' has taken place but we cannot ignore the special provisions of Rule 7 (5) of the '2014 Amendment Rules' read with Clause 3 of the Schedule annexed thereto which stipulate that the minimum tenure of posting can be curtailed on the recommendation of the Civil Services Board upon which it has been made incumbent to follow the procedure as specified therein in the Schedule. At the time when the applicant's transfer order was issued, there was no declaration available to the effect that the order

dated 12.03.2014 is invalid right from its inception, therefore, the competent authority in its wisdom took a decision to transfer the applicant by curtailing his minimum tenure. Such an irregularity, in our considered view, can be cured and the ends of justice will be met if the order of applicant's transfer is revisited by the competent authority after taking recommendation from the Civil Services Board which, in any case, is bound to follow the procedure as prescribed in Clause 3 of the schedule annexed to '2014 Amendment Rules' before making such a recommendation.

64. In the conspectus of discussions made hereinabove, we hold that the order dated 12.03.2014 issued by the Government to keep the Civil Services Board in abeyance is invalid and ineffective since the date of its inception and being non-est in the eye of law, cannot be acted upon henceforth. Let the glory of the orders passed by the Hon'ble Supreme Court in Subramanian's case (supra) be restored and the '1954 Rules' as amended up to date be abided by the State Government."

21. If the facts and circumstances of the present case are taken into consideration in the light of the arguments advanced by the learned counsel for the parties, certainly no CSB meeting was held in the present matter in case of pre-mature transfer, which is mandatory to conduct the CSB meeting. Thereafter, competent authority may accept or reject the board's recommendation. Although in the present matter, applicant himself was one of the member of the CSB Board but CSB meeting could be held in his absence. If the law laid down in cases of Shri Ishwar Chandra (supra) and Talluri Srinivasa (supra) are taken with Ernakulam Bench decision, the ratio laid down in the case of Ernakulam Bench cannot be relied upon, as Hon'ble Apex court has clearly held in the case of Shri Ishwar Chandra (supra) and Talluri Srinivasa (supra) that in absence of one of the member of the committee, meeting of the board /committee cannot be held to be invalid. Thus, if applicant himself was one of the members of the Board/committee, and he could not participate in the board meeting, being under consideration zone, then also other committee members could conduct the board

meeting. Applicant's transfer has been made in this matter on the basis of simply note prepared by the concerned minister. No such procedure has been prescribed in any statutory law, rule or regulation to transfer the cadre post officer only on the basis of note prepared by the concerned minister without recommendation of the CSB, which is not justifiable and Court is of the opinion that injustice has been done to the applicant and therefore he is entitled for relief claimed in the instant OA. It is worth mentioning that there was interim direction of the Hon'ble High Court to the effect that DPC resolution be not given effect to and respondent No. 4 appointment has been made subject to the outcome of the present O.A. Thus, applicant plea cannot be defeated on the aforesaid ground. Applicant's plea can also not be rejected on the ground that he has to retire from service within few months. Nothing is on record to show that there was recommendation of CSB for transfer of the applicant prematurely. Transfer order is not bonafide one. Except to assertion in the pleading, nothing is on record to show that applicant career was blemish or any charge sheet had been served upon him at the time of impugned transfer order. If for the sake of argument this fact that applicant was not performing his duty very well on the post of PCCF (HOFF) is taken into consideration, then also at least procedure prescribed for transfer should have been followed.

22. Hon'ble Apex Court in catena of judgments has observed that *when an order of transfer is passed in lieu of punishment the same is liable to be set aside being wholly illegal.*

23. **The Hon'ble Apex Court in the matter of Arvind Dattatraya Dhande vs State of Maharashtra, AIR 1997 SC 3067**, has held in the matter of an appellant who had conducted raid on toddy shops at various places and

samples were taken from the toddy for analysis; consequently offences were registered on the basis of the analyses report which revealed that the toddy was adulterated; aggrieved by this, the toddy contractor later lodged complaint against the appellant and action was taken against the officer by way of transfer. In this matter it was held that -

“..the transfer is not in public interest but is a case of victimization of an honest officer at the behest to the aggrieved complainants carrying on the business in liquor and toddy. Under these circumstances the transfer of the appellant is nothing but mala fide exercise of the power to demoralize honest officers who would efficiently discharge the duties of a public officer”. The appeal was accordingly allowed.

24. The Hon'ble Apex Court has in the case of **Somesh Tiwari vs Union of India and others decided on 16th December, 2008 in Civil Appeal No. 7308 of 2008 (Arising out of SLP (Civil) No. 3516 of 2007)** in para-20 observed as follows:-

“ 20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground ie on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment the same is liable to be set aside being wholly illegal...”

25. Thus, on the basis of aforesaid discussion, the O.A. is liable to be allowed. Accordingly, the OA is allowed. Impugned order dated 25.11.2021 is quashed. Respondents are directed to restore the applicant to the post of PCCF (HOFF) forthwith.

26. No costs.

**(Justice Om Prakash -VII)
Member (J)**

HLS/-