

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 730 OF 2023
(Subject – Transfer)**

DISTRICT : DHULE

Chetansing Kalyansing Rajput,)
Age : 43 years, Occu. : Service)
(Asst. Commissioner GST Officer))
R/o : GST Bhavan, Khamgaon,)
Tq. Khamgaon, Dist. Buldhana-444303.)

.... **APPLICANT**

V E R S U S

1. **State of Maharashtra,**)
Through It's Additional Chief Secretary,))
Department of Finance,)
Mantralaya, Mumbai- 32.)
2. **The Commissioner of State Tax,**)
GST Bhawan, Mazgaon, Mumbai-10.)
3. **Pravin Ashok Bhadak,**)
State Tax Officer, GST Bhavan, Kalyan,))
Dist. Thane-421301.)

... **RESPONDENTS**

APPEARANCE : Shri Ajit B. Kale, Counsel for Applicant.

: Shri I.S. Thorat, Presenting Officer for
respondent authorities.

: Shri Sachin Deshmukh, counsel holding for
Shri Sanket Suryawanshi, counsel for
respondent No. 3.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

RESERVED ON : **01.02.2024**

DATE : **11.03.2024**

ORDER

1. Heard Shri Ajit B. Kale, learned counsel appearing for the applicant, Shri I.S. Thorat, learned Presenting Officer appearing for respondent authorities and Shri Sachin Deshmukh, learned counsel holding for Shri Sanket Suryawanshi, learned counsel for respondent No. 3.

2. By filing the present Original Application, the applicant is seeking quashing and setting aside the transfer order dated 27.07.2023 to the extent of respondent No. 3.

3. Brief facts as stated by the applicant giving rise to the Original Application are as follows :-

(i) The applicant has been meritorious student and he has completed his MBBS from top Medical College at Mumbai. The applicant is serving as Gazetted Officer since 13 years and presently serving as Assistant Commissioner of State Tax at Khamgaon, Dist. Buldhana. The applicant has been recently awarded a patent on X-Ray Ionizing Radiation Tubes by Government of India to increase the yield of X-Ray generating machines. The applicant's research work in the realm of Mathematics is referred by various reputed institutions and websites like Wikipedia

etc. The applicant has been utilizing his scientific knowledge for public and also raise his voice for illegal use of radioactive material in consumer products which is leading to radioactive proliferation in the society.

(ii) It is the further case of the applicant that in year 2019, the respondent No. 3 was posted as State Tax Officer Class-II at Nandurbar GST Office. The respondent No. 3 was acting in collusion with respondent No. 2. This is evident from the fact that in the year 2019, the respondent No. 3 was given the additional charge of Dhule District for the post of Assistant Commissioner of State Tax Class-I, even though he was holding Class-II post in another district. It has been done so while several Class-I and Class-II posts were available at Dhule location.

(iii) It is further case of the applicant that the respondent No. 3 under the blessings and auspices of superiors in August, 2019 approached the applicant, who was working as Assistant Commissioner State Tax at Dhule and insisted him to allow illegal Input Tax Credit (ITC) of M/s Jaydeep Trading Company, even when the Joint Commissioner of State Tax, Amravati had directed not to do so. The

applicant when denied to allow the said ITC, he was pressurized in the names of seniors and superiors and was threatened to allow the ITC or to face the consequences. However, the applicant denied to allow the said ITC despite the repeated pressures and threats.

(iv) On 27.08.2019, the State Tax Inspector of respondent No. 2 Mr. Sagar Pralhad Sonawne manhandled the applicant in the lobby of the GST Bhawan at Dhule and threatened the applicant on instructions of respondent No. 3. Consequently, the applicant has filed complaint against the said Mr. Sagar Pralhad Sonawne at Dhule City Police Station on 27.08.2019 itself and the Dhule City Police Station registered a non-cognizable case (Annexure-2).

(v) It is further case of the applicant that on 31.08.2019, the applicant was called to the office of respondent No. 2 and was ordered by the superiors to sign the files and pass the order as per the directions given by respondent No. 3, failing which the applicant would have to face the Departmental Enquiries and transfers. It was shocking for the applicant and thus he has approached to the Director

General Anticorruption, Worli, Mumbai and filed written complaint on 31.08.2019 (Annexure-3).

(vi) It is the case of the applicant that respondent No. 3 approached the applicant around the time of Diwali 2019 and started persuading him to de-freeze the bank accounts of two dealers, whose accounts were freezed for recovery of the tax. The applicant has denied to de-freeze the said accounts due to available recovery from those dealers. The respondent No. 3 gave an ultimatum to the applicant to defreeze the said accounts and allow the wrongful ITC in case of M/s Jaydeep Trading Company to be done on or before 05.11.2019. The applicant accordingly informed the Director General of Police, ACB (hereinafter called as "DG ACB") Worli office about the threat of respondent No. 3. Consequently, the DG ACB team laid a trap on 05.11.2019 and caught respondent No. 3 red handed giving bribe of Rs. 25,000/- to the applicant in the above mentioned three matters. The names and scams of the multiple senior officers in GST department were recorded in the recording bug of the ACB. Accordingly, ACB registered FIR against the respondent No. 3 on 06.11.2019 (Annexure-4). Even though the DG ACB, Worli office gave intimation to the GST

department by its letter dated 08.11.2019, however the respondent No. 2 took no action against the respondent No. 3. By letter dated 26.11.2019 (Annexure-5), the DG ABC, Worli has informed to the respondent No. 2 to take action against respondent No. 3. However it took several months for respondent No. 2 to suspend the respondent No. 3 and initiate Departmental Enquiry against him.

(vii) It is further case of the applicant that the respondent No. 3 was suspended from the post of State Tax Officer, Class-II in the year 2020, which charges of corruption of Dhule GST office and the Government of Maharashtra initiated Departmental Enquiry against him on 31.07.2020 (Annexure-6). The respondent No. 3 is also facing various inquiries in connection with the criminal matters including ACB open enquiry about illegal assets, Departmental Enquiry on corruption of charges etc.

(viii) It is further case of the applicant that the respondent No. 3 even while facing various charges was reinstated at Kalyan GST Office as Establishment Officer in the year 2021. Before completion of his tenure at Kalyan office and just within two years of their reinstatement, while all the

enquiries being pending, the respondent No. 3 is facilitated with request transfer to an executive charge as DHU-VAT-C-010 at Dhule location by order dated 27.07.2023 at Sr. No. 118 (Annexure -7) (impugned order). Hence, the present Original Application.

4. Learned counsel for the applicant submits that the appointment of respondent No. 3 at Dhule by order dated 27.07.2023 is in gross violation of the Government Circular dated 20.04.2013 (Annexure-8) issued by the General Administration Department, which categorically mentions that if an officer is facing criminal enquiry, he shall not be reinstated to the office at which he was holding the charge while facing the enquiry. The respondent No. 3 was holding the charge of Assist. Commissioner of State Tax at Dhule before being trapped by ACB on 05.11.2019. The respondent No. 3 is also facing various allegations and multiple criminal proceedings as (i) FIR in ACB trap case of 05.11.2019 and charge sheet in Dhule Court, (ii) Open Enquiry by ACB regarding illegal assets and (iii) Departmental Enquiry against respondent No. 3 in same division.

5. Learned counsel for the applicant submits that if the respondent No. 3 is posted at Dhule, it is likely that he will

influence the witnesses and tamper the evidences against him. The respondent No. 3 is also likely to be reactivated the corruption and crime syndicate at Dhule as run by him in the year 2019 before ACB trap. Thus, the applicant gave his representation to the office of respondent Nos. 1 and 2 against the transfer order dated 27.07.2023 (Annexure-9) of respondent No. 3.

6. Learned counsel for the applicant submits that the present Original Application deserves to be allowed by quashing and setting aside the transfer order dated 27.07.2023 to the extent of respondent No. 3.

7. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 and 2 submits that the statement made by the applicant that Mr. Sagar Sonawane is State Tax Inspector of respondent No. 2 is incorrect. He is not directly working in the office of respondent No. 2. Learned P.O. submits that respondent No. 2 never called the applicant to sign and pass the order, which contrary to law. Therefore, the averments made by the applicant in his regard are baseless and without any foundation. The applicant has right to take his own decisions in accordance with law.

8. Learned Presenting Officer submits that though the respondent No. 3 was suspended from the service vide Government order dated 24.07.2020 w.e.f. 06.11.2019, as he was trapped while offering bribe to the applicant and therefore, the Departmental Enquiry under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 was initiated vide Government Memorandum dated 31.07.2020 against respondent No. 3.

9. Learned Presenting Officer submits that the department had implemented the provisions of G.R. dated 20.04.2013 while directing reinstatement of respondent No. 3. The department has issued Circular on 07.02.2023 regarding General / request transfers and accordingly, the applications have been invited from the willing employees for request transfers. Thus, the applications were taken into consideration in accordance with the availability of vacancies and criteria as decided by the department.

10. Learned Presenting Officer submits that during the request transfer of the year 2023, the respondent No. 3 has presented four choice preferences i.e. Dhule, Malegaon, Nandurbar and Jalgaon respectively and the reason for request

transfer is that his father is suffering from paralysis. At the time of transfer process, one vacancy was available in Dhule location. Thus, the respondent No. 3 was considered for transfer, as the vacancy was available at Dhule location and accordingly, respondent No. 3 was posted as DHU-VAT-C-010 at Dhule.

11. Learned Presenting Officer submits that para No. 11 of the G.R. dated 20.04.2013 prescribes guidelines regarding reinstatement of the officer. According to para 2(a), the officers / employees in the State level cadre suspended from the post in which they were working in the original revenue Zone should be appointed in non-executive post excluding original revenue zone. Thus, the department had implemented the same criteria while transferring respondent No. 3 on non-executive post as KAL-DDO-C-001. Learned P.O. submits that the request transfer of respondent No. 3 was considered on the basis of criteria decided by the department in terms of internal transfer policy.

12. Learned Presenting Officer submits that the applicant has unnecessarily consumed the time of department by challenging the order dated 27.07.2023, which was legitimately issued. Learned Presenting Officer submits that the Original Application thus liable to be dismissed.

13. The respondent No. 3 has raised the preliminary objection. Learned counsel for respondent No. 3 submits that the present Original Application is not tenable, since the applicant is not the person aggrieved in terms of the provisions of Section 19 of the Administrative Tribunals Act, 1985, which necessary to be read in conjunction with Section 3(q) of the Act, which provides for the expression of service matters. Learned counsel submits that equally the application is filed without the cause of action to the applicant.

14. Learned counsel for respondent No. 3 submits that in the wake of mandate of Section 19 of the Administrative Tribunals Act, 1985, the person aggrieved can present an application before the Tribunal. By any stretch of imagination the applicant cannot be regarded as person aggrieved. Further the applicant is working as Assistant Commissioner at Khamgaon, Dist. Buldhana, whereas the objection is raised in relation to the transfer of respondent No. 3 from Kalyan, Dist. Thane to Dhule as a State Tax Officer and as such, there is no infraction of right of the applicant in any manner coupled with the right even in slightest manner.

15. Learned counsel for respondent No. 3 submits that there is no occasion for the applicant to approach this Tribunal since address in the title clause of the O.A. Khamgaon, Dist. Buldhana is mentioned, which admittedly does not fall within the territorial jurisdiction of this Tribunal. Thus, it is not open for the applicant to approach this Tribunal. The said issue is no more res integra in the light of the order passed by the Hon'ble Court of Bombay, Bench at Aurangabad in a case of **Sachin Chhotu Pawar V. Collector Raigad and Ors., AIR Online Bom 525.**

16. Learned counsel for respondent No. 3 submits that the applicant is using this proceeding as a tool to victimize the respondent No. 3. The applicant is the informant in case of Prevention of Corruption Act and in the event of any breach of order of the bail conditions, the applicant can conveniently approach to the concerned court. Thus, filing of the present Original Application in anticipation that the respondent No. 3 pressurized the witnesses is unwarranted and uncalled for.

17. Learned counsel for respondent No. 3 submits that misinterpretation and misreading of the Government Circular dated 20.04.2013 was rather surfacing, since the same deals with the eventuality of revocation of suspension and

consequential reinstatement. The respondent No. 3 admittedly placed under suspension with effect from 06.11.2019 and the suspension has been revoked on 07.07.2021 and eventually reinstatement was at Kokan Region at Kalyan GST office on a non-executive post, which is governed by the Government Circular dated 20.04.2013. Thus, the stage which contemplates with reinstatement is over. Therefore, the applicability of the Government Circular is stricto-senso applicable to the reinstatement preceded by revocation of suspension and by stretch of imagination cannot be made applicable for general transfer, which is effected on 27.07.2023. Learned counsel submits that the expression used in the Circular is to be applied in the context given.

18. Learned counsel for respondent No. 3 submits that in the year 2019, the respondent No. 3 came to be posted as State Tax Officer, Class-II at Nandurbar GST office. He was also holding the additional charge of Assistant Commissioner of Sales Tax for limited period.

19. Learned counsel for respondent No. 3 submits that on the basis of complaint lodged by the applicant with the ACB on 05.11.2019, a trap was laid against the respondent No. 3 and in

consequences thereof, criminal prosecution and Departmental Enquiry came to be initiated against him. The respondent No. 3 was also suspended by order dated 24.07.2020 and by order dated 31.07.2020 the Departmental Enquiry was initiated against him. The respondent No. 3 came to be reinstated pending Departmental Enquiry at Kalyan GST office on the post of Establishment Officer in the year 2021. The respondent No. 3 has been serving on the said post to the best of his capability and ability since reinstatement. Learned counsel submits that children of respondent No. 3 are taking education in Dhule. Further his father is ex-army person aged about 82 years old facing continuous medical complications and mother of respondent No. 3 is also old aged and suffering from typhoid and joint related disease rendering her immobile. Thus due to advance age of the parents and since the children are taking education at Dhule, the respondent No. 3 submitted his representation dated 07.03.2023 requested therein to be transferred either at Dhule, Malegaon, Nandurbar or Jalgaon. Learned counsel submits that request letter dated 07.03.2023 of respondent No. 3 came to be accepted and he was transferred to Dhule vide common transfer order dated 27.07.2023. The said common transfer order pertains to total 141 candidates, out of

which first of 100 are administrative transfers and Sr. No. 101-141 are after considering the request transfers. Thus the name of the respondent No. 3 is at Sr. No. 118 (request transfer).

20. Learned counsel for respondent No. 3 submits that the applicant for no reason using pressurize tactics against respondent No. 3. The applicant do not have good reputation in the department and known as habitual complainant. Thus the several employees have filed complaints against him, so also, many FIR registered against the applicant and he is also facing the Departmental Enquiry on grave and serious charges (Annexure X-5 collectively).

21. Learned counsel for respondent No. 3 submits that the said ACB trap was laid upon respondent No. 3 and it was carried by ACB Mumbai. Thus two Panch witnesses in the said trap are the resident of Mumbai and working in RTO department. Further the Departmental Enquiry that came to be initiated against respondent No. 3 owing to complaint of the present applicant is being carried out at the office of the Divisional Commissioner, Nashik. In view of the same, there is no occasion, cause, chance or even scope for respondent No. 3 to approach, pressurize or tamper with the witnesses if at all he is transferred

to Dhule. Learned counsel submits that the Government Circular dated 20.04.2013 relied upon by the applicant pertains to employees whose reinstatement is in question. However, the respondent No. 3 was already reinstated at Kalyan GST office as establishment officer in the year 2021 and the present posting at Dhule is by way of transfer and not reinstatement. In view of the same, the said circular does not apply in the present case.

22. Learned counsel for respondent No. 3 submits that the applicant is in fact mischief monger and is in the habit of using pressurizing tactics against the officers like the respondent No. 3. Thus the present Original Application liable to be dismissed.

23. Learned counsel for respondent No. 3 in order to substantiate his submissions placed reliance on the following case laws :-

- (i) Dr. Duryodhan Sahu and Others Vs. Jitendra Kumar Mishra and Others, (1998) 7 Supreme Court Cases 273.
- (ii) Sachin Chhotu Pawar V. Collector Raigad and Ors., AIR Online 2020 Bom 525

24. Learned counsel for the applicant on the basis of rejoinder affidavit submits that even though after clear evidence in ACB trap and police custody granted to respondent No. 3 in

connection thereto from 06.11.2019, respondent No. 2 has suspended respondent No. 3 after eight months i.e. on 24.07.2020. There is no explanation of delay in initiating Departmental Enquiry as against respondent No. 3. Further the Departmental Enquiry did not include the audit paras in the file of respondent No. 3, which is standard procedure to be followed in every trap cases.

25. Learned counsel for the applicant submits that there were many vacancies available at Dhule location including the non-executive post of Professional Tax Officer (PTO), which is clear from the transfer order, but still in violation of the G.R. dated 20.04.2013, the respondent No. 3 was given the executive charge at Dhule.

26. Learned counsel for the applicant submits that if the respondent No. 3 was reinstated to the post of Kalyan Establishment Officer on 07.07.2021 in accordance with the G.R. dated 20.04.2013, then the respondent No. 2 must let the respondent No. 3 complete his tenure at Kalyan, which would end in the month of May 2025. Under the pretext of internal transfer policy, the respondent No. 2 violating the said G.R. and providing executive post to respondent No. 3 against whom

criminal proceedings and multiple enquiries are going on at Dhule, which will get affected after said transfer of respondent No. 3 at Dhule.

27. Learned counsel for the applicant submits that request transfer of respondent No. 3 to Dhule due to health issues of his parents is concerned, the mother of the applicant is suffering from Typhoid, which is a short term curable disease with modern day medicines. There are several officers including the applicant suffering from life threatening disease like acute pancreatitis have been denied request transfer by the department, but undue favour was shown to respondent No. 3, who is main accused in corruption case.

28. Learned counsel for the applicant submits that respondent No. 3 is tried to paint the applicant as habitual complainant with FIR against him and several D.Es., but the truth of the matter is that the FIR against the applicant was filed in false complaint of atrocity by the colleagues of respondent No. 3 in which the applicant had no role to play and was innocent as testified by the Police Department in their B-Final Report dated 10.06.2019. Further the false Departmental Enquiries against the applicant came to be initiated after ACB trap on respondent

No. 3 to suppress the corruption of respondent Nos. 2 and 3. Thus, the applicant, who is whistle blower, has filed Writ Petition against the corruption in the department at the Hon'ble Bombay High Court, Benches at Aurangabad and Nagpur. In turn, the Hon'ble High Court issued notices to respondents. The Annexure A-3 is the copy of B-Final Report dated 10.06.2019 and notice of the Hon'ble High Court of Bombay, Bench at Nagpur in W.P. No. 2998/2023.

29. Learned counsel for the applicant submits that the complaints filed against the applicant are false, concocted and frivolous and in some of the cases, the complainants are unaware of the complaint, as their forged signatures made on it.

30. Learned counsel for the applicant submits that respondent No. 3 is having four children while being in the Government service, which is contrary to the Government Resolutions notified time to time. The respondent No. 3 has confessed the said fact before the ACB Worli and must have terminated immediately. However, the respondent No. 2 has reinstated the respondent No. 3 into the service and now transferred him to Dhule where already an enquiry including his four children and other corruption enquiries are going on. The

respondent No. 2 initiated open enquiry of illegal assets of respondent No. 3 after the ACB trap. But the respondent No. 2 protected the respondent No. 3 while the respondent No. 3 was using his power and post at Dhule towards obtaining illegal assets on different names by manipulating the record in various departments. The respondent No. 3 has immovable property at Dhule by changing name of his father. Thus the respondent No. 3 will hamper and interfere with such enquiries, if posted at Dhule.

31. Learned counsel for the applicant submits that the respondent No. 3 is facing criminal proceedings including FIR of ACB Worli and charge sheet in Dhule Court against the corruption charges. All the files related to the ACB Trap i.e. P.S. Kotkar, Jogeshwari Constructions, Jaydeep Trading Company are at Dhule GST office and so also all the concerned dealers and their C.A's., who are the crucial witnesses in the criminal proceedings are at Dhule location. Further Dhule GST office employees, computers, hard drives, digital records and CCTV footages are also the crucial evidence against the respondent No. 3 and likely to be tampered with by respondent No. 3.

32. Learned counsel for the applicant submits that in view of the same, the present Original Application deserves to be

allowed by quashing and setting aside the impugned transfer order dated 27.07.2023.

33. Learned counsel for the applicant submits that the expression “aggrieved person” is a flexible concept. Learned counsel submits that in a case of **Jasbhai Motibhai Desai Vs. Roshan Kumar, (1976), 1 SCC 671**, it is held as it cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. In the context of the above condition we are of the confirm opinion that the applicant is the aggrieved person in respect of impugned order.

34. Learned counsel for the applicant submits that Section 3(q) of the Administrative Tribunals Act, 1985 (for short the Act of 1985) use the definition of ‘service matters’. If the definition of ‘service matter’ is considered, then it appears that the said definition is very wide. Its meaning cannot be limited strictly to the condition of the service, but it also other incidental

and ancillary matters. Learned counsel submits that even transfer of respondent No. 3 under the peculiar circumstances is required to be considered as incidental and ancillary in terms of the service matter and thus the Tribunal get jurisdiction to entertain the Original Application.

35. Learned counsel for the applicant in order to substantiate his submissions placed reliance on the following case laws :-

- (i) Nighat Parveen Vs. Union of India and Others, (1995) 05 DEL CK 0077, Hon'ble Delhi High Court,
- (ii) S.K. Shrivastava Vs. Union of India and Ors. (O.A. No. 2238/2011), Central Administrative Tribunal, Principal Bench.
- (iii) O.A. No. 407/2019 (Sadhana W/o Umesh Borse @ Sadhana D/o Subhash Pachpol Vs. The State of Maharashtra and Ors.), dated 30.03.2023.

36. After having heard extensive submissions advanced by all the parties and perusal of the pleadings, Annexures, the following points arise for my consideration and I have recorded my finding for the reasons mentioned below :-

Sr. No.	Points	Finding
i	Whether the applicant is a “person aggrieved” in terms of provisions of Section 19 of the Administrative Tribunals Act, 1985.	Negative
ii	Whether the applicant is entitled for the relief sought for.	Negative
iii	Whether the impugned order of transfer to the extent of respondent No. 3 dated 27.07.2023 is proper, correct and legal.	Negative
iv	What order	O.A. Dismissed

Reasons

Points No. 1 & 2

37. In the instant case, the applicant is seeking direction to cancel the transfer order of respondent No. 3 for the reason that the enquiry pertaining to the corruption allegedly made by the respondent No. 3 is still pending at the same place where he has been transferred. The applicant claims to be a whistle blower and further on the basis of his complaint, the respondent No 3 was caught red handed in the ACB raid while offering bribe of Rs. 25000/- to the applicant in connection with three matters of the department. Consequently, FIR came to be registered at Dhule Police Station on 06.11.2019 (Annexure-4) against respondent

No. 3. In consequence of the said ACB raid, the respondent No.3 came to be suspended and the Departmental Enquiry was also initiated against him (Annexure A-6). In addition to that, the respondent No. 3 is facing various inquiries in connection with criminal matters including ACB open enquiry about accumulation of illegal assets. The respondent No. 3, however, came to be reinstated and posted at Kalyan GST office as Establishment Officer in the year 2021. Before completion of the tenure at Kalyan GST office and within a period of two years of reinstatement while all the enquiries being pending, the request transfer made by the respondent No. 3 was accepted and by impugned order dated 27.07.2023, the respondent No. 3 was again posted as DHU-VAT-C-010 at Dhule. Being aggrieved by the same, the applicant has approached this Tribunal.

The respondent No. 3 has raised the objection that the applicant is not a person aggrieved in terms of Section 19 of the Act of 1985 and he has no locus to challenge the request transfer order of respondent No. 3.

38. In order to appreciate the rival submissions made in this regard, it is necessary to reproduce Section 19 of the Administrative Tribunals Act, 1985 herein below :-

“19. Applications to tribunals.—(1) *Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.*

Explanation.—For the purposes of this sub-section, “order” means an order made—

(a) *by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation 3 [or society] owned or controlled by the Government; or*

(b) *by an officer, committee or other body or agency of the Government or a local or other authority or corporation 3 [or society] referred to in clause (a).*

(2) *Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) 4 [in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government].*

(3) *On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.]*

(4) *Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.*

39. In terms of Section 19 of the Act of 1985, any person who is adversely affected by act or omission of the administrative agency may approach to the Tribunal for redressal of his grievance. A person is deemed to be adversely affected by administrative action if such person has sustained injury in fact,

actual or threatened due to the action of the administrative agency. The aggrieved person must have been prejudiced or is likely to be prejudiced by the action. Moreover as stated above personal injury may be actual or threatened. Alleged injury in fact must be sufficiently direct and palpable to allow the Tribunal to say with fair assurance that there is an actual controversy proper for adjudication. A “person aggrieved” means a person who is wrongly deprived of his entitlement, which he is legally entitled to receive. In absence of that seeking redressal of grievance would be in the nature of public interest.

40. All service matters are defined in Section 3 of the Act of 1985, which reads as under :-

“(q) “service matters”, in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation 5 [or society] owned or controlled by the Government, as respects—

- (i) remuneration (including allowances), pension and other retirement benefits;*
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;*
- (iii) leave of any kind;*
- (iv) disciplinary matters; or*
- (v) any other matter whatsoever;”*

Thus considering the scope and ambit as defined in Section 3(q) a person aggrieved as per Section 19 of the Act of

1985 may make an application to the Tribunal for the redressal of his grievance.

41. In a case of **Dr. Duryodhan Sahu and Ors. Vs. Jitendra Kumar Mishra and others, (1998)7 Supreme Court Cases 273**, relied upon by learned counsel for respondent No. 3, in para Nos. 15 to 19 the Hon'ble Apex Court has made the following observations :-

"15. Section 20 provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant rules. Section 21 provides for a period of limitation for approaching the Tribunal. A perusal of the above provisions shows that the Tribunal can be approached only by 'persons aggrieved' by an order as defined. The crucial expression ' persons aggrieved' has to be construed in the context of the Act and the facts of the case.

16. In Thammanna versus K. Veera Reddy and other (1980) 4 S.C.C. 62 it was held that although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something.

17. In Jasbhai Motibhai Desai Versus Roshan Kumar Haji Bashir Ahmed and others (1976) 1.S.C.C. 671 the Court held that the expression 'aggrieved person' denotes an elastic, and to an extent, an elusive concept. The Court observed:

"...It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him'.

18. The constitution of Administrative Tribunal was necessitated because of large pendency of cases relating to service matters in various courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the Courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of 'service matters' found in Section 3 (q) shows that in relation to a person the expression means all service matters relating to the conditions of his service. The significance of the word 'his' cannot be ignored. Section 3 (b) defines the word 'application' as an application made under Section 19. The latter Section refers to 'person aggrieved'. In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the word 'order' has been defined in the explanation to sub-s. (1) of Section 19 so that all matters referred to in Section 3 (q) as service matters could be brought before the Tribunal. It in that context, Sections 14 and 15 are read, there is no doubt that a total stranger to the concerned service cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal the very object of speedy disposal of service matters would get defeated.

19. Our attention has been drawn to a judgement of the Orissa Administrative Tribunal in *Smt. Amitarani Khuntia Versus State of Orissa 1996. (1) OLR (CSR)-2*. The Tribunal after considering the provisions of the Act held that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. The following passage in the judgement is relevant:

"... A reading of the aforesaid provisions would mean that an application for redressal of grievances could be filed only by a 'person aggrieved' within the meaning of the Act.

Tribunals are constituted under Article 323 A of the Constitution of India. The above Article empowers the Parliament to enact law providing for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or

any local or other authority within the territory of India or under the control of the Government and such law shall specify the jurisdiction, powers and authority which may be exercised by each of the said Tribunals. Thus, it follows that Administrative Tribunals are constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts. Its jurisdiction and powers have been well-defined in the Act. It does not enjoy any plenary power."

We agree with the above reasoning."

42. In this regard learned counsel for the applicant relied upon the decision rendered by the Central Administrative Tribunal, Delhi in a case of **S.K. Shrivastava Vs. Union of India and Ors.**, decided on 14.11.2011, wherein in para Nos. 11 to 13, it is observed as follows :-

*"11. A perusal of the provisions in Section 20 and 21 show that the Tribunal can be approached only by 'persons aggrieved by an order'. The applicant is an aggrieved person of the order dated 16.06.2011. The crucial expression 'person aggrieved' has to be construed in the context of the Act and the facts of the case. In *Thammanna versus K. Veera Reddy*, (AIR 1981 SC 116) it was held by the Apex Court that although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. In *Jasbhai Motibhai Desai versus Roshan Kumar Haji Bashir Ahmed*, [(1976) 1 SCC 671] the Hon'ble Supreme Court held that the expression 'aggrieved person' denotes an elastic concept. The Court observed. It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him" In*

the context of the above definition we are of the confirmed opinion that the applicant is an aggrieved person in respect of the impugned order

12. *In Duryodhan Sahu Versus Jitendra Kumar Mishra [1998-7-SCC-273], the Hon ble Supreme Court dealing with the issues of this Tribunal's jurisdiction observed that" The constitution of Administrative Tribunals was necessitated because of large pendency of cases relating to sermet matters in various Courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the Courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of 'service matters' found in Section 3 (q) shows that in relation to a person the expression means all service matters relating to the conditions of his service." The Apex Court in 1. N. Subba Reddy Versus Andhra University [AIR1976 SC2049] gave the definition to the expression 'conditions of service' as all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension etc.*

13. *The Administrative Tribunals Act envisages five different clauses which would bring such action within the ambit of the Tribunal to adjudicate the grievances on service matters of the persons. In this context, the interpretation given by the respondents is that the applicant s remuneration, tenure including confirmation, leave of any kind and disciplinary matters are not covered by impugned order. At best the applicant s argument to that his case gets covered by any other matters whatsoever, in the interpretation of the respondents, the administrative arrangements of allocating certain functions though concern the applicant and dealt by different officers would not come within the ambit of any other matters whatsoever clause and the applicant could not be aggrieved by such administrative arrangement. The said argument of the respondents has been repelled by the counsel for the applicant on the ground that applicants service matters would be dealt by a group of people against whom the allegations have been raised by the applicant. Thus, the applicant s disciplinary, vigilance and service matters and more specifically the cases filed by him before the Tribunal and Courts would be dealt by such private respondents who would be interested parties, could prejudice him. Therefore, the order comes well within the ambit of the jurisdiction of the Tribunal for adjudication."*

43. Learned counsel for the applicant has also placed reliance in a case of **Nighat Parveen Vs Union of India and Ors., (1995) 05 DEL CK 0077**, wherein the Division Bench of the Hon'ble Delhi High Court in para Nos. 5 and 6 has made the following observations :-

“(5) In view of this contention of the respondents it is necessary to consider as to whether the claim made by the petitioner is governed by the provisions of the Administrative Tribunals Act, 1985. Respondent Nos. 1 to 3 are admittedly representing the Central Government and the job in question is with the Central Government. None of the respondents are covered by the provisions of Section 2 of the Administrative Tribunals Act, 1985. Consequently, the job in question is government by the provisions of Administrative Tribunals Act, 1985. Section 3(q) of the Administrative Tribunal, Act, 1985 gives the definition of 'Service Matter' as under:- "Service Matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the Government, as the respects- (i) remuneration (including allowance), pension and other retirement benefits; (ii) tenure, including confirmation, seniority, promotion, reversion premature retirement and superannuation; (iii) leave of any kind ; (iv) disciplinary matters; or (v) any other matter whatsoever. If the above definition of Service Matter is considered then it would be quite clear that the said definition is very wide. There is no scope to consider narrowly the term "Service Matter" or to limit its meaning strictly to the conditions of service. Thus, the term service matter includes not only the conditions of service but also other incidental and ancillary matters. The expression service matter has a very wide amplitude. Therefore, even the process of selection for the service would be governed by the word; service matter'.

(6) Learned counsel for the petitioner drew our attention to Section 19 of the Administrative Tribunal is Act and contended that a person aggrieved by any order pertaining to any matter within the jurisdiction of the Administrative Tribunal can make sin application to the Tribunal for the redressal of his grievances. He, thus, contended that in order to approach the Administrative

Tribunal it is necessary to have the existence of an order in within order to go before the Tribunal. The term order is not defined in the said Act, Explanation to Section. 19(1) also does not define the term order but only states that an. order made by the government, local body, etc. all come within the purview of what is known as an order. Therefore, in these circumstances, the term has to b& given a wide meaning to include not only the order made in writing and directed against the person concerned but also the actions and inactions of the concerned authorities. It could not be said that as there is no order a person cannot approach the Administrative. Tribunal. On mere ground that no order as such has been passed against the petitioner by any authority and there is no specific prayer in the petition for quashing any particular order it cannot be said that the matter cannot be entertained by the Administrative Tribunal, in case National Federation of Railway Porters & Bearers Vs. Union of India & Another [55(1995) Dlt 1991(1)], learned Single Judge of this Court had considered this aspect and has observed in para 11 as under:- "The dispute raised now pertains to the absorption to the service under the Railway, resulting in creating a tenure in favor of the appointee; the dispute, also involves the remuneration paid or payable to the petitioners. This apart, Clause (v) of Section 3(q) brings in every kind of dispute relating to the conditions of service, within the concept of "service matters". The phrase "conditions of Service" would always include terms or conditions governing recruitment or employment. The scope of the said phrase is not limited to the conditions governing the relationship of employer and employee after a person is employed. The word 'conditions', in the phrase 'covers the entire gamut of "services" in connection with the affairs of the Union or of any State, etc. The word 'Services', here, is not the individual services of the person employed. but refers to the generality of the 'services'. The idea can be understood if the following two sentences are compared with each other :- (i) Government Servant is employed to render 'service'; (ii) He is employed in the 'services' of the State. The Government servant is in the services of the State, rendering service by virtue of the employment, with reference to the individual, his employment is denoted by the term 'service'. But with reference to the State, the term service reflects the State's establishment. through which, the State functions." We are in agreement with the said view."

44. It is true that the terms service matter not only includes the conditions of service, but also other incidental and ancillary matters and it has a very wide amplitude.

45. The Hon'ble Apex Court in a case of **Dr. Duryodhan Sahu and Ors. Vs. Jitendra Kumar Mishra and others** (referred supra) has observed that the crucial expression 'persons aggrieved' has to be construed in the context of the Act and the facts of the case. The Hon'ble Apex Court in para Nos. 16 and 17 of the judgment has observed that the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced who has been wrongfully deprived in view of something or wrongfully refused something or wrongfully affected his title to something. The Hon'ble Apex Court has referred earlier view wherein it is observed that the expression 'aggrieved person' denotes an elastic, and to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him.

Thus, by giving reference to the earlier view taken in this context in the said case of **Dr. Duryodhan Sahu and Ors. Vs. Jitendra Kumar Mishra and others** (referred supra), in para No. 18, the Hon'ble Apex Court has observed that setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the Courts, but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The definition of 'service matters' found in Section 3 (q) shows that in relation to a person, the expression means all service matters relating to the conditions of his service. The significance of the word 'his' cannot be ignored. Section 3 (b) defines the word 'application' as an application made under Section 19. The later Section refers to 'person aggrieved'. In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. The word 'order' has been defined in the explanation to sub-section (1) of Section 19 so that all matters referred to in Section 3 (q) as service matters could be brought before the Tribunal. If in that context, Sections 14 and 15 are read, there is no doubt that a total stranger to the concerned service cannot make an application before the

Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated.

46. In the instant case the applicant is instrumental to unearth the corruption in the department and accordingly, succeeded in bringing the respondent No. 3 under the clutches of Prevention of Corruption Act by filing complaint against him for allegedly offering him bribe of Rs. 25000/- for doing the illegal things in connection with the official business of the department. The applicant is not at the place where the said action was proposed and executed against respondent No. 3. He came to be transferred and presently working at Khamgaon, Dist. Buldhana. In terms of the provisions of Section 19, sub-section (1) read with Section 3(q) one may say that the applicant is concerned about the outcome of criminal case pending against respondent No. 3 on account of successful ACB raid effected against him on the basis of complaint filed by the applicant and further initiation of departmental Enquiry of the respondent No. 3 by the department in this context. However, by any stretch of imagination the applicant cannot be treated as a person aggrieved because of request transfer order of respondent No. 3. In terms of the observations made by the Hon'ble Apex Court in a case of **Dr.**

Duryodhan Sahu and Ors. Vs. Jitendra Kumar Mishra and others (referred supra) in the facts of the present case, though the applicant is not the total stranger to the service concerned, however it cannot be said that the impugned order has wrongfully deprived the applicant of something or wrongfully refused something or wrongfully affected his title to something. The definition of “service matters” in Section 3 (q) means all service matters relating to the conditions of his service. I afraid that the impugned order is not the part of the conditions of service of the applicant and thus, he cannot be a “person aggrieved”. In my considered opinion, the applicant has no *locus standi* to challenge the said request transfer order of respondent No. 3 and is not entitled for relief sought. Accordingly, I record my findings to point Nos. 1 and 2 in the negative.

Point No. 3

47. The respondent No. 3 was holding the charge of Assistant Commissioner State Tax at Dhule before being trapped by ACB on 05.11.2019. The respondent No. 3 is also facing various allegations and multiple proceedings including open enquiry by ACB for holding illegal assets, charge sheet in Dhule Court for corruption and departmental enquiry in the same context at Dhule. It is but obvious that the witnesses in the

aforesaid cases except few witnesses like Panch etc. must be from Dhule Station along with documentary evidence collected during the investigation and even for the purpose of serving memorandum of Departmental Enquiry on the respondent No. 3 for initiation of Departmental Enquiry.

48. Learned counsel for the applicant has heavily relied upon the Government Circular dated 20.04.2013, wherein it is stated that if the criminal case / Departmental Enquiry is pending against the Government servant and if his reinstatement at the same place may malign the image of the Government and therefore, the said Government servant may be transferred to any other division on the non-executive post except the place where he was serving and suspended owing the criminal charges and Departmental Enquiry. Learned counsel for respondent No. 3 has vehemently submitted that the said Government Circular dated 20.04.2013 pertains to the employees whose reinstatement is in question. Learned counsel has submitted that the respondent No. 3 was already reinstated on the Kalyan GST office establishment in the year 2021 and the present posting by way of impugned transfer order dated 27.07.2023 is not the reinstatement. Learned counsel for respondent No. 3 submits that the said Circular does not apply in the instant case.

49. I do not agree with the submissions made on behalf of learned counsel for respondent No. 3. If for the reinstatement purpose the Government Circular dated 20.04.2013 takes care the image of the Government. It is difficult to accept that if the Government is likely to be defamed by reinstating a person at the same place where the action was taken about the suspension, would have no defamatory effect, if the said Government servant after his reinstatement at the different place brought again to the same place where he was suspended in connection with the serious charges of the corruption.

50. It is difficult to digest that within a period of two years of reinstatement if the said Government servant is brought by way of so called request transfer order at the same place, the image of Government would not be maligned. In addition to maligning the image of the Government possibility of tampering with the evidence cannot be ruled out altogether. In my considered opinion, the impugned order of transfer dated 27.07.2023 is not proper, correct and legal. Accordingly, I record my finding to point No. 3 in negative.

51. In view of the discussions in foregoing paragraphs, however, the applicant is not a person aggrieved in terms of the

provisions of Section 19 (1) of the Act of 1985 and he has no *locus standi* to challenge the impugned order of transfer of respondent No. 3. Unfortunately, the applicant is not entitled for the relief as sought for. Even then since the parties to the Original Application have addressed to this Tribunal on both the aspects, it is necessary to record my finding to point No. 3 also.

52. *Suo moto* powers are used by the Courts when they notice the violations of constitutional rights are not being adequately addressed by the State authorities. The use of *suo moto* powers by the Courts is criticised often. The debate around *suo moto* powers has also been extended to the Tribunals. The Tribunal is a quasi-judicial body; an administrative institution had partial judicial powers. The Tribunals are set up to aid Courts with speedy disposal of the cases. The Administrative Tribunals does not have a *suo moto* powers. Therefore, even recording the finding to point No. 3 in negative, no effective order can be passed *Suo moto* to quash and set aside the impugned order.

53. By interim order dated 08.08.2023, the respondent Nos. 1 and 2 are directed not to relieve the respondent No. 3 until further orders of this Tribunal and in the meanwhile, it

would be open for the respondents to give posting to respondent No. 3 at some place other than Dhule and the said interim relief is still in force as on today. In view of the peculiar facts and circumstances of the case and since this Tribunal has recorded the finding to Point No. 3 in negative to the effect that the impugned order is not proper, legal and correct, it would be just and proper to continue the interim order for a period of four weeks from the date of this order to enable the parties to approach the Hon'ble High Court, if so desire.

54. Hence, the following order :-

ORDER

- (i) The Original Application is hereby dismissed.
- (ii) In the circumstances there shall be no order as to costs.
- (iii) Interim relief granted earlier on 08.08.2023 to continue for a period of four weeks from the date of this order.
- (iv) The Original Application accordingly disposed of.

PLACE : Aurangabad.
DATE : 11.03.2024

(Justice V.K. Jadhav)
Member (J)