

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.564 OF 2022
IN
ORIGINAL APPLICATION NO.519 OF 2022**

DISTRICT : KOLHAPUR

Smt. Manisha Pandurang Shinde.)
Age : 49 Yrs, Currently working as State)
Tax Officer, promoted as Assistant)
Commissioner of State Tax, currently)
Working at GST Bhavan, Kolhapur and)
Residing at 16/24, "Sadguru" Sawata)
Mali Colony, Gondhale Nagar, Hadapsar,)
Pune – 411 028.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai – 400 032.)
2. Joint Commissioner of State Tax,)
In the Office of Special Sales Tax)
Commissioner, New Building,)
3rd Floor, GST Bhavan, Mazgaon,)
Mumbai – 400 010.)
3. Smt. Sonal Rangrao Kale.)
(Sonal Girish Somane) Currently)
working as Assistant Commissioner)
of State Tax, Pune having office at)
GST Bhavan, Airport Road,)
Opp. Golf Club, Yerwada,)
Pune – 411 006.)
4. Smt. Baljindar B. Sekho.)
Currently working as Assistant)

Commissioner of State Tax,)
Pune, having Office at GST Bhavan,)
4th Floor, Opp. Golf Club, Yerwada,)
Pune – 411 006.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 17.10.2022

JUDGMENT

1. The Applicant has challenged the order dated 13.05.2022 issued by Government to the extent of posting on promotion, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant was serving as State Tax Officer on the establishment of Respondent No.2 – Commissioner of State Tax, Mazgaon, Mumbai. She was in the zone of consideration for the promotional post of Assistant Commissioner of State Tax. The Department had called options when she was in the zone of consideration. She gave options as Pune, Kolhapur and Satara. In Option Form, she cited family difficulties stating that her husband is serving in B.J. Medical College, Pune and daughter is studying in 10th Standard at Pune. On this ground, she gave option of Pune. However, Government by order dated 13.05.2022 posted her at Kolhapur instead of giving posting at Pune. Being aggrieved by it, she has filed the present O.A.

3. Smt. Punam Mahajan, learned Advocate for the Applicant sought to assail the impugned order *inter-alia* contending that though Applicant was senior, her seniority was not considered and Pune posting was given to Respondent Nos.3 & 4. She has further pointed out that Respondent

No.4 was at Pune in lower grade from 1999 to 2021. But despite this position, she was again given posting at Pune on promotion. She, therefore, raised the issue of discrimination in posting. In alternative submission, learned Advocate for the Applicant submits that Applicant be allowed to make representation for posting at Pune in view of personal difficulties.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to justify the impugned order *inter-alia* contending that Respondent No.2 – Commissioner of State Tax had laid down the criteria for giving posting to State Tax Officer on the post of Assistant Commissioner of State Tax and following the guidelines/criteria, it was decided that the Officers who have completed more than 6 years at one place should not be continued on the same post. Besides, preference was to be given to widow, divorcee or unmarried lady and Respondent No.4 being unmarried lady staying with mother, she was given posting at Pune. Adverting to this aspect, learned Presenting Officer submits that Applicant was rightly posted at Kolhapur, since she had already served at Pune from 2012 to 2021.

5. In view of submission advanced, the issue posed for consideration is whether on promotion, Applicant is entitled to get posting as per option at Pune as a vested right and impugned order suffers from any legal infirmity. The answer is in emphatic negative.

6. Needless to mention, transfer being incidence of service, a Government servant cannot claim particular place or post as a vested right. It is always subject to the administrative exigencies, but at the same time, it should be in fair and reasonable manner. Here, we are not dealing with the matter of transfer under the provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer

Act 2005' for brevity), but it is a case of posting on promotion, and therefore, the provisions of 'Transfer Act 2005' have no role to play in it.

7. True, while giving option, the Applicant has given Option No.1 at Pune. At the same time, Option No.2 was Kolhapur and Option No.3 was Satara. However, Applicant was given 2nd Option Kolhapur where she was posted on the post of State Tax Officer in 2021. Thus, she has hardly completed one year at Kolhapur and in view of promotion, she was continued at the same place. Indeed, it was her 2nd Option and this is not a case that posting was given out-rightly rejecting all Options by giving posting at some different place, so as to make such grievance.

8. Only because Applicant was senior to Respondent Nos.3 and 4, that itself would not invest her any such legally enforceable right to claim posting on promotion at Pune only. Admittedly, Applicant was at Pune for about 9 years. At the time of promotion, she was at Kolhapur which was her Option No.2.

9. True, Respondent No.4 was also at Pune 1999 to 2021. But again she was posted at Pune. However, her posting at Pune was in terms of criteria/guidelines laid down by Commissioner whereby preference is given to widow, divorcee and unmarried lady. That apart, as per these guidelines, where employee has already rendered six years' service at one place, then the said post should not be again given though claimed in Option but it would not be applicable to divorcee, widow or unmarried lady. Thus, apparently, Respondent No.4 was given posting at Pune in terms of criteria laid down by Commissioner, State Tax.

10. True, Respondents have not placed on record any of Government Resolution or Rules supporting the criteria or guidelines adopted by the Commissioner, State Tax. Indeed, it is a matter of policy decision and even if there is no such G.R. or Rule is forthcoming, if the policy seems to be reasonable and rational, it being domain of executive, it should not to

be interfered with. Therefore, the submission advanced by the learned Advocate for the Applicant that the criteria/guidelines determined by Commissioner, State Tax is arbitrary holds no water.

11. Insofar as Respondent No.3 is concerned, it is not a case of Applicant that she was at Pune for any such longer period. Indeed, she was posted at Pune in 2021 only and there she was continued on promotion as per the Option given by her.

12. At any rate, the Applicant was given posting at Kolhapur which was her Option No.2 and only because she was not given posting at Pune where she had already served in lower cadre for longer period, the order of giving posting at Pune cannot be termed discriminatory or arbitrary. I, therefore, see no merits in challenge to the posting order. Hence, the following order.

ORDER

- (A) The Original Application is dismissed with no order as to costs.
- (B) Applicant is at liberty to make representation and if representation is made, it be decided by the Competent Authority appropriately latest within two months from the date of this order and decision be communicated to the Applicant.
- (C) M.A. No.564/2022 which is filed for interim relief stands disposed of.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 17.10.2022
Dictation taken by :
S.K. Wamanse.

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