

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.595 OF 2022**

**DISTRICT : NAVI MUMBAI  
SUBJECT : TRANSFER**

Shri Shripad Ramrao Misal, )  
Age. 44 years, Occ. Sub Inspector, )  
R/at Trupti CHS, Plot No.10, B Wing, )  
Flat No.312, Sector 8, Nerul, Navi Mumbai – 400 706. )... **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
Through the Principal Secretary, )  
State Excise Department, Mantralaya, )  
Mumbai-32. )
- 2) The Commissioner, )  
State Excise Department, Old )  
Custom House, 2<sup>nd</sup> Floor, SBS Road, )  
Fort, Mumbai-400 023. )...**Respondents**

**Shri Dinesh. B. Khaire, learned Advocate instructed by Shri Abhijeet U. Pawar, learned Advocate for the Applicant.**

**Shri Ashok J. Chougule, learned Presenting Officer for the Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER (J)**

**DATE : 09.02.2023.**

**JUDGMENT**

1. Heard Shri D.B. Khaire, learned Advocate instructed by Shri A.U. Pawar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. The Applicant has challenged the impugned communication dated 10.06.2022 whereby his representation for choice posting is rejected and also challenged transfer order dated 27.08.2021 whereby he was

transferred from Palghar to M/s. Akash Traders, FL-1, Mumbai Suburban *inter-alia* contending that it is in contraventions of Circular issued by G.A.D. dated 11.07.2000.

3. Shortly stated undisputed facts giving rise to this O.A. are as under:-

The Applicant is presently serving as Sub Inspector, State Excise on the establishment of Respondent No.2 – The Commissioner, State Excise Department, Mumbai. In 2013, while he was serving as Excise constable, he was given ad-hoc promotion by Order dated 31.05.2013. Thereafter, he was given technical break but was continued on ad-hoc promotion as Excise Constable and served in Palghar District. In the year 2021, he was due for Transfer and submitted 10 options in view of Circular dated 11.07.2000 which *inter-alia* provides that transfer on posting be given to Government servants as per their choices, who have worked well in Adivasi Area. None of the options of the Applicant were considered and he was posted on Non-Executive post at M/s. Akash Traders, FL-1, Mumbai Suburban by transfer order dated 27.08.2021. Then he filed O.A.No.778/2021 which was disposed of with liberty to make representation and to take decision within two months. The Applicant accordingly made representation, but it came to be rejected by order dated 10.06.2022. It is on this background, the Applicant again approached this Tribunal raising grievance that he is deprived of getting benefit of Circular dated 11.07.2000 and also deprived to work on Executive post.

4. Shri D.B. Khaire, learned Advocate for the Applicant has pointed out that though there were some technical breaks in the services, the Applicant served in Adivasi area and, therefore, the benefit of the Circular dated 11.07.2000 ought to have been given to the Applicant. He has further pointed out that the Applicant has not worked on Executive post, and therefore, he had given 10 options of Executive post but none of them is considered. He also referred rewards given to the

Applicant for his good performance. Thus, in substance according to him, there was nothing to deprive the Applicant from getting choice posting to work on Executive post. He has further pointed out that one of the Option No.7 i.e. O-2, Bandra, Mumbai Suburban is still vacant and direction to be given to the Respondent No.2 to post the Applicant as per Option No.7 given by him.

5. Per contra, Shri A.J. Chougule resisted O.A. and in reference to contention raised in Affidavit-in-Reply submits that by order dated 27.08.2021, the Applicant is posted on Non-Executive post in Mumbai on regular promotion and it is not transfer so as to attract Circular dated 11.07.2000. Thus, according to him, the Circular dated 11.07.2000 is restricted to transfer only and it is not applicable to the present case. He, therefore, submits that the challenge to the transfer order of rejection of representation holds no water.

6. The facts stated above are not in dispute. Notably, in order dated 03.07.2016, Applicant shown working as Sub-Inspector, State Excise at Mumbai and transferred to Talasari, District Thane. But the perusal of record further reveals that thereafter Applicant was given ad-hoc promotion by order dated 16.05.2018 and technical break of 14 days was given to him and later, he was continued on ad-hoc promotion on the post of Sub-Inspector, State Excise (Non-Executive Post) in Palghar, which is admittedly Adivasi area. That apart, the Department by order dated 30.01.2018 has also granted the benefit of one step-up of salary in terms of G.R. which *inter-alia* provides for step-up of salary for Government servant working in Adivasi areas as such, there is no denying that Applicant has worked in Adivasi area for more than 5 years. He was also rewarded with cash price of Rs.48,547/- (Forty Eight Thousand Five Hundred Forty Seven) by order dated 01.03.2021 for his good performance.

7. Material to note that, again the Applicant was shown temporarily promoted by order dated 27.08.2021 and posted at Mumbai Suburban on Non-Executive Post. But fact remains, he worked in Adivasi area for more than 5 years on ad-hoc promotion. Indeed, when he was due for transfer in 2021, the Department called options by letter dated 07.05.2021. He submitted 10 options stating that he worked in Palghar (Adivasi area) and is entitled to choice posting. That time, he seems to have been suffering from Cancer and on that ground sought posting. Admittedly, at that time, all those 10 options were vacant, but none of them were given to him. Not a single reason for not considering his options is forthcoming.

8. All that learned P.O. sought to contend that order dated 27.08.2021 is of posting on promotion and it is not a case of transfer so as to attract Circular dated 11.07.2000. Indeed, the perusal of record clearly reveals that prior to order dated 27.08.2021, from time to time the Applicant was given ad-hoc promotion as Sub Inspector, State Excise and worked in Adivasi area for more than five years. Moreover, order dated 27.08.2021 is again of ad-hoc promotion and posting at M/s. Akash Traders, FL-1, Mumbai Suburban. Thus, it is not regular promotion order and it will have to be considered transfer order. Therefore, submission advanced by learned P.O. that order dated 27.08.2021 is promotion and not transfer order is totally fallacious and mis-conceived. Be that as it may, while giving posting by order dated 27.08.2021, Respondents ought to have given thought to the Circular dated 11.07.2000 and options claimed by the Applicant but they failed to do so for no reason. Such decision is arbitrary and Respondents ought to have adhered to the policy of the Government as reflected in Circular dated 11.07.2000.

9. True, no Government servant claims for a particular place of posting as a legally vested right. However, when Government has taken decision by Circular dated 11.07.2000 to give posting as per their choice,

those are required to be considered in fair and transparent manner. But Respondents have adopted very technical approach.

10. The learned Advocate for the Applicant has rightly pointed out the communication dated 25.05.2021, which *inter-alia* provides where Sub-Inspectors, State Excise have worked for two tenures on Executive post, they should be given Non-Executive post. In present case, the situation is reversed. Though the Applicant never worked on Executive post, he is again given Non-Executive post without considering his claim for Executive post in terms of options given by him. There is no adverse remark against him so as to deny Executive post to him.

11. Learned P.O. on instructions fairly concedes that Option No.7 i.e O-2, Mumbai Suburban which was given by the Applicant in 2021 is still vacant, since the additional charge has been given to some-one else. Thus, this is not a case where post is kept vacant or there is no requirement for posting of Sub-Inspector as per the options given by the Applicant.

12. Now, general transfers of 2023 are due within next 3/4 months. By that time, the Applicant would be completing more than 21 months' service on Non-Executive post at Mumbai Suburban. So at this stage, without distributing the posting, it would be appropriate to direct Respondent No.2 to consider the Applicant's claim for choice posting on Executive post in ensuing general transfers of 2023 and it would strike the balance. Applicant should continue at Mumbai till general transfers of 2023.

12. The aforesaid discussion leads me to sum-up that the decision of rejecting representation of the Applicant as well as the posting given to him by transfer dated 27.08.2021 is in contravention of Circular dated 11.07.2000 and arbitrary. Therefore, the impugned order dated

10.06.2022 rejecting the representation of the Applicant is liable to be quashed. Hence, the order.

**ORDER**

- A) The Original Application is allowed.
- B) Impugned order dated 10.06.2022 rejecting the representation of the Applicant stands quashed and set aside.
- C) The Applicant's claim for choice posting deserves to be considered by Respondent No.2 in terms of Circular dated 11.07.2000 afresh in ensuing general transfers of 2023.
- D) The Applicant shall make representation giving his options within two weeks from today and Respondent 2 – The Commissioner, State Excise, Mumbai shall consider it in appropriate perspective in general transfers of 2023. If for one or other reasons general Transfers are not effected by the end of May 2023, in that event also Respondents are required to consider the representation of the Applicant as singular case and to decide the same.
- E) The decision, as case may be, shall be communicated to the Applicant within a week thereafter.
- F) No order as to costs.

**Sd/-**  
**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 09.02.2023  
Dictation taken by : N.M. Naik.

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