

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.763 OF 2015
WITH
MISC. APPLICATION NO.500 OF 2015**

DISTRICT : MUMBAI

ORIGINAL APPLICATION NO.763 OF 2015

- 1) Shri Milind S. Garud.)
Sub-Inspector, State Excise)
Maharashtra, 873/B-Ward, Mali)
Galli, Ravivar Peth,)
Kolhapur – 416 012.)
- 2) Shri Prakash M. Gauda.)
Sub-Inspector, State Excise)
Maharashtra, Superintendent of)
State Excise Office, 14/A, Sadhu)
Vaswani Road,)
Pune – 411 001.)
- 3) Shri Anil Sudam Pawar.)
Sub-Inspector, State Excise)
Maharashtra, Chendani Koliwada,)
Kopri, Rajya Utpadan Shulk Bhavan,)
Thane (E).)
- 4) Shri Anwar I. Khatib.)
Sub-Inspector, State Excise)
Maharashtra, Superintendent of)
State Excise Office, 145 Railway Line)
Solapur – 413 001.)



- 5) Shri Pawan A. Mule.)
 Sub-Inspector, State Excise)
 Maharashtra, Near Rankala Tower,)
 Juni Daru Bhatti,)
 Kolhapur - 416 002.)
- 6) Shri Ajay V. Dalvi.)
 Sub-Inspector, State Excise)
 Maharashtra, Chendani Koliwada,)
 Kopri, Rajya Utpadan Shulk Bhavan)
 Thane (E).)
- 7) Shri Subhash B. Hanwate.)
 Sub-Inspector, State Excise)
 Maharashtra, Superintendent of)
 State Excise (MSD),)
 Old Custom House, Fort,)
 Mumbai.)
- 8) Shri Shrikant D. Kharat.)
 Sub-Inspector, State Excise)
 Maharashtra, Superintendent of)
 State Excise, Alibaug, Dist : Raigad.)
- 9) Shri Avinash H. Gharat.)
 Sub-Inspector, State Excise)
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- 10) Shri Santosh D. Chopadekar.)
 Sub-Inspector, State Excise)
 Maharashtra, Superintendent of)
 State Excise Office, 14/A, Sadhu)
 Vaswani Road, Pune 411 001.)
- 11) Shri Rajaram Prabhu Shewale)
 Sub-Inspector, State Excise)
 Maharashtra, Superintendent of)
 State Excise Office, 14/A, Sadhu)
 Vaswani Road, Pune 411 001.)...Applicants



Versus

- 1) The Secretary.)
 State Excise Department, State of)
 Maharashtra, Mantralaya,)
 Mumbai - 400 032.)
2. Commissioner, State Excise Dept.,)
 State of Maharashtra, Old Custom)
 House, Shahid Bhagatsingh Road,)
 Fort, Mumbai 400 001.)...**Respondents**

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3. The Additional Chief Secretary)
(Services), General Administrative)
Department, Mantralaya, Mumbai.)...**Respondents**

Shri M.R. Patil with Shri D.B. Khaire, Advocates for Applicants.

Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 04.05.2016

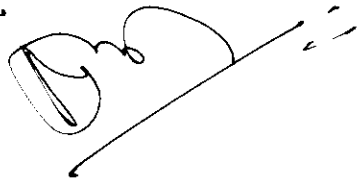
PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Original Application (OA) is brought by as many as 11 Sub-Inspectors in State Excise Department of



the State of Maharashtra and it relates to the issue of promotion but in essence, the Applicants claim to be immune from the provisions of the Divisional Cadre structure and the Divisional Cadre allotment for appointment by promotion to the post of Group 'A' and Group 'B' (Gazetted and Non-Gazetted) of Government of Maharashtra Rules, 2010 (2010 Rules or Superseded Rules). The Applicants claim to be belonging to Group 'C' cadre. In the alternative, they claim for a declaration that the promotions to the post of Excise Inspectors are governed by the selfsame 2010 Rules read with the Government Notification dated 16.7.2015. They further claim that they are not governed at all by the Revenue Divisional Allotment for appointment by nomination and promotion to the post of Group 'A' and Group 'B' (Gazetted and Non-Gazetted) of Government of Maharashtra Rules, 2015 (2015 Rules or Superseding Rules). The essence of the claim is that they should be allowed to exercise, post promotion, the option with regard to the division which they should be posted in. It needs to be noted here itself that in all probability, the Applicants are averse to being posted to any division except Konkan Division and Pune Division.



2. We have perused the record and proceedings and heard the learned Advocates S/S M.R. Patil and D.B. Khaire for the Applicants and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

3. Broadly so speaking, the main issues that are thrown up for determination *inter-alia* are as to whether the State Excise Inspectors fall within Group 'A' or 'B' or Group 'C'. In the event, it was held that they fall in Group 'C' which apparently must have been taken with 2010 Rules in mind. But this issue in all probability would lose much of its sting if it was held that the provisions of 2015 Rules brought into force from 28.4.2015 are applicable to the present facts.

4. The issue, therefore, is as to whether the Superseding or the Superseded Rules would apply. Again the net result would be that in case, the Superseded Rules were held applicable, then on the practical side of it, the Applicants would have a right to give choice or option with regard to the Division, they wanted to be posted in post promotion, as an Excise Inspector. There may be more ancillary issues or the issues arising as a fall out.



5. Before we proceed further, it will be advantageous to note that in deciding a fasciculus of a number of OAs including **OA 355/2015 and others** by a common judgment rendered by us on 30th March, 2016, we had an occasion to deal with these very Divisional Allotment Rules. Those were the matters in which the Applicants were holding Diplomas or Degrees in Engineering, but in the ultimate analysis, the issue was with regard to the applicability of the same Superseding and Superseded Rules post promotion. For the sake of facility, the said judgment will be referred to as **Vyavahare's** case because he was apparently the first Applicant in OA 355/2015.

6. Returning to the present facts, the sum and substance of the case of the Applicants is that before 2011, the post of the Excise Inspector was a Group 'C' post. By G.R. of 13.12.2011, it was moved to Group 'B'. However, the pay scales remained the same that is Rs.9300-34800 + Grade Pay of Rs.4300/-. According to the Applicants, this pay scale is of Group 'C' category except for the Excise Department where the post itself is declared as Group 'B' Gazetted post. According to the Applicants, except for upgrading, no other benefits including monetary benefits

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are conferred on the post of Excise Inspector, and therefore, they fall within Group 'C' cadre.

7. The State of Maharashtra has been divided in six Revenue Divisions. They are Konkan, Pune, Nashik, Aurangabad, Amravati and Nagpur. The Applicants claim that for the Excise Department, this sub-division is in accordance with the sale of liquor. Charts are put up in the OA in order to buttress the case of the Applicants that in the Nagpur Division, Wardha, Chandrapur and Gadchiroli are dry Districts. The sale of liquor is much more in the Konkan and Pune Division implying that more man power is required for Konkan and Pune when compared with the other Divisions.

8. It may be noted at this stage itself that by virtue of instruments which will be under consideration herein, the Government appears to be insistent on giving preference to the Revenue Divisions other than Konkan and Pune for the purposes *inter-alia* of appointments post promotion.

9. However, at this stage itself, it is necessary to refer to the Affidavit-in-reply filed on behalf of the Respondent No.1 - Secretary, State Excise Department.

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The Affidavit has been filed by Ms. Punam H. Wagde, a Joint Secretary in Home/Excise Department of the State of Maharashtra. It is pleaded therein that the post of the Inspector, State Excise Department has been upgraded to Gazetted Group 'B'. It is disputed that the pay scale of the post of Inspectors, State Excise is of Group 'C' category and in that connection, an example is given of Naib Tahsildars in Revenue Department and Education Superintendents in Education Department, which are Group 'B' posts with the same pay scale. Pertinently, it is the case of the Respondents that sub-divisions that the State of Maharashtra has been carved into is based not only on the basis of sale of liquor, but also other factors like revenue sources, sugar industry, density and illicit liquor flow, etc.

10. Now, in our opinion, whatever may be the ultimate findings on this aspect of the matter, it is very clear that the post of Inspector, State Excise post 2011 is a Group 'B' Gazetted post and not Group 'C' post. We have noted the gist of the rival cases and we do not think any elaborate discussion is really called for. In our opinion, the judicial forum like this one is not at all in a position to enter the niceties of the cadre classification. It cannot even be remotely suggested that while issuing the G.R. dated


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find out if despite the upgradation, they continue to be in Group 'C'. That as a matter of fact is clearly impermissible. Similarly, the submission on behalf of the Applicants with regard to the subordination of this or that authority is in our opinion not something that can be accepted. Similarly, in the present set of facts, we cannot hold that despite upgradation, the cadre of Inspector of State Excise remains in Group 'C'. By no canon of interpretative process can we do so. The language is absolutely clear and unambiguous, and therefore, it is not possible for us to go along with the Applicants in this behalf. We would, therefore, hold that the post of Inspector, State Excise is Group 'B' Gazetted post.

11. Another aspect of the case of the Applicants is that by the end of March, 2015, a total of 138 posts of Excise Inspectors lay vacant. It is their case that all the posts were not filled up and only 69 posts were filled up. Now, as far as this aspect of the matter is concerned, a combined reading of the Affidavits-in-reply of Respondents 1 to 3 would show that after the upgradation of the post of Excise Inspector, the service matters are handled by the State Government and not by the Commissioner as was the practice in vogue in past. The process in 2012 got started at the Government level and was finalized in February,

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13.12.2011 moving the said post from Group 'C' to Group 'B', there was any oblique motive. If anything, the intention could as well have been to provide a fillip to the cadre itself to motivate the personnel to put their best foot forward. It is not within the jurisdictional office of a judicial forum to super impose its own views or thoughts in the matter of cadre classification, save and except in the presence of compelling circumstances which are absent here. We do not think that the sole determining criteria could be the pay scale and in that behalf, we are impressed by the case of the Respondent No.1 as reflected in their Affidavit-in-reply as alluded to above. If that be so, then in our opinion, the submissions of Mr. Patil, the learned Advocate for the Applicants including the fact that no cadre benefit was conferred upon the Applicants and that the sole purpose of the said upgradation was to facilitate the performance of duties under Bombay Prohibition Act, 1949 and also under the provisions of Narcotic Drugs and Psychographic Substance Act, 1985 (NDPS), in our view is not something that could persuade us within the realm of this OA to sit in judgment for the purposes of spelling out a different cadre classification despite the unequivocal placement of the Inspectors in Group 'B'. It is not possible for us to enter into some kind of a forensic exercise to dissect a clear and unambiguous provision with a view to


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2013 after the approval of G.A.D was obtained. The year-wise selection list has to be prepared by taking into consideration the vacancy position during 1st September to the 31st August next. There was some loss of documents in a fire which broke out on 22nd June, 2012 and some delay was caused in the matter relevant hereto. The things so took shape that the Department prepared two separate lists for the years 2012-13 and 2013-14. But this was ultimately disapproved by the G.A.D. who directed the preparation of two separate selection lists one by one year-wise and that was the reason why initially 69 Officers came to be promoted and then subsequently others were also promoted.

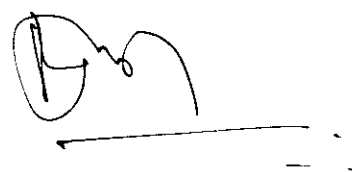
12. In view of the foregoing, if the idea behind the plea taken by the Applicants was to read something fishy in initially appointing only 69 Officers, we do not quite go along with them. In the above set of circumstances, we think we should agree with the Respondents that recommendations of the DPC which may have been made in respect of both the sets of promotees may be one aspect of the matter, but that by itself need not in all circumstances, especially pertaining to these facts, would be decisive.



13. In all probability in accordance with the 2010 Rules, the options were invited from the would be promotees to the post of Inspector, State Excise. The Applicants did so. However, GAD Notification of 16.7.2015 had it that the options considered would be for allotmenting the revenue divisions of Nagpur, Amaravati, Aurangabad and Nashik. As mentioned above, according to the Applicants, in Vidharbha, there are 3 dry Districts namely Wardha, Chandrapur and Gadchiroli, where there is a total liquor ban. This aspect of the matter has already been dealt with. We may quite safely hold that at least on these facts, we do not think such finer aspects of the matter can be held to be justiciable. We repeat that though we do not make an observation of universal application for all time to come, but in the set of these facts, these finer aspects are something that we need not closely examined. This is because a proper focus has been presented by the Affidavit-in-reply of 1st Respondent which has already been discussed hereinabove. Even otherwise, it cannot be accepted as a general principle that just because a particular District is dry District that by itself should be held sufficient to conclude that lesser number of personnel will be required. The crux of the matter is enforcement of the provisions of law in its entirety.

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14. There is then a reference to the fact that the operation of 2015 Rules in so far as the Sales Tax Department and Police Department are concerned, have been already stayed by the Government itself. This issue could have been discussed when we take up for consideration the grounds, but then we can as well deal therewith here and now and it will not be necessary to repeat the same all over again. Now, as a matter of principle, in so far as the judicial forum exercising the power of judicial review of administrative action is concerned, it will have to make sure that it remains within the confines of the jurisdiction of the said forum. If the Government comes up with a case that the facts regarding the Sales Tax Department and the Excise Department in the matter hereto relevant are distinct and different, even to an objective observer unless there was convincing material to hold to the contrary the stand appears to be not something capable of being branded as vitiated by any vice capable enough to shoot it down. Broadly so speaking, though Sales Tax and Excise Department may both be the species of the same genera of fund collection that by no means is the only function of both the Departments. Therefore, the consideration that weigh about the Sales Tax Department may not in all circumstances be the same as in case of Excise, and



therefore, in the absence of compelling material of convincing nature, we do not think that it would be a legally sound and good move to physically lift the decisions about the Sales Tax Department and apply it to Excise Department.

15. If that be so, in so far as the Sales Tax Department is concerned, the position of the Police Department is quite easily distinguishable. In fact, a very elaborate discussion is really not necessary. There are several factors that determine the postings of the Police personnel and they are far more comprehensive and wider when compared with the Excise Department, and therefore, the consequent latitude and elbow room may have to be conceded to the Government with regard to the Police Department which may not be so in case of Excise Department. We, therefore, do not think, it will be possible for us to hold for the Applicants in this regard.

16. Turning now to the Superseded and Superseding Rules, before we consider to the extent necessary the grounds raised herein, it would be proper to examine both the set of Rules including a Circular of 8th May, 2015. As a matter of fact, in all fairness to Mr. Patil, the learned Advocate, he told us that the Applicants had nothing to do

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with 2015 Rules. Now, that was in all probability because of the case of the Applicants that they were governed by 2010 Rules and their cases had been almost completely decided before 28th April, 2015. If the promotions were not split up into 69 and the rest, then all of them could have been safely governed by the 2010 Rules for which the initial ground work was also performed as claimed by the Applicants. It is the case of the Applicants, therefore, that by delaying the actual act, the Respondents have artificially created the circumstances to introduce in picture the 2015 Rules to the complete detriment of the Applicants.

17. The above argument though need not necessarily be in the same form, but very substantially same was dealt with by this very Bench in the common judgment in **Vyavahare's** case (supra). It will be most appropriate in our view to read that particular common judgment to the extent it is relevant even here, so as to have a proper grasp and focus and avoid unnecessary paraphrasing which is prone to create confusion.

18. In **Vyavahare's** case also, the Applicants made representations to the Government. They were also insisting that their matters had been concluded just a

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short while before 28th April, 2015, and therefore, they would be governed by 2010 Rules. It was their case that the 2015 Rules were prospective in operation and the radical changes brought about thereby would not affect those whose cases were concluded by 2010 Rules. A certain Rule 14 of 2015 Rules was severely assailed therein. In Para 19 and subsequent Paragraphs, this Bench took up for consideration the 2010 Rules. Instead of making any paraphrasing, we think it proper to reproduce Paras 19 to 25 thereof.

“19. 2010 Rules came to be framed under the proviso to Article 309 of the Constitution of India. These Rules came into effect on 8.6.2010. A select list was to be prepared after one month from that date of the promotee Officers of Group A and Group B posts and to them, those Rules would be applicable for Divisional Cadre allotment. But it was subject to the condition that the said posts should have the Cadre strength of thirty or more which number would be ensured by the concerned Administrative Department. It was further provided that those posts should be transferable at State level as per the Recruitment Rules for which posts roaster was maintained at State level.

20. Rule 3 of 2010 Rules was the dictionary Clause Rule 3(b) read with the Schedule would show that Divisional Cadre would mean the Divisional Cadre of the six revenue divisions viz. Nagpur, Amravati, Aurangabad, Konkan, Nashik and Pune. Mumbai City and Mumbai Suburban were included in Konkan Division.

21. Rule 4 of 2010 Rules needs to be reproduced.

“4. Appointment to the post of Group ‘A’ and Group ‘B’ to be filled in by promotion, shall be according to the six Divisional Cadres mentioned in

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the Schedule. The rules regarding allotment to those six Divisional Cadres are as follows, namely:-

- (a) the employee whose name is included in the select list for promotion shall indicate his first preference to any one of the Divisional Cadre for appointment by promotion;
- (b) the Appointing Authority shall decide the Divisional Cadre Allotment after taking into consideration the first preference given by the employee and his/her serial number in the concerned select list;
- (c) while making Divisional Cadre allotment, if posts in promotion quota are available in the Divisional Cadre for which the employee has given first preference, the Divisional Cadre allotment shall be made accordingly, if posts are not available in the Divisional Cadre for which preference has been given by the employee then in case of such employees Divisional Cadre allotment shall be made as per the serial number of the employee in the select list in the following order, i.e. (1) Nagpur, (2) Amravati, (3) Aurangabad, (4) Konkan, (5) Nashik and (6) Pune, as mentioned in the Schedule :

Provided that, the Divisional Cadre allotment shall be made proportionately taking into account the vacancies in the Divisional Cadre at the time of preparation of select list and vacancies at the time of actual Divisional Cadre allotment;

- (d) As per the above mentioned Divisional Cadre allotment, the employees appointed by promotion in Group 'B' shall be required to complete a minimum period of six years; and the employee appointed by promotion in Group 'A' shall be required to complete a minimum period of three years in that Divisional Cadre :



Provided that, before completion of such period of six years in case of employee in Group 'B', if he gets second or third promotion, the minimum period of six years prescribed for Divisional Cadre allotment after first promotion shall remain unchanged :

Provided further that, if post is not available at the time of next promotion in that Divisional Cadre then before completion of the period of six years, a posting shall be given in other Divisional Cadre on promotion :

Provided also that, the period of six years or three years as the case may be is not completed due to non-availability of post in that Divisional Cadre, then in case of such employees, posting can be given again for the remaining period in the original Divisional Cadre either by promotion or transfer :

Provided also that, after Divisional Cadre allotment the period of six years or three years, as the case may be, is completed, then it shall be compulsory to give posting to such employee in other Divisional Cadre as per the availability of post' and it shall be compulsory on the part of that employee to accept it;

- (e) a separate post wise list of employees working in every Divisional Cadre shall be prepared by the Appointing Authority and it shall also be necessary to update it, from time to time."

22. Although Rule 4 has been quoted fully and it is self-speaking but a few features need to be underlined in view of the fact that they would be relevant when 2015 Rules are placed under judicial scrutiny. **Firstly**, there was a provision there for allowing the Officer concerned to indicate his preference for the division which he wanted to be posted post promotion. The concerned authority would take into consideration the first preference given by the said Officer for Division

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allotment. There were other incidental provisions giving primacy to the preference given by the said Officer. **Secondly**, if the posts were not available in the preferred division, then for the purpose of allotment, the order of Divisions would be Nagpur, Amravati, etc. It is clear that the region which Nagpur and Amravati fell within got some kind of priority in the matter of allotment. **Thirdly**, the minimum period that Group B and Group A Officers would be posted at the allotted division would be 6 years and 3 years respectively. Certain other contingencies in that behalf were taken care of. For that, the provisos in the above extracts need to be perused.

23. By Rule 5, special provisions were made for Naxalite areas.

24. Rule 6 provided that before finalizing the Divisional Cadre allotment after promotion as per the provisions of Rule 4, the concurrence of the General Administration Department of the Government shall be mandatory.

25. Rule 7 provided that after the Divisional Cadre allotment as per 2010 Rules, the transfers thereafter would be made as per the provisions of "The Maharashtra Government Servants (Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005" (Transfer Act) and the Rules made there under. Rule 8 laid down that the 2010 Rules would apply only to such employees who were actually working on the date of issue of the said Rules."

19. We, therefore, took up for consideration the 2015 Rules and just as we did in case of 2010 Rules, we may reproduce Paras 26 to 36.

"26. Let us now turn to the Rules which became effective from 28.04.2015. They were made under the proviso to Article 309 of the Constitution of India. They



were made in supersession of 2010 Rule above discussed and also in supersession of all the existing Government Resolutions, Orders or Instruments made in that behalf. The 2015 Rules may be called Revenue Division Allotment for appointment by nomination and promotion to the post of Group A and Group B (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules 2015 (2015 Rules hereinafter).

27. Be it noted, therefore, that 2010 Rules were expressly superseded by 2015 Rules and 2010 Rules, therefore, ceased to be effective from 28.04.2015. Some submissions were made on behalf of the Applicants in this regard. To the extent relevant, they would be dealt with presently.

28. Now, as far as applicability is concerned, 2010 Rules were applicable for Divisional Cadre allotment to those posts in the Groups B and A which were to be filled up by promotion. The 2015 Rules would be applicable to both Gazetted and Non-Gazetted Group B and A posts to be filled up by nomination and promotion. The first proviso to Rule 2 about the Rules being applicable only to such posts which were transferable at the State level in 2010 Rules was retained in 2015 Rules. The second proviso to Rule 2 of 2010 Rules about cadre strength, 30%, etc. was omitted by 2015 Rules. But by another proviso to Rule 2, the 2015 Rules shall not be applicable to the posts of Professor, Associate and Assistant Professor in the Government Medical Colleges and Hospitals which are under Medical Education and Drugs Department. Therefore, that was the only departmental which was expressly made immune from 2015 Rules through the implementation thereof to the Police and Sales Tax Department was deferred by a period specified therein (one year).

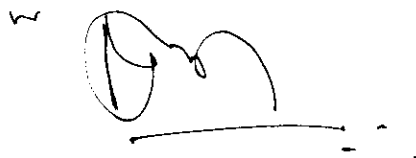
29. In 2015 Rules, there is substantial difference in the dictionary clause when compared with 2010 Rules. 2015 Rules has introduced a new definition of "Administrative Department" to mean a department of Government of Maharashtra of Mantralaya level as specified in Rules of business. The definition of "appointing authority" is the same in both, the



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superseding and superseded Rules. So also is the case with the expressions Government, Group A and Group B posts, Schedule and State. The expression "Divisional Cadre" which was to be read with the Schedule in 2010 Rules has been omitted in 2015 Rules. But a new phrase "Revenue Division" is included in the dictionary clause of 2015 Rules. It should be read along with the Schedule which Schedule in 2015 Rules is the same as it was in 2010 Rules. The phrase Revenue Division "means one of the six Revenue Divisions of the State mentioned in the Schedule". The phrase "Divisional Cadre" in 2010 Rules means the Divisional Cadre of the six Revenue Divisions of the State mentioned in the Schedule". The question of its relevance to this OA apart, but it appears by an *ex-facie* reading that the "Divisional Cadre" in 2010 Rule were composite cadres of six Scheduled Revenue Divisions of the State. On the other hand, in 2015 Rules "Revenue Division would be "one Division out of the Scheduled Six. There are other Rules which may not be read in detail. But it does appear by a combined reading of Rules 10 and 11 of 2015 Rules that lists of Officers working in every revenue division under promotion and nomination quotas of Group A and Group B Cadres will be maintained and updated by the competent authority. Rule 11 of 2015 Rules does away with the mandate to have GAD concurrence for allotment of Divisional Cadres to both Group A. The power of allotment of Officers selected either by promotion or nomination has been delegated to the concerned Administrative Department (in Mantralaya). In case of Group B Officers, the power is delegated to the State level heads of the departments under the control of the concerned Administrative Department in Mantralaya. It, therefore, clearly appears that by elucidating and elaboration, 2015 Rules have further streamlined and simplified the procedure. But they produce the same results or ever better results than 2010 Rules. 2015 Rules have retained 6 years, 3 years tenure for Groups B and A respectively which was provided for in 2010 Rules.

30. 2015 Rules introduce a new expression "Selection Committee" to mean "the Selection Committee constituted for appointment to Group 'A' and Group 'B'

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posts which are exempted from purview of the Maharashtra Public Service Commission as per Maharashtra Public Service Commission (exemption from consultation) Regulations 1965". The meaning and import are quite clear.

31. Another new expression in 2015 Rules is "State level Head of Department". We have already dealt herewith above.

32. It is, therefore, clear that in the matter of Division Allotment as per 2015 Rules Group 'A' Officers are under the control of the Government i.e. Administrative Department in Mantralaya while Group 'B' Officers are under the immediate control of State level Head of the Department, but who in turn is under the control of the concerned Administrative Department.

33. Rule 4 of 2015 Rules reads as follows :

"4. The appointments shall be made to the posts of Group "A" and Group "B" by nomination and promotion in six Revenue Divisions mentioned in the Schedule appended hereto as per these rules."

34. Subject to the discussion to follow on the issue of the applicability of 2010 Rules to the vacancies that existed when 2015 Rules came into force which was a point strongly urged by Mr. Bandiwadekar, it is clear that 2015 Rules provide that "the appointments shall be made to the posts of Group "A" and Group "B" by nomination and promotion in six Revenue Divisions mentioned in the Schedule appended hereto as per these rules." Therefore, other factors remaining constant 2015 Rules will govern the appointments after 28th April, 2015.

35. Rule 4 of the 2010 Rules has been fully quoted above. It was an elaborate and detailed Rule. Its salient features have also been set out. There in that Rule which has now been superseded by 2015 Rules primacy was given to the preference given by the Officers. Rule 4 of 2015 is a much shorter Rule than its superseded counterpart and it completely does away with the

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preference aspect of the matter and everything ancillary to it and that quite clearly affects and hurts the Applicants.

36. Rule 5 of the 2015 Rules requires every administrative department of the Government to determine the revenue division-wise posts of the quotas from promotion and nomination in Groups A & B before allotting the Revenue Divisions. It seems to be the case of the Applicants that this exercise has not been undertaken by the Government before the impugned allotment of the Revenue Divisions.”

20. We then adverted to the principles of interpretation in Para 37 which we may for facility reproduce.

“37. Now, before proceeding further and right here itself, we need to mention that though dated and traditional but still a salutary principle of interpretation is that while each word of the Act or Rules under judicial scrutiny must be construed on the basis that there is life in each word and not even one of it is a listless dead letter but then this Rule of interpretation must be read in harmony with another one which has it that the entire enactment or Rule must be read as a whole bearing in mind apart from other factors, the purposive aspect thereof. The process of interpretation that reads each word and/or sentence of the provision in isolation and either accepts or rejects it, is not a good one because there is every likelihood that it might then leave a disfigured and asymmetrical structure of little practical utility. Therefore, Rule 5 also will have to be read alongside other Rules.”

21. It was then observed that there is a presumption in favour of constitutionality and legality of Act and Rules and also the State instruments. In any case, in so far as



the State instruments are concerned, no judicial forum can proceed on the basis or assumption against its validity.

22. In Para 39 of our judgment, we read in continuation of our discussion Rule 6 of 2015 Rules. We may reproduce now Paras 39 to 45 from **Vyavahare's** judgment.

“39. The Applicants have not challenged the 2015 Rules on the ground of lack of State's Rule making power. The said Rules are challenged on other grounds which aspect is under consideration. Further, the case law will be noticed presently. The application thereof to the present facts will in our view fortify the conclusion that we are drawing generally as well as particularly in respect of Rule 5 of 2015 Rules. On its plain language, we see nothing obnoxious about it. But now, let us read the other Rules. Rule 6 to the extent, it is relevant hereto reads as follows :

“6. While making appointments to such determined posts of nomination quota and promotion quota allotment of Revenue Divisions shall be made as follows :

- a)
- b) For appointment to the posts in Group “A” and Group “B” by promotion to the officers whose names are included in the select list for promotion Revenue Divisions as mentioned in the schedule shall be allotted to the officers by rotation as per their serial numbers in the select list by taking into consideration total vacancies in the promotion quota existing at that time in the sequential order of Nagpur, Amravati, Aurangabad and Nashik Revenue Division. After all the vacant posts in promotion quota in



the above four Revenue Divisions are filled up, the Konkan Division and Pune Division shall be allotted alternately to the remaining candidates in the select list.

For appointments to posts by promotion, the Revenue Divisions shall be allotted to all officers in the select list at the same time except in cases which are kept open due to non-availability of confidential reports, non-availability of caste validity certificates and in which departmental enquiries are in progress or where the subject matter is *sub-judice*. In case of latter such allotment of Revenue Division shall be made separately after final decisions on them."

40. The above quote is self-speaking and self-explanatory requiring no elucidation or elaboration except that by exercise of the Rule making power the Government has given primacy to Nagpur, Amravati, Aurangabad and Nashik Revenue Divisions with Konkan and Pune coming thereafter. If the action of the Government is within the bounds prescribed by the Constitution and by law, then normally such a move shall be immune from judicial interference. That of course is, if other factors remain constant. We have the discussion of case law in store. But then again, other factors remaining constant and absent breach of constitutional strictures, there is nothing *per-se* objectionable about the provision being made for some regions for which reasons might have been disclosed if asked for either expressly or impliedly by someone in the shoes of the Applicants. No doubt with the intervention and even interference of law, the freedom that was available to the employers under the traditional law of contract of service will have to be read down as per law. In this connection, reference can usefully be made to **University of Pune Vs. Mahadeo (2006) 5 Mh.LJ 2170** which came to be cited by Mr. Gangal, the learned Special Counsel. Relying on some judgments of the Hon'ble Supreme Court, it was explained as to how a public service is not merely a service, but is status. Further, the concept of "Vested Right" was also



elucidated. But even otherwise if no violence to this principle is caused, the tenet howsoever old, it may be that in case of a transferable job transfer is an incidence of service will be applicable.

41. Rule 7 of 2015 Rules is what can be called exemption Clause. Rule 7(a) read along with a recent G.R. of 15.07.2015 has it that an Officer who is due for retirement in less than three years at the time of Revenue Division Allotment will be exempted from the 2015 Rules. Further, a handicapped Officer or the one whose spouse or child was mentally retarded or a widow or abandoned lady too would also be exempted from its provisions.

42. A detailed reading of Rules 8, 9 and 10 may not be necessary except to note all about the retention of the provision of the tenure of six years and three years for Group 'B' and Group 'A' Officers respectively which was there in 2010 Rules as well. Some other aspects of these Rules are not quite germane hereto.

43. Rule 11 is a new one. It delegates powers of allotment of Revenue Divisions and does away with the concurrence of G.A.D. which aspect has been alluded to already. But let it be reproduced verbatim for, then it will be self-speaking. It reads as follows :

"11. (1) Powers to allot Revenue Divisions to officers appointed by nomination and by promotion to the posts of Group 'A' cadres as per provisions of these rules, are hereby delegated to the concerned Administrative Departments. It shall not be necessary for them to obtain the concurrence of the General Administration Department for this purpose.

(2) Power to allot the Revenue Divisions to officers appointed by nomination and by promotion to the post of Group 'B' cadres as per the provisions of these rules, are hereby delegated to concerned State level heads of departments under control of the concerned Administrative Departments. It shall not be necessary for them

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obtain the concurrence of the General Administration Department for this purpose.”

44. Similarly, we may advantageously reproduce Rules 12 and 13. They read as follows :

“12. After completion of service of one year in the allotted Revenue Divisions, an officer may apply for change of the Revenue Division on the following grounds, namely :-


(a) these illness of the officer himself or of his or her spouse or children or father or mother, who are dependent on him or her :-

- (i) Cases of Heart Surgery.
- (ii) Kidney Transplantation or Kidney Dialysis.
- (iii) Cancer.
- (iv) Brain Tumor or Brain Surgery.
- (v) Coma.
- (vi) Mental Disorder.

(b) Postings of spouses together at the same place or location :

If husband or wife is in service in an office of Central or State Government, Semi-Government Organization, Municipal Corporation, Municipal Council, Zilla Parishad, Panchayat Samiti or Government Educational Institution (excluding Government aided private educational institutions),-

- (i) a change of the Revenue Division may be allowed only from Konkan and Pune Revenue Divisions to Nagpur, Amravati, Aurangabad and Nashik Revenue Divisions; and
- (ii) Nagpur, Amravati, Aurangabad and Nashik Revenue Divisions may be interchanged amongst themselves.

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(c) Mutual change in allotted Revenue Divisions

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- (i) If request for change in the Revenue Division on mutual basis is received from an officer appointed by nomination, the Revenue Division may be changed
- (ii) If request for change in the Revenue Division on mutual basis is received from an officer appointed by promotion, the Revenue Division may be changed only with another officer appointed by promotion :

Provided that, while allowing such change in the Revenue Division on mutual basis, the officer whose Revenue Division is changed from Konkan or Pune Revenue Division to either Nagpur or Amravati or Aurangabad or Nashik Revenue Division, will be required to join first in the newly allotted Revenue Division.

13. The concerned administrative Departments may allow change in the Revenue Divisions as per the provisions of rule 12, and it shall not be necessary to obtain the concurrence of the General Administration Department for this purpose."

45. Rule 14 is very crucial one. It was heavily relied upon by the Applicants. It reads as follows :


"14. All the cases pending for the allotment of Revenue Divisions and the applications pending for the change of Revenue Divisions on the date of publication of these Rules in the Maharashtra Government Gazette shall be disposed of as per the provisions of these Rules."

(emphasis supplied)"

23. In Para 47, we held relying upon a judgment of the Hon'ble Supreme Court that the Rules like 2015 Rules would become effective from the date of their issuance. We then dealt with the issue of the existence of right and its accrual to the Applicants in the context relevant hereto.

24. In Para 49, we took guidance from a judgment of the Hon'ble Supreme Court in the matter of **E.P. Royappa Vs. Tamilnadu, AIR 1974 SC 555.**

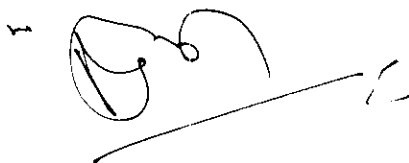
25. There was a certain Circular of 8th May, 2015 which was made a bone of contention in **Vyavahare's** case *inter-alia* on the basis of whether it supplemented or supplanted the main Rule. This aspect of the matter was considered and in effect, it was held that the Applicants were not really entitled to make much capital out of it. From Para 59 onwards, we dealt with the question of pre-existing vacancies in the context of amendment of the Rules. Here also, a submission could be made as hinted already that the 2015 Rules would not be applicable at all because the cases of the Applicants had been concluded under the 2010 Rules. We need not get much detained by the fact as to the language employed in Prayer Clause 1 and the alternate prayer Clause thereto. We may take the issue head on. The argument apparently is that in the



event of an amendment to the Rules, if the vacancies existed prior to the new Rules coming into effect, the old Rules shall nevertheless be the governing ones. This aspect of the matter was dealt with in **Vyavahare's** case. We may reproduce a few Paragraphs from Para 59 onwards from that judgment.

“59. We may now turn to another aspect of Mr. Bandiwadekar’s argument. According to him, regardless of the language of 2010 Rules and 2015 Rules in so far as the vacancies that were existing when 2015 Rules came into force, they would be governed in any case by a 2010 Rules. Now, in our view while dealing with this submission of the learned Advocate, we must bear in mind and that again is the factual peculiarity hereof. That peculiarity is that one must clearly understand the context in which the term ‘vacancy’ and its plural arise. Here, the promotions apparently have been cleared and now the issue is of transferring the new promotees to the new divisions. In our opinion, in the present set of facts, there is nothing to even remotely suggest that there was any mala fide or oblique intention or motive to assign the revenue divisions to the new promotees, and therefore, the principles laid down in the matters where the initial appointments are made or even the appointments by promotion are made, but in different factual scenario cannot be bodily lifted and made applicable hereto. The case law has been cited which we shall presently seek guidance from. However, it needs to be restated that for example, if the Rules provide for appointment in the context of the qualifications or experience at the time of the issuance of an advertisement and the Rules are changed in the interregnum, then the different set of principles would apply which we must repeat cannot just be bodily lifted and applied to the present set of facts.

60. Mr. Bandiwadekar relied upon **Kulwant Singh and others Vs. Daya Ram and others, (2015) 3 SCC 177.** Mr. Bandiwadekar laid particular emphasis on placitum

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'C' which lays down the principle that normally the amended Rules would operate prospectively and the vacancies which had occurred after the amendment would only be governed thereby. The facts of **Kulwant Singh's** case (supra) may not be exactly similar to the present one, but the principles will have to be carefully read for guidance. It must be clearly understood that when one considers the issue of applicability of the amended Rules in the context of retroactivity or prospective operation, the core issue is as to whether according to the old Rules, certain rights had accrued which rights are threatened to be divested from the concerned litigant. If we were to peruse Para 39 of **Kulwant Singh's case** (supra) wherein another earlier judgment of the Hon'ble Supreme Court was discussed, it should become clear in our view that while considering such aspects, the Rules concerned will have to be carefully perused, understood and interpreted. The Hon'ble Supreme Court was pleased to hold that the vacancies that had arisen after the amendment would be governed by the amended Rule and the vacancies that arose prior to the amendment would be governed by the unamended Rules.

61. Another judgment cited by Mr. Bandiadekar was in the matter of **M. Surender Reddy, (2015) 8 SCC 410.** That was in the context of the Rules retroactivity of the Rules regarding reservations. The facts were different and the principles have already been grasped and applied herein by us.

62. We have already referred to the judgment in the matter of **Jagdish Chandra Singh Bora** (supra) hereinabove. Here, we may only mention that Hon'ble Supreme Court in that matter has again emphasized the factor of vesting of right and its accrual. Mr. Bandiwadekar then relied upon a judgment of Division Bench of the Hon'ble Bombay High Court at Aurangabad Bench in the matter of **Trimbak Sangramappa Kadge Vs. State of Maharashtra, 2003 (2) Bombay Cases Reporter 231.** It laid down the principle that administrative instructions cannot override the Rules that seek their validity from higher sources. We have



already discussed that aspect of the matter in the context of the present facts.

63. Mr. Gangal, the learned Special Counsel in support of his contention relied upon University of Pune (supra). He emphasized the fact that in this matter, the virus of 2015 Rules by itself has not been questioned. In so far as the principles are concerned, in Para 12, the Hon'ble High Court was pleased to refer to a number of judgments of the Hon'ble Supreme Court and it was held as follows in the context of the concept of vested right which is in our view highly significant for the present matter.

"12. It was held that the expression "vested right" has been used in the context of a right flowing under a relevant rule which was sought to be altered with effect from an anterior date, and thereby to take away the benefits which were available under the rule in force at that time, and in that context, it was ruled that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Article 14 and 16 of the Constitution. Further with reference to the case of Rangadhamaiyah, it was observed that the court therein was concerned with the case relating to the pension payable to the employees after their retirement. In that regard, it was also observed that the concerned persons were no longer in service on the date of issuance of the Notification which was sought to be impugned. Considering the fact that the amendments to the Rules were not restricted in their application in future, and the amendments were sought to be applied to the employees who had already retired and who were no longer in service on the date of the impugned notification, it was held to be bad in law. However, at the same time, it was also held that, "it can, therefore, be said that a rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of



retroactivity as being violative of articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion of pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.”

64. The distinction between the applicability of amended provision in case of the personnel appointed prior to the crucial date would depend upon the issue as to whether it would amount to giving retrospective effect to the amended provision or it would merely amount to giving effect “in futuro”. The observations in Para 21 of the said judgment are also very apposite and they need to be reproduced.

“21. CONSIDERING the law on the point in question and the provision comprised under Section 20(1)(c) of the said Act, it cannot be said that merely because the person was appointed prior to 12-5-2000, the provision incorporated under the said amended clause will not apply to such person. The law laid down in Bishun Narain Misras case (supra) clearly states that the rule regarding the service tenure is a matter of policy to be decided by the Government. Accordingly, the post of finance and Accounts Officer being made a tenure post, it will apply to all the incumbents in the said post from the day the law in that regard has come into force. Those who have completed five years before coming into force of the said Act will also be covered by the said provision and their service tenure cannot be considered different from the tenure of those who are appointed on or after 12-5-2000. The same principle will have to be applied in all such cases irrespective of their date of appointment. No vested right is accrued in favour of the person occupying such post and it is a status acquired by such officer and his service conditions including the tenure of service are subject to the rules and regulations framed by the Government from time to time. The Government having declared the said post to be a tenure post

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for five years, on completion of the said period the incumbent thereof has to leave the post, unless his tenure is renewed for the second term of five years by the University. The observation in the impugned Judgment that the employee has acquired vested right, and that therefore the Legislature cannot take away the same by giving retrospective effect to the provision comprised under Section 20 (1)(c) of the said act is not sustainable. There is no vested right in favour of the Government servant in relation to their services and they merely hold a status and not like an ordinary contract of service between a master and servant. Same principle will apply to the relationship between the employer and employee of local bodies and public institution like the University. Therefore, no fault could have been found with the order passed by the appellant terminating the services of the respondent in terms of Section 20(1)(c) of the said Act and, therefore, there was no justification for interference in the order passed by the University Tribunal. Considering the same, the impugned Judgment cannot be sustained.”

65. Pertinently, relying upon the judgment of the Hon'ble Supreme Court in **Bishun Narain Misra Vs. State of Uttar Pradesh and others, A.I.R 1965 SC 1567**, it was observed that the cases of public servants are not like ordinary contract of service because though at the base of it, it may be a contract, but then once that contract takes shape, the provisions of constitution and law accord to it an element of status and that will have to be borne in mind in dealing with the matters pertaining to the public servants.

66. Mr. Gangal, the learned Special Counsel relied upon **Shivaji S. Gaikwad & others Vs. State of Maharashtra & others, Writ Petition No.2092/2011 along with 4236 of 2011, dated 30.9.2011**. The citation appears as **CDJ 2012 BHC 485**. It may not be necessary for us to closely examine the facts therein, but the issue of the prospective operation or retroactivity of the amended Rules were at issue in that matter as well.



Relying on the judgment in the matter of **K. Nagra Vs. State of Andhra Pradesh, A.I.R 1985 SC 551**, it was held that the power to amend the Rules retrospectively was very much there and until and unless an authoritative Rule emanating from higher sources like legislature intervened, such Rules would continue to hold the ground. Relying upon **T.R. Kapoor Vs. State of Haryana, A.I.R 1987 SC 415**, it was held in effect that an authority competent to lay down qualifications for promotions could as well change the qualifications and that can be done even retrospectively, subject to the condition that the rights acquired under the existing Rules were not taken away. Now, in these OAs, as already discussed above, no such right has accrued to the Applicants much less have they been taken away. The learned Special Counsel then relied upon **K.K. Bhaskaran and another Vs. Administrator of Daman and others**. The citation of which is **CDJ 2010 BHC 2394 (DB)**. In Para 20 of that judgment, their Lordships were pleased to observe that by amendment, even if chances of promotion were affected that by itself can be no ground for striking down the said Rules. Now, if that be so, the present facts are much better placed for the Respondents.

67. In **Mani Subrat Jain Vs. State of Haryana, A.I.R 1977 (SC) 276 = 1977 (1) SCC 486**, it was held in effect that unless a legal right was established, no relief could be claimed in service jurisprudence. We do not think any further elaboration is necessary on this point. Mr. Gangal, the learned Special Counsel then relied upon **A.S. Sangwan Vs. Union of India, A.I.R 1981 SC 1545**. Two senior Army Officers were vying for one of the highest posts. A certain policy statement arose for judicial consideration. In Para 4, it was held by the Hon'ble Supreme Court in effect that the employer being the Union of India in that matter (the State of Maharashtra in this matter) had the power to change and re-change the policy and unless it was demonstrated that the impugned action fell foul of the constitutional mandate, the action cannot be successfully challenged."



26. Finally, in **Vyavahare's** OA, in Para 69, we relied upon **Chandigarh Administration Vs. Jagjit Singh, A.I.R 1995 SC 705**. The principle laid down was that the mere fact that a certain authority had passed a certain order in case of another person similarly situated by itself in all circumstances may not be sufficient enough reason to necessarily decide the case at hand in the same manner.

27. Now, written submissions of Mr. Patil, the learned Advocate for the Applicants has in Para 13 relied upon all the judgments referred to in **Vyavahare's** case and in addition, he has argued thus :

“13. In view of the above, as per the settled position in law, the Applicants are entitled to be governed by the 2010 Rules since they are selected for promotion in respect of the vacancies existing prior to the revised 2015 Rules for divisional cadre allotment. Apart from the authorities already cited by the ld. Advocate Shri A.V. Bandiwadekar during the course of the hearing of OA No.445/2015, the applicants crave leave to rely upon the following decisions of the Apex Court :-

- 1) Y.V. Rangaiah & Ors. Vs J. Sreenicasa Rao & Ors. Reported in (1983) 3 SCC 284 decided on 24.3.1983;
- 2) M. Surender Reddy Vs State of Andhra Pradesh & Others, reported in (2015) 2 SCC (L & S) 799 decided on 18.2.2015;



- 3) P. Ganeshrao & Co. Vs State of Andhra Pradesh & Ors., reported in 1988 AIR 2068 decided on 5.9.1988;
- 4) A. Manoharan & Ors. Vs Union of India & Ors. Reported in (2008) 1 SCC (L & S) 870 decided on 14.2.2008;
- 5) Arjun Singh Rathore & Ors Vs. B.N. Chaturvedi & Ors., reported in (2008) 2 SCC (L & S) 397 decided on 12.10.2007;
- 6) Union of Indian & Another Vs. International Trading Co. & Another, reported in (2003) 5 SCC 437.”

28. In **Rangaiah's** case, the delay in doing the needful has resulted in causing prejudice to a set of employees and in that context, it was held that their case ought to have been decided under the old Rules. In **Surender Reddy's** case, it was held that there was power to provide retro-activity to the statutory provisions and Rules provided it was expressly or by implication capable of being deciphered on its plain language. On the facts in **Ganeshrao's** case, it was found that the Amendment Rules were prospective in operation. The principle laid down, however, was the same. In **Manoharan's** case, it was held that the vacancies existing earlier would have to be filled up in accordance with the Rules then in force. In **Arjun Singh Rathore's** case, the same principle was enunciated.




29. Now, as far as the above case law is concerned, its application to the present facts in so far as the principles are concerned, in our opinion, would make it very clear that in the first place, once it was found that on a plain language of 2015 Rules, the same is applicable, then as discussed in **Vyavahare's** case also and the relevant part of which has been reproduced, the present Applicants cannot succeed in establishing a case that they would be governed by the 2010 Rules.

30. In **Vyavahare's** case also, this Bench had held which finding is squarely applicable hereto that the Applicants cannot successfully argue that as on 28th April, 2015, their cases were not pending. Therefore, the arguments in Para 14 of the Written Submissions will have to be rejected. The learned Advocate for the Applicants gave up the submissions in Para 15 of the Written arguments.

31. The submissions were made with regard to the legitimate expectation aspect of the matter. **Union of India Vs. International Trading Company (2003) 5 SCC 437** was relied upon. In fact, in this branch of law, this argument is very frequently advanced. In fact, in other cases to which reference has been made above, there could



be direct or indirect reference thereto or at least the basic principles underlying the said principle. The learned C.P.O. made a pointed reference to the fact that there was no challenge to the validity of 2015 Rules, and therefore, the Rule of **Union of India** (supra) as well as a few other judgments would not be applicable at all. As to this aspect of the matter, we find that in insisting to be governed by the 2010 Rules, there is indeed no specific challenge to the validity of 2015 Rules. If the case of the Applicants that they continued to be governed by 2010 Rules is not accepted, then there is no other go but to decide the matter on a plain language of 2015 Rules and as already alluded to hereinabove, the whole matter falls within the well recognized principles of transfer being a necessary incidence of service and the power of an employer to genuinely and honestly and bona-fidely effect the transfers of its employees depending upon the demand of the situation. If, in matters like the present one, the constitutional safeguards are not violated, then the judicial forum generally and by and large would not rush into occupying a space reserved for the genuine exercise of powers by the employer. It would have to be established on record that the employer is guilty of colourable exercise of power or unreasonableness and such vices. We are of the opinion that the above discussion would make it clear

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that such a charge cannot stick on to the Respondents. It is not possible for us to grant in this OA any relief to the Applicants. The Original Application stands, therefore, dismissed with no order as to costs. The Misc. Application being M.A.No.500 of 2015 for interim relief also gets concluded herewith.

Sd/-

(R.B. Malik)
Member-J
04.05.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
04.05.2016

Mumbai

Date : 04.05.2016

Dictation taken by :

S.K. Wamanse.

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