

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

**ORIGINAL APPLICATION NO.259 OF 2019
(Subject : Transfer)**

DISTRICT : MUMBAI

Shri Dattatray Rekhu Rathod)
Working as Constable, Mumbai Central Jail, Arthur Road,)
Mumbai 400 011.)
Residence : Room No.1373, Bldg No.8,)
Central Jail Karmachari Vasahat,)
Government Colony, Bandra (East),)
Mumbai 400 051.) **....Applicant.**

Versus

The Commissioner,)
State Excise Department,)
2nd floor, Old Customs House,)
Shahid Bhagat Singh Marg, Fort,)
Mumbai 400 001.) **..Respondent.**

Shri U.V. Bhosle, learned Advocate for the Applicant.

Smt. Archana B.K., learned Presenting Officer for the Respondent.

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

DATE : 09.08.2019

J U D G M E N T

1. The Applicant has challenged the impugned order dated 16.08.2018 refusing to give suitable posting to him in terms of G.R. dated 03.06.2011

invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this Original Application are as follows :-

Applicant is working as Police Constable with Central Jail Arthur Road, Mumbai since 01.12.2012 and staying in the quarters which are inside the jail premises. Applicant got married on 04.12.2013 and was blessed with son on 10.10.2014. Unfortunately, his son had developed heart problem which has been diagnosed as Congenital Heart Disease. His son was examined by medical board at J.J. Hospital, Mumbai and he was advised to avoid infection and if possible shift his residence so that there should not be repetitive respiratory infection. The Applicant submits that he is living in highly polluted unhygienic circumstances in jail premises and therefore shifting to some other Department is most essential from the point of health of his child. He had, therefore, applied to his Department for grant of No Objection Certificate (NOC) so as to get the posting in any Department in terms of G.R. dated 03.06.2011. Surprisingly, initially the request of grant of NOC was rejected by the Jail Authorities and Applicant was constrained to file O.A.No.1203/2016, wherein by order dated 28.04.2017 this Tribunal gave direction to issue NOC to the Applicant. Consequently, the Jail Authorities issued NOC dated 23.05.2017 to the Applicant in terms of G.R. dated 03.06.2011. The Applicant then approached the Police Department for request of out of cadre transfer. However, regret to note that the Police Department by letter dated 27.01.2017 rejected his request without assigning any valid reason.

3. The Applicant then approached the Commissioner of State Excise (Respondent) with the NOC given by the Jail Authorities for giving posting in State Excise Department by filing the application dated 02.07.2018. However, the

same has been rejected by the Respondent by letter dated 16.08.2018 which is challenged in the present O.A. While rejecting the request of the Applicant, all that Respondent stated was that the policy decision is taken not to accept out of cadre transfer. Having, no alternative the Applicant has approached this Tribunal.

4. Respondent resisted the application by filing the affidavit-in-reply stating that in view of the policy decision taken by the Department the Applicant's request was not considered.

5. Heard Shri U.B. Bhosale, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondent.

6. At the very outset, it is appalling to see insensitiveness on the part of the Respondent while rejecting the request of the Applicant for out of cadre transfer in Excise Department. The Applicant is seeking out of cadre transfer because of advice given by medical board J.J. Hospital, Mumbai for the health of his child who is diagnosed with disease namely congenital heart disease. His son is suffering from repetitive respiratory infection as the applicant is staying in quarter which is inside the jail premises and obviously the atmosphere is inconducive and unsuitable for the health of the child.

7. The Tribunal can take note of the fact of the unhygienic environment inside the jail premises. Inmates in the jail are not free of infections. It is on this background the Applicant was advised to shift the residence at better place which will be conducive for the health of the child. The Parent Department of the Applicant has already issued NOC in terms of G.R. dated 03.06.2011.

8. The Applicant had first approached the Police Department but did not succeed due to sheer insensitiveness of the concerned. The request of the Applicant has been rejected without considering his plight and suffering. The Applicant then approached Respondent i.e. Commissioner of State Excise for out of cadre transfer in Excise Department but met the same fate. While rejecting the request of the Applicant, all that the Respondent stated that the policy decision is taken not to accept out of cadre transfer. In the present situation, this could hardly be valid reason to reject the request of the Applicant. In fact, there is nothing to show what was the exact policy decision and reasons for the same. Needless to mention any policy decision should be rational and reasonable and should not suffer from arbitrariness or unreasonableness. The request of the Applicant was not rejected for non-availability of vacancy or non-eligibility of the Applicant. Learned Advocate has pointed out that the Applicant had fulfilled entire eligibility criteria in terms of G.R. dated 03.06.2011 and on compliance thereof only, Applicant was issued NOC by his Parent Department. Suffice to say the Applicant has fulfilled the criteria for out of cadre transfer and therefore his request ought to have been accepted considering his genuine difficulty and the advice given by the medical board J.J. hospital, Mumbai.

9. Today the Applicant is present in the Tribunal with his family and small son who is suffering from heart ailment. When the specific query was raised to the Applicant by the Tribunal about the choice of his posting he states that he is ready for posting at any place preferably in Solapur, Osmanabad or Pune District subject to availability of the post. He further states that if there is no vacancy in these District named above, in that event, he is ready for posting anywhere in State Excise Department.

10. For the aforesaid reasons, I have no hesitation to sum up that the impugned order rejecting the request of the Applicant is arbitrary, unreasonable and deserves to be quashed. Respondent ought to have considered the request of the Applicant on humanitarian ground but rejected the same under the colour of policy decision.

11. The necessary corollary of aforesaid discussion is that the impugned order is not sustainable in law and deserves to be quashed. Hence, the following order:-

- (a) Original Application is allowed.
- (b) Impugned order dated 16.08.2018 is quashed and set aside.
- (c) Respondent is directed to accommodate the Applicant in State Excise Department on the post of Police Constable in terms of G.R. dated 03.06.2011 and shall issue appropriate order.
- (d) Preferably, Applicant be posted in Solapur, Osmanabad or Pune District subject to availability of vacancy. If vacancies are not available Respondent may post him at anywhere as per requirement of the Department.
- (e) Respondent is further directed to issue appointment order as stated above within one month from today.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)