

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

**ORIGINAL APPLICATION NO. 305 OF 2017**

DIST. : AURANGABAD

Smt. Rajmudra Murlidhar Khillare,  
Age. 40 years, Occ. : Service,  
R/o Amrut Sait Plaza, H-3,  
Near Railway Station,  
Aurangabad 431 001.

-- APPLICANT

**V E R S U S**

1. The State of Maharashtra,  
Through its Principal Secretary,  
Finance Department,  
Mantralaya, Mumbai 32.
2. The Special Sales Tax Commissioner,  
Maharashtra State, Mumbai.
3. Additional Sales Tax Commissioner,  
Maharashtra State, Mumbai.

-- RESPONDENTS

APPEARANCE :- Ms. Pradnya Talekar, learned Advocate  
holding for Shri S.B. Talekar, learned  
Advocate for the applicant.

: Shri M.S. Mahajan, learned Chief  
Presenting Officer for the respondents.

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**CORAM** : **Hon'ble Shri B.P. Patil, Member (J)**  
**DATE** : **22<sup>nd</sup> September, 2017**  
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**O R D E R**

1. The applicant has challenged the order dtd. 18.5.2017  
issued by the res. no. 2 by which she has been transferred to  
Jalna from Aurangabad, by filing the O.A.

2. The applicant was appointed initially on the post of Sales Tax Inspector on 13.10.1999 and posted at Mumbai. Thereafter she was transferred and posted at Aurangabad by the order dtd. 28.6.2002. She was promoted as Sales Tax Officer by order dtd. 20.11.2008 and thereby transferred and posted at Pune. Thereafter on her request she has been transferred to Aurangabad by the order dtd. 9.7.2010 as her son was mentally ill and was undergoing brain treatment in IKON Hospital at Aurangabad. It is her contention that, she has completed her normal tenure of posting at Aurangabad and therefore, she filed application on 6.3.2017 addressed to res. no. 2 and requested to post her again at Aurangabad on account of ill health of her child. Thereafter, again on 7.4.2017, she submitted application and gave her first 2 preferences at Aurangabad and 3<sup>rd</sup> place of choice at Jalna. It is her contention that her son is suffering from Dyslexia and undergoing treatment at IKON, Aurangabad and her husband has suffered brain stroke and is taking treatment at Aurangabad and she has to take care of her family members. Therefore, she prayed the res. no. 2 to retain her at Aurangabad only but the res. no. 2 has issued the order on 18.5.2017 and thereby transferred her to Jalna.

3. It is her contention that 4 other employees were also due for transfer from Aurangabad in the year 2017. They made representations to retain them at Aurangabad on the ground of their family problems and their requests have been considered by respondent no. 2 & they are retained at Aurangabad. It is her contention that the res. no. 2 made discrimination while effecting the transfer and he had not considered her request to retain at Aurangabad on the ground of her family problems. It is her contention that the res. no. 2 has favoured other employees, who are retained at Aurangabad. The res. no. 2 had not considered the fact that the applicant has not yet completed 7 years at Aurangabad, but other employees who are working at Aurangabad from 7 to 10 years are not transferred. Therefore, she challenged the impugned transfer order and prayed to quash the same.

4. The res. nos. 1 to 3 filed an affidavit in reply and denied the contentions raised by the applicant. They have denied that, they have favoured other employees viz. Shri Prakash B. Kshirsagar, Mrs. Gaisamudre, Mrs. Hundekar and Mrs. Kapure and retained them at Aurangabad by considering their request. They have denied that they have not considered the request of the applicant to retain her at Aurangabad and they have transferred her with mala-fide intention. It is their contention that the impugned

transfer order has been issued in view of the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005) and in view of the guidelines issued by the Government from time to time. It is their contention that the applicant was initially appointed at Mumbai on her appointment, but thereafter she has been transferred to Aurangabad on her request in the year 2002. She worked as a Sales Tax Inspector at Aurangabad up to the year 2008. Thereafter she was promoted and transferred to Pune on promotion as Sales Tax Officer. She worked at Pune up to 9.7.2010. She requested to transfer her at Aurangabad and therefore she has been again transferred to Aurangabad on 9.7.2010 considering her request and since then she is working at Aurangabad,. It is their contention that in the year 2013, the applicant was transferred to Aurangabad on another post. In the general transfers of the year 2017, she was due for transfer as she had completed 6 years' continuous service at Aurangabad. By the letter dtd. 1.4.2017 the Joint Commissioner of Sales Tax, Mumbai called 3 preferences of places for transfer from the Officers, who are due for transfer in the year 2017. The applicant had given 3 preferences vide letter dtd. 7.4.2017. Thereafter on 7.4.2017 she submitted another application and gave her first 2 preferences at

Aurangabad and 3<sup>rd</sup> place of choice at Jalna. She had requested in the application that, if her transfer from Aurangabad is inevitable then she may be posted at Jalna as per her 3<sup>rd</sup> preference. It is their contention that other employees viz. Mrs. Gaisamudre, Mrs. Hundekar and Mrs. Kapure had not completed their tenure on the present posting in the year 2017 as they were transferred on their present post in the year 2015 and they are due for transfer in the year 2018 and, therefore, they have not been transferred from Aurangabad. It is their contention that Shri Kshirsagar was due for transfer in the year 2017, but he requested for retention at Aurangabad on the ground of couple convenience as his wife is service in L.I.C. He has also requested to retain him at Aurangabad on the ground that he is retiring in the year 2019 and the respondents have considered his request and retained him at Aurangabad.

5. It is their contention that the res. no. 2 has effected the transfer by taking into consideration the guidelines given in the G.R. dtd. 27.11.1997, Govt. Notification dtd. 12.10.2006 as modified up to 17.7.2008. It is their contention that the applicant was due for transfer and, therefore, she has been transferred from Aurangabad and posted at Jalna as per choice given by her.

There is no illegality in the impugned order and, therefore, they prayed to reject the O.A.

6. The applicant has filed rejoinder and contended that there are 30 posts of Sales Tax Officer in the Aurangabad region, out of which 21 posts are filled in. The applicant can be accommodated on the vacant post at Aurangabad by considering her request. It is her contention that the respondents have not applied the same criteria, which was applied for other 4 employees, who were due for transfer, but had been retained at Aurangabad by the res. no. 2 considering their request. Therefore, she prayed to allow the O.A.

7. The respondents have filed an affidavit in reply to the rejoinder and contended that, at present there is no post vacant of Sales Tax Officer at Aurangabad as 5 employees have been posted at Aurangabad by the order dtd. 18.5.2017 and the proposal regarding request transfer of 3 other employees is pending with the Government. They have given the details regarding the position of the post of Sales Tax Officer at Aurangabad. They have contended that the applicant has been posted at Jalna as per her choice and, therefore, they prayed to reject the O.A.

8. I have heard Ms. Pradnya Talekar, learned Advocate holding for Shri S.B. Talekar, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents and considered the detailed written notes of arguments filed by the applicant as well as the respondents.

9. Learned Advocate for the applicant has submitted that the applicant is serving at Aurangabad as Sales Tax Officer from 9.7.2010. She is due for transfer in the general transfer of the year 2017. She has submitted that options regarding the place of choice for the transfer have been called from the applicant as well as other employees, who are due for transfer. She has submitted that the applicant requested the respondents to retain her at Aurangabad by giving posting at Aurangabad itself due to her family problems. She has submitted that her son is suffering from mental illness and is taking treatment in IKON Hospital, Aurangabad. She has further submitted that her husband has suffered brain stroke and is taking treatment at Aurangabad and her old aged parents are staying with her and she is required to take care of her family members. Therefore, she requested the res. no. 2 to retain her at Aurangabad. She has submitted that the requests of 4 other employees are considered and they are retained at Aurangabad, but the request of the applicant has not

been considered and she has been transferred to Jalna by the impugned order. She has submitted that the res. no. 2 has made discrimination while effecting the transfer of the applicant and the res. no. 2 transferred her with mala-fide intention. Therefore, she prayed to allow the O.A. and quash the impugned transfer order.

10. The learned Advocate for the applicant has further submitted that the other employees viz. Smt. Kapure, Smt. Hundekar, Smt. Gaisamudre and Shri Kshirsagar are serving at Aurangabad from 8 years, 16 years, 19 years and 34 years respectively. They were due for transfer, but they have not been transferred by the res. no. 2 and the respondents favoured them. She has submitted that Shri Kshirsagar has been retained at Aurangabad on the ground that his wife is working at Aurangabad in L.I.C. She has submitted that, the G.R. regarding couple convenience is not applicable for the employees of the L.I.C., but the res. no. 2 has not considered the said aspect. She has submitted that, she could have been accommodated on 3 vacant posts at Aurangabad at the time of issuing impugned order. The impugned order is illegal and it is causing injustice to the applicant. Therefore, she prayed to allow the O.A. and to quash the impugned order.



11. Learned P.O. has submitted that the res. no. 2 by the letter dtd. 1.4.2017 called the choices of the places of the employees, who were due for transfer in the general transfers of 2017. In view of the letter dtd. 1.4.2017 the applicant had given her choices by letter dtd. 7.4.2017. The applicant had given first 2 preferences at Aurangabad and 3<sup>rd</sup> choice at Jalna. She has specifically stated in the option form that, if her transfer from Aurangabad is necessary, then she may be considered for transfer at Jalna. She has submitted that the applicant was initially appointed at Mumbai in the year 1999. In the year 2002 on her request she has been transferred and posted at Aurangabad as Sales Tax Inspector. In the year 2008, she has been promoted and posted at Pune, but again she has requested for transfer at Aurangabad and respondents considered her request and transferred her at Aurangabad and since 9.7.2010 the applicant is working at Aurangabad. He has submitted that, each and every time, the request of the applicant was considered by the respondents. In the year 2017, the applicant was due for transfer. After considering her representation and choices given by her, she has been posted at Jalna as Sales Tax Officer by the impugned order and, therefore, there is no question of mala-fide on the part of the respondents in the transfer of the applicant. Learned P.O. further submits that 360 Degree Scrutiny Committee has been

constituted by the respondents to consider the proposal of transfers of the employees. The said Committee scrutinized the proposal and made recommendation of transfer of the employees including the applicant. The recommendations of the 360 Degree Scrutiny Committee has been placed before the Civil Services Board headed by the res. no. 2 in the meeting held on 18.5.2017. On considering the report of the said Committee and the representation of the applicant, the Civil Services Board decided to effect the transfers of 214 employees, who are due for regular transfer and transfer of 36 employees considering the request. On the basis of the decision of the Civil Services Board no. 2, on 18.5.2017 the res. no. 2 issued the impugned transfer order. He has submitted that the applicant has already completed her tenure in the present posting and she was due for transfer. Her transfer has been made in view of the provisions of the Transfer Act, 2005. He has submitted that, there is no illegality in the impugned transfer order and, therefore, he prayed to reject the O.A.

12. On perusal of the documents produced by both the sides, it reveals that, the applicant was initially appointed as a Sales Tax Inspector in the year 1999 and posted at Mumbai. On her request she was posted at Aurangabad in the year 2002. In the year

2008, she had been promoted as Sales Tax Officer and posted at Pune by the order dtd. 20.11.2008. The applicant joined on that post on 16.12.2008 at Pune and it is evident from the document at paper book page 245 filed by the applicant. She was on maternity leave from 19.7.2008 to 16.10.2009. After joining the duty, she made representation to the res. no. 1 and sought her transfer to Aurangabad. Her representations dated 15.12.2008, 16.1.2010 (paper book page 244 & 245) had been considered by the res. no. 1 and she had been transferred to Aurangabad by the order dtd. 9.7.2010 and since then she is serving at Aurangabad. It means that the applicant worked at Pune for the period of 8 months only after joining there and enjoying maternity leave. Since the year 2002, the applicant is working at Aurangabad, excluding the period of her posting at Pune. On the present posting at Aurangabad the applicant is serving from the year 2010. Meanwhile the applicant has been transferred in the year 2013 to another post in Aurangabad itself. She has completed tenure of 3 years on the present post and this fact is not disputed by the applicant. The res. no. 2 by the letter dtd. 1.4.2017 called options from the Govt. servants who are due for transfer giving their choice of places of transfer in the year 2017. In response to the said letter, the applicant filed the application dtd. 7.4.2017 and exercised her option / choice. Initially she has opted for

Aurangabad only, but by another letter she has given first 2 preferences at Aurangabad and third preference at Jalna (paper book page 246).

13. The res. no. 2 appointed 360 Degree Scrutiny Committee headed by the Additional Director General of Police, and Chief Vigilance Officer, Sales Tax, Mumbai to scrutinize the proposal of the transfer. The said Committee scrutinized the proposal and considered the representation of the employees and recommended the transfers of the employees including the applicant. The said recommendations were placed before the Civil Services Board no. 2 constituted by the res. no. 2 on 3.5.2017. The meeting of the Civil Services Board has been held on 18.5.2017. They considered the recommendations of the 360 degree Scrutiny Committee, the proposals and the representations made by the Govt. employees and decided to transfer the employees including the applicant and accordingly the res. no. 2 issued impugned order dtd. 18.5.2017. On considering the said fact, it is explicitly clear that the transfer of the applicant has been made in accordance with the provisions of the Transfer Act, 2005. She has completed her normal tenure of posting, which is 3 years. Not only this, but the applicant is serving at Aurangabad since 2010 in the same office or the Department. Therefore, the applicant is due for transfer as

defined under sec. 3 (1) of the Transfer Act, 2005. Therefore, I do not find any illegality in the impugned order issued by the res. no. 2 in that regard.

14. The only grievance of the applicant is that her representation has not been considered by the res. no. 2 and respondents have favoured other employees viz. viz. Shri Prakash B. Kshirsagar, Mrs. Gaisamudre, Mrs. Hundekar and Mrs. Kapure and retained them at Aurangabad though they are serving at Aurangabad since 8 to 10 years and some of them are at Aurangabad for more than 10 years also. The respondents have contended that they considered the cases of those employees and they were not due for transfer in view of their present posting as they have been posted on the present post in the year 2015 and, therefore, they have not transferred Mrs. Gaisamudre, Mrs. Hundekar and Mrs. Kapure. The case of viz. Shri Prakash B. Kshirsagar is considered for retention as he is retiring in the year 2019 and also in view of the guidelines of the Govt. regarding couple convenience as his wife is working in L.I.C. Some of the employees are also due for transfer, but the respondents have considered their request and they thought it proper to retain them at Aurangabad considering their genuine reasons. The applicant cannot claim retention at

Aurangabad on that ground. Therefore, I do not find substance in the contentions raised by the applicant in that regard.

15. In the instant case, the transfer of the applicant has been made in view of the provisions of Transfer Act, 2005 and more particularly as per sec. 4 (4) of the same. She has given her choice at Jalna as preference no. 3 and the said fact has been considered by the respondents and accordingly she has been posted at Jalna by the impugned order. Therefore, it cannot be said that the impugned order issued by the res. no. 2 is arbitrary and mala-fide.

16. Learned Advocate for the applicant has argued that the respondents considered the posting of employees working as S.T.I. and S.T.O. at different poles at a particular station as transfer. She has argued that the applicant worked on the present post for 3 years and, therefore, she ought to have been accommodated in other post at Aurangabad by means of transfer, but the respondents had not considered the said aspect. Therefore, she prayed to direct the respondents to consider her request for posting her at Aurangabad on different post.

17. It is material to note that, there are 26 sanctioned posts of Sales Tax Officer in Aurangabad region. The Commissioner of

Sales Tax issued Circulars on 7.12.2015 and 1.2.2016 for better management of the department and for running smooth administration and made several divisions and renamed them as nodal divisions. Separate areas are covered by pin codes and accordingly the Sales Tax Officer has been appointed to look after the establishment related work of the said area. In fact all the Sales Tax Officers working in the same office. Merely allotment of work of particular area and transferring S.T.O. from one area to another does not amount to transfer. Therefore, the applicant cannot take benefit of the said fact and claim retention at Aurangabad by claiming at different area / code, which has been made for administrative purposes by the respondents. The transfers of the Government servants can be governed by the provisions of the Transfer Act, 2005 and, therefore, the provisions of the Act will prevail. Considering the provisions of the Transfer Act, 2005, the impugned order issued by the res. no. 2 transferring the applicant is legal and proper. There is no illegality in the impugned order. Therefore, no interference is called for in the impugned order. There is no merit in the O.A. and consequently it deserves to be dismissed.

18. In view of above discussion, the O.A. stands dismissed with no order as to costs. The status quo granted by this Tribunal vide order dated 30.5.2017 stands vacated.

**MEMBER (J)**

ARJ-O.A. NO. 305-2017 BPP (TRANSFER)