

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 310 OF 2020

DISTRICT:- AURANGABAD

Sandip S/o. Panditrao Nalawade,
Age : 38 years, Occ. Service,
R/o. RH 10 Raj Valley,
Kanchanwadi, Aurangabad

.. APPLICANT

V E R S U S

- 1] The State of Maharashtra,
Through the Secretary,
Department of Finance,
Mantralaya, Mumbai.
- 2] The Joint Commissioner State Tax,
Office of Special State Tax-
Commissioner, Deputy Commissioner
of State Tax (Establishment),
Maharashtra State, 3rd Floor,
New Building, E-Wing, GST Bhawan,
Mazgaon, Mumbai-10.
- 3] Joint Commissioner of State Tax,
GST Adm., GST Bhavan,
Opp. Railway Station, Aurangabad
- 431005

.. RESPONDENT.

APPEARANCE : Shri C.V. Dharurkar, learned
counsel for the applicant.

: Shri V.R. Bhumkar, learned Presenting
Officer for the respondent authorities.

CORAM : HON'BLE SHRI V.D. DONGRE, MEMBER (J)

DATE : 16.12.2022

ORDER

By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the impugned transfer order dated 26.7.2020 to the extent of the applicant (Annexure 'A-7') passed by respondent No. 2 namely the Joint Commissioner State Tax (Headquarter)-4, M.S. Mumbai, in concurrence of the Commissioner of State Tax, Mumbai, whereby he has been transferred from Aurangabad office to Jalna office.

2. The facts in brief giving rise to this original application are as follows: -

(i) The applicant initially joined as Sales Tax Inspector on 9.10.2009. On 29.12.2016 he was promoted as Sales Tax Officer (State Tax Officer). As on the date of passing of impugned transfer order dated 26.7.2020, the applicant had completed 3 years 6 months and 27 days of service as Sales Tax Officer at the office of respondent No. 3 at Aurangabad. The applicant, who is State Tax Officer is Group 'B' employee and is covered by the provisions of the Maharashtra Government Servants regulation of

Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 and Government Resolution dated 9.4.2018 (Annexure 'A-11'), whereby procedure of counseling before effecting transfer of the Government employees is settled down in tune with the Transfer Act of 2005.

(ii) It is further contended that before issuing transfer order in the month of March, 2020 the list of STOs due for general transfer (Annexure 'A-1') along with total vacancies available in STOs cadre was disclosed on respondent No. 1 department 'What's New' over the website. The said list was also seniority list from the date of posting in the cadre of State Tax Officer. As per the said list, the name of the applicant is at Sr. No. 11 showing date of appointment to the present location at Aurangabad as STO of 29.12.2016. In the said list names of S/Shri Mahale Nitin Shantaram and Thombre Sunil Thakaram appear at Sr.No.9 and 10, respectively. Their dates of appointment to the present location at Aurangabad as STO has been shown as 31.01.2014 for both.

(iii) It is the contention of the applicant that as per Section 3 of the Transfer Act of 2005, the applicant is entitled to have two tenures of 3 years each as STO at the office of respondent no.3 at Aurangabad, whereas S/Shri Mahale and Thombre had completed tenure of more than 6 years. The applicant has completed tenure of 3 years 6 months and 27 days only. The applicant,

therefore, made representation dated 05-03-2020 (Annexure A-2) to the respondent no.2 i.e. Joint Commissioner of State Tax, Mumbai seeking retention for another 3 years as he has completed only one tenure of 3 years. He also stated ground of couple convenience stating that his wife Smt. Sangita Nivrutti Akat @ Sangita Sandip Nalawade is working on the post of STO in the office of respondent no.3 at Aurangabad. He also contended that his son is taking education at Aurangabad and he is required to take care of his old aged mother.

(iv) It is further submitted that as called for the applicant submitted his option form on 15.04.2020 (Annexure A-3). In the meanwhile, lockdown was declared due to prevailing COVID 19 pandemic situation. The Finance Department, State of Maharashtra issued G.R. dated 04.05.2020 (Annexure A-4) whereby as per clause 15 thereof the transfers of the employees during that financial year were resolved to be stayed. In view of that, list of eligible candidates for transfer (Annexure A-1) was consequently reported to be withdrawn. As a result, applicant was having legitimate expectation that a fresh round of counseling will be held in tune with the G.R. dated 09.04.2018, in case, the Government decides to go ahead with the pending transfers.

(v) However, GAD, MS issued G.R. dated 07.07.2020 (Annexure A-5) laying down certain guidelines for

effecting transfers in the financial year 2020-2021. Apprehending transfer in view of the said G.R. dated 07.07.2020, the applicant made representation dated 25.07.2020 (Annexure A-6) to respondent no.2 requesting to consider his request for retention in view of the grounds of couple convenience and also ailments suffered by his aged mother, as stated in earlier representation dated 05.03.2020 (Annexure 'A-2').

(vi) Thereafter, respondent no.2 issued order of transfer dated 26.07.2020 which is impugned in this O.A. to the extent of the applicant only. In view of this development, the applicant immediately made representation dated 26.07.2020 (Annexure A-8) to the respondent no.2 i.e. State Tax Commissioner, Mumbai reiterating his plight and seeking to accommodate him on vacant post in the office of respondent no.3 at Aurangabad. Respondent no.2 issued modified order dated 10.08.2020 (Annexure A-9). However, name of the applicant did not appear in it.

(vii) In the circumstances as above, it is contended that the impugned order of transfer dated 26.07.2020 to the extent of applicant is not in accordance with law in as much as the applicant has been meted with the discriminatory treatment when his senior colleagues namely S/Shri Mahale and Thombre, who completed more than 6 years at Aurangabad, were not transferred. In view of the same, the impugned order is in contravention of the provisions of the Transfer Act of

2005 as well as guidelines issued vide G.R. dated 09.04.2018 (Annexure A-11). Moreover, there were vacancies of respondent no.3 at Aurangabad but ground of couple convenience as envisaged in G.R. dated 09.04.2018 (Annexure A-11) was not considered. Moreover, one Shri Pawar Maroti Lahanu, who has suffered paralytic stroke on 21.11.2011, was seeking request transfer to Jalna, against whom the applicant can be accommodated. The said representation is still pending. Hence, the present Original Application.

3. The present Original Application is resisted by filing affidavit in reply on behalf of respondent nos.1 to 3 by Shri Sachin Nanasaheb Waindeshkar working as Deputy Commissioner, State Tax, Aurangabad Division, Aurangabad, thereby he denied the adverse contentions raised in the O.A. It is specifically contended that as per proviso to Section 3 of the Transfer Act of 2005, only such employee who is from non-secretarial services, in group C shall be transferred from the post held on his completion of two full tenures of three years each at that office or department to another office or department. The applicant being a State Tax Officer falls in Group-B category. As per Section 3 of the Transfer Act, his normal tenure in the said post shall be of 3 years. Hence, the applicant was due for transfer having upon completed 3

years, 6 months and 27 days on the post of STO in the office of respondent no.3. Moreover, the State, GST Department has been exempted from requisite G.R. applicable for revenue division allotment which mentions guidelines for transfer of employees belonging to Group-A and Group-B (Gazetted and Non-Gazetted officers). Hence, in view of that the applicant is liable to be transferred anywhere in the State of Maharashtra.

4. It is further submitted that in view of the provisions of G.Rs. dated 09.04.2018 and 07.07.2020, already referred to by the applicant in his pleadings, respondent no.2 wrongly mentioned as respondent no.4 finalized a list of 117 STOs to keep the number of transfers within 15% of the working strength of the STO cadre due for general transfer out of the already published list of 256 STOs on the basis of seniority determined based on the length of service rendered by them in their present post i.e. as per tenure wise seniority on their current post.

5. It is further submitted that as per tenure wise seniority on their current post the applicant's Sr.No. in seniority list was 44, whereas Sr.No. of Shri Mahale and Shri Thombre were 255 & 256, respectively. The applicant has already

completed 3 years' period on the post of STO in the office of respondent no.3, therefore, the applicant was held as due for transfer as per criteria mentioned hereinabove and on the contrary, both Shri Mahale and Shri Thombre were not held due for transfer. Shri Mahale and Shri Thombre who could not be transferred this year due to 15% criterion would become eligible for the next year's general transfer on priority.

6. It is further specifically contended that the State GST Department has fixed an internal policy for general transfers regarding officers, who have been working continuously for 15 years at Mazgaon location and officers who have been continuously working for 6 years at locations other than Mazgaon to undergo change in their locations while carrying out the general transfer process. It was also decided that while calculating the said period, the period for which they have continuously worked in the existing cadre as well in the cadre below the existing cadre at the same location was to be taken into account. In view of that the applicant was due for change in location as per the State GST Department's internal criterion. The applicant, therefore, is being transferred immediately as per his next option at Jalna. In the

circumstances, the applicant was liable for change in location as he has been working at Aurangabad location for more than 6 years in State Tax Officers' cadre and State Tax Inspectors' cadre. In the circumstance, ground of couple convenience requested by the applicant could not be considered. The said ground can be considered when he will be due for transfer next time depending upon the availability of the vacancy at the location at Aurangabad. In the circumstances, there is no merit in the application and the same is liable to be dismissed.

7. I have heard arguments advanced by Shri C.V.Dharurkar, learned Counsel on one hand and Shri V.R.Bhumkar, learned Presenting Officer on the other hand.

8. From the facts on record, it is evident that the applicant was seeking retention / being accommodated at Aurangabad on the ground of couple convenience stating that his wife is working as STO in the office of respondent no.3 at Aurangabad. He has placed on record Purshis dated 13.10.2022 and corrected Purshis dated 14.10.2022 in that regard. As per the said Purshis, applicant's wife namely Smt. Sangita Nivrutti Akat @ Sangita Sandip Nalawade joined

Government service as State Tax Inspector on 20.01.2009. She was promoted to the post of STO on 31.10.2015 and was posted at Jalna. Thereafter, she has joined on the post of STO on 29.07.2016. It is also mentioned that since 16.08.2019, she is working at Aurangabad to the current charge with Charge Code- AUR VAT C 005.

9. After having considered the pleadings and documents on record and more particularly the contentions raised on behalf of the respondents about the internal policy of change of location from Mazgaon, Mumbai after 15 years and 6 years at other offices in Maharashtra, by order dated 05-01-2022 passed in Farad Sheet, learned PO was directed to place on record the documents regarding any such alleged internal policy. During the course of hearing of the matter, learned P.O. submitted that there is no specific document laying down said internal policy in the department and in that regard he produced copy of the minutes of the meeting dated 22-07-2020 in respect of impugned order of transfer dated 26-07-2020. The relevant portion of the said meeting is as follows:

“उर्वरीत २५६ राज्यकर अधिकारी नियतकालीक बदली २०२० साठी पात्र झाले होते. परंतु कोविड-१९ मुळे उदभवलेल्या परिस्थितीमुळे दि. ०४.०५.२०२० रोजीच्या वित्त विभागाच्या शासन निर्णयान्वये चालू वित्तीय वर्षात कोणत्याही संवर्गातील अधिकारी/कर्मचारी यांची बदली करण्यात येऊ नये असे निर्देश देण्यात आले होते. परंतु त्यानंतर दि. ०७.०७.२०२० रोजीच्या सामान्य प्रशासन विभागाच्या शासन निर्णयान्वये दि. ३१.०७.२०२० पर्यंत त्या त्या संवर्गातील एकूण कार्यरत पदांच्या १५% एवढ्या मर्यादेत सर्वसाधारण बदल्या करण्यात याव्यात, तसेच सर्वसाधारण बदल्यांब्यतिरिक्त काही अपवादात्मक परिस्थितीमुळे किंवा विशेष कारणामुळे बदल्या करावयाच्या असल्यास अशा बदल्या देखील दि. ३१ जुलै २०२० पर्यंत बदली अधिनियमातील तरतुदी विचारात घेऊन करण्यात याव्यात असे निर्देश देण्यात आलेले आहेत.

उपरोक्त शासन निर्णयाच्या पार्श्वभूमीवर मा. राज्यकर आयुक्त यांनी वस्तू व सेवाकर विभागातील अधिकारी/कर्मचारी यांच्या सध्या कार्यरत असलेल्या पदांच्या १२% एवढ्या मर्यादेत सर्वसाधारण बदल्या व ०३% एवढ्या मर्यादेत सर्वसाधारण बदल्यांब्यतिरिक्त काही अपवादात्मक परिस्थितीमुळे किंवा विशेष कारणामुळे बदल्या करण्यात याव्यात असे निर्देश दिलेले आहेत.

सबब राज्यकर अधिकारी संवर्गातील दि. ०१.०७.२०२० रोजी कार्यरत असलेल्या एकूण अधिका-यांची संख्या ९७१ एवढी आहे. ९७१ च्या १२% म्हणजेच ११७ राज्यकर अधिकारी सर्वसाधारण बदलीस पात्र होत आहेत.

दि. ०९.०४.२०१८ च्या समुपदेशनाद्वारे बदलीबाबतचे धोरणाबाबतच्या शासन निर्णयातील परिशिष्ट-१ मधील (अ) टप्पा क्र. १ मधील अ.क्र. २) नुसार बदलीपात्र अधिका-यांची, सध्याच्या पदस्थापनेच्या ठिकाणी केलेल्या सेवेच्या ज्येष्ठतेनुसार यादी तयार करावी. त्यानंतर सदर यादीतील, संबंधित संवर्गाच्या कार्यरत पदांच्या ३०% च्या मर्यादेत, बदलीस पात्र ठरणा-या अधिका-यांचीच ज्येष्ठतेनुसार यादी प्रसिध्द करावी. मात्र दोन किंवा अधिक अधिका-यांचा सदर कालावधी समान असल्यास (सध्याच्या पदावरील सेवा कालावधी) अशा वेळी संबंधित अधिका-यांचा शासकीय सेवेतील एकूण कालावधी विचारात घेऊन ज्या अधिका-यांची सर्वाधिक शासकीय सेवा झाली असेल असा अधिकारी सर्वात ज्येष्ठ राहिल. त्यानुसार बदलीपात्र अधिका-यांची ज्येष्ठतानिहाय यादी करावी असे नमुद करण्यात आलेले आहे.

त्यानुसार २५६ बदलीपात्र अधिका-यांची यादी सध्याच्या पदस्थापनेच्या ठिकाणी केलेल्या सेवेच्या ज्येष्ठतेनुसार आणि दोन किंवा अधिक अधिका-यांचा सदर कालावधी समान असल्याने (सध्याच्या पदावरील सेवा कालावधी) संबंधित अधिका-यांचा शासकीय सेवेतील एकूण कालावधी विचारात घेऊन ज्या अधिका-यांची सर्वाधिक शासकीय सेवा झाली आहे असा अधिकारी सर्वात ज्येष्ठ ठरवून यादी तयार करण्यात आलेली आहे. मा. राज्यकर आयुक्तांनी दिलेल्या निर्देशानुसार केवळ १२% मर्यादेतच सर्वसाधारण बदल्या करावयाच्या असल्याने सदर यादीतील सर्वात ज्येष्ठ ठरलेले ११७ अधिकारी सर्वसाधारण बदलीस पात्र ठरलेले आहेत.”

10. Perusal of the said minutes would show that absolutely there is no mention of permissible tenure of 15 years at Mazgaon, Mumbai and 6 years at offices in other cities. Further perusal of the said minutes would show that the list of 117 STOs due for transfer in general transfers of 2021 was prepared. As per guidelines mentioned in clause 2 of Schedule 1 of G.R. dated 09-04-2018 (Annexure A-11), it appears that in fact list of 117 STOs was prepared on the basis of period of their working at a particular station irrespective of post. It also appears that such list of eligible officers due for transfer consisting of 266 officers was previously prepared. Earlier Mahale & Thombre were shown senior to the applicant in total month of period on the post of STO at Aurangabad. In the circumstances as above, it appears that while preparing the list of 117 such officers

including the applicant, there was deviation from the guidelines laid down in G.R. dated 9.4.2018.

11. The applicant has not filed affidavit in rejoinder to the affidavit in reply filed on behalf of the respondents. The respondents have not placed on record any document in support of the contention raised in affidavit in reply in respect of their alleged internal policy. The applicant has not responded in fact in writing to such internal policy contended by the respondents in the affidavit in reply. In my considered opinion in order to carve out the case of the applicant, it was necessary for the applicant to raise pleadings in writing.

12. In absence of any specific pleadings in writing on behalf of the applicant, it would not be desirable to go into the contention raised by the respondents about their policy. Such policy may be there, but the documents are not forthcoming and not produced, but it appears that the applicant would have been one of the beneficiaries of such alleged policy in the post as he has been working in the office at Aurangabad together on the post of State Tax Inspector and State Tax Officer for more than 6 years. He may be working at Aurangabad since his first appointment.

13. Though the applicant pleaded that his normal tenure is of 6 years proviso to Section 3 of the Transfer Act of 2005, there is no substance in such submissions. The applicant belongs to Group 'B' category and the said tenure of 6 years is not applicable to Group 'B' officers. Addressing this issue of policy without proper pleadings and documents on record would open pandora's box, which may not be helpful to anybody and would be inconsequential.

14. In the circumstances, as above in my considered opinion some irregularity is there while issuing transfer order of the applicant. In these circumstances, in my considered opinion instead of declaring the impugned order to the extent of the applicant being null and void, this Original Application can be disposed of by giving directions to the respondents to consider the representations dated 5.3.2020 (Annexure 'A-1'), 25.7.2020 (Annexure 'A-6') and 26.7.2020 (Annexure 'A8') seeking retention in the office of respondent No. 3 at Aurangabad on the ground of couple convenience preferably which would serve the interest of justice. I, therefore, proceed to pass the following order: -

ORDER

The Original Application is disposed of in the following terms: -

- (i) The respondents and more particularly respondent No. 2 including State Tax Commissioner, M.S. Mumbai is/are directed to consider the representations made by the applicant dated 5.3.2020 (Annexure 'A-1'), 25.7.2020 (Annexure 'A-6') and 26.7.2020 (Annexure 'A8') for accommodating him in the office of respondent No. 3 at Aurangabad, keeping in view the administrative exigency and available vacancy positively which seems to be feasible within the period of 3 months from the date of this order.
- (ii) There shall be no order as to costs.

MEMBER (J)