

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.409 OF 2019**

**DISTRICT : PUNE**

Dr. Babu Hamid Tadvi. )  
Aged : Adult, Working as Superintendent, )  
State Excise, Pune and residing at Pune. )...**Applicant**

**Versus**

The State of Maharashtra. )  
Through Principal Secretary [Excise], )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )...**Respondent**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondent.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 16.09.2019**

**JUDGMENT**

1. The Applicant has challenged the impugned transfer order dated 15.04.2019 whereby he was transferred from the post of Superintendent, State Excise, Pune to Superintendent, State Excise, Sindhudurg invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under:-

The Applicant was serving on the post of Superintendent, State Excise, Pune. He was posted at Pune by order dated 31.05.2018 and had hardly completed one year till the date of impugned transfer order. Abruptly, by transfer order dated 15.04.2019, he was transferred from Pune and posted as Superintendent, State Excise, Sindhudurg. In view of Parliamentary Elections of 2019, the Election Code of Conduct was imposed w.e.f.10.03.2019 in State of Maharashtra. In the night of 7<sup>th</sup> April, 2019, Smt. Prajakta Lavangare-Varma, Commissioner, State Excise took surprise round in city and found several Wine Shops open till the mid-night i.e. beyond the closing time of 10.30 p.m. and liquor was being sold to the customers though the customers were not holding permit. Therefore, on next day i.e. on 8<sup>th</sup> April, 2019, she sent letter to Principal Secretary, State Excise informing rampant irregularities noticed by her and recommended for transfer of the Applicant being unable to handle the administration of District and proposed to transfer him to Sindhudurg. Accordingly, the approval by members of the Civil Services Board (CSB) was obtained through Circulation. Smt. Valsa Nair Sinha, Principal Secretary of State Excise and Chairman-person of CSB was on official tour in U.S.A, and therefore, her approval was obtained through Whatsapp Messenger. In pursuance of it, after obtaining the approval of Hon'ble Minister as well as Hon'ble Chief Minister by impugned order dated 15.04.2019, the Applicant was transferred from Pune to Sindhudurg. The Applicant has assailed the impugned transfer order contending that it is mid-term and mid-tenure transfer, but the same is not in consonance to Section 4(5) of "Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005" (hereinafter referred as 'Transfer Act 2005' for brevity). He contends that the impugned order is punitive as there was no fault on his part and he had already taken necessary precautions of reporting the matter to the Collector for cancellation of license of the concerned Liquor Shops. He further contends that the approval of CSB is not

transparent or fair and there was no meaningful deliberations amongst the member of CSB. In addition to it, he has also raised some other grounds to substantiate that the impugned transfer order is not sustainable in law, which will be dealt with during the course of discussion.

3. The Respondent resisted the application by filing Affidavit-in-reply (Page Nos.19 to 28 of Paper Book) *inter-alia* denying that the impugned order suffers from any illegality. It is not in dispute that the Applicant had not completed normal tenure of three years at Pune. The Respondent sought to justify the impugned transfer order contending that in the night of 7<sup>th</sup> April, 2019 when Smt. Prajakta Lavangare-Varma, Commissioner of State Excise took surprise round in city, she had noticed that several Wine Shops were open till midnight and liquor was being sold to the customers without permit with them. As such, there was rampant illegalities in the functioning of the Liquor Shops and the Applicant was found unable to handle the District. Such situation was likely to create further law and order problem in view of on-going process of Parliamentary Elections of 2019. Therefore, on 08.04.2019, she had sent letter recommending for the transfer of the Applicant. Accordingly, the CSB approved the proposal in circulation. As Chair-person of CSB Smt. Valsa Nair Sinha was on tour, the approval was obtained through Whatsapp Messenger. In pursuance of it, in consultation with Election Commission, the file was placed before the Hon'ble Minister and Hon'ble Chief Minister who accorded the approval being Competent Authority for mid-term and mid-tenure transfer. The Respondent thus contend that the transfer was necessitated as an administrative exigency and the same is in consonance with Section 4(5) of 'Transfer Act 2005' and prayed to dismiss the O.A.

4. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondent.

5. In view of pleadings and submissions advanced by the learned Advocate for the Applicant, the impugned transfer order is assailed on the following grounds :-

- (a) Impugned action of transfer is punitive and stigmatic for no fault on the part of Applicant, as he had already initiated action against erring Wine Shop owners for selling liquor beyond stipulated time.
- (b) Commissioner, State Excise herself being complainant, she should not have acted as a Member of CSB.
- (c) Approval of CSB for transfer of the Applicant is invalid since there was no meaningful deliberation in transparent manner.
- (d) In view of absence of signature of Principal Secretary of the Department on the proposal of transfer, there is absence of meaningful consultation with Secretary, as required in law.
- (e) Absence of prior approval of Election Commission to the transfer of the Applicant in view of implementation of code of conduct for Parliamentary Elections of 2019.

6. At this juncture, it would be apposite to borne in mind the settled legal position holding the field in the matter of transfer. The following are the guiding principles laid down by the Hon'ble Supreme Court.

“i) The courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the grounds of malafides. (Mrs. Shilpi Bose & Ors Vs. State of Bihar & Ors. 1991 Supp, (2) SCC 659).

ii) A Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer order issued by a Competent Authority does not violate any of his legal rights. (Shilpi Boses's case (supra)).

iii) Who should be transferred where, is a matter for the appropriate authority to decide. Unless the transfer order is vitiated by malafides and is made in violation of any statutory provisions, the court cannot interfere with it. (Union of India & Ors. Vs. S.L Abbas (1993) 4 SCC 357).

iv) Transfer of an employee is not only an incidence inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. (State of Uttar Pradesh & Ors. Vs. Gobardhan Lal (2004) 11 SCC 402).

v) Transfer made even in transgression of administrative guidelines cannot also be interfered with, as it does not confer any legality enforceable rights, unless, it is shown to be vitiated by malafides or made in violation of any statutory provision and so long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments (Gobardhan Lal's case supra).

vi) The courts should not deal with transfer orders as if they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. They cannot substitute their own decision in the matter of transfer for that of competent authorities of the State. Even allegations of malafides when made must be such as to inspire confidence in the court or based on concrete materials (Gobardhan Lal's case (supra)).

vii) Allegation of malafides should not be entertained on the mere making of it or on consideration borne out of conjectures of surmises. (Gobardhan Lal's case (supra)).

viii) Except for strong and convincing reasons no interference could ordinarily be made with an order of transfer (Gobardhan Lal's case (supra))."

7. **As to Ground No.(a) :-**

Shri A.V. Bandiwadekar, learned Advocate for the Applicant vehemently urged that the Applicant as Superintendent, State Excise, Pune had already initiated action against Wine Shop owners for selling liquors beyond stipulated time and had forwarded the proposal to the Collector for appropriate action of cancellation of License, and

therefore, the very foundation of the transfer that the Applicant failed to discharge his duties efficiently is not sustainable. In this behalf, the learned Advocate for the Applicant has further pointed out that the concerned Shop owners against whom Collector had initiated action approached the Hon'ble High Court by filing Writ Petition No.4993/2019 in which Hon'ble High Court by order dated 15<sup>th</sup> April, 2019 stayed the action initiated by Collector. On this premises, he submits that the transfer is punitive and stigmatic.

8. Material to note that the illegalities in liquor business was noticed by Commissioner, State Excise Smt. Prajakta Lavangare when she took round in Pune City in the night of 7<sup>th</sup> April, 2019. She had noticed that Sangram Wines, Hinjewadi, Ashoka Country Liquor, K.M. Wines, Viman Nagar and Chancellor Beer & Wines, Avian Nagar were opened till the mid-night though their official closing hours were 10.30. p.m. She also noticed that this liquor was being sold without verification of drinking permit and majority of young students population of City were purchasing liquor from these Wine Shops in mid-night. Therefore, immediately on next day, i.e. on 8<sup>th</sup> April, 2019, she sent letter to Principal Secretary, State Excise, Mantralaya. The contains of the letter are material, which are as follows :-

“Madam,

This is with reference to my tour last night in Pune City to (1) Hinjewadi Sangram Wines (10.50 p.m.), (2) Ashoka Country Liquor (2.45 a.m. alcohol was still served till then), (3) K.M. Wines Viman Nagar Wine Terminal (11.30 p.m.) and Chancellor Beer & Wines, Avian Nagar (11.30 p.m.), where it has come to my notice that in Pune City (Hinjewadi, Viman Nagar) most of the FL-II wine shops are operating much beyond the official closing hours i.e. 10.30. p.m. It is seen that the unofficial operating time lasts upto 2 a.m. and most of the sales is without receipt and without verification of the drinking permits. It was also seen that young students' population were availing of this late night liquor sale from FL-II wine shops.

On checking the google locations and website of these wine shops, two serious things have come to my notice – (1) closing time declared by them on the google location varies from 11.30. p.m. to

2.00 a.m. This closing time declaration by them on the website is extremely worrying and (2) also there are references on just dial app about home delivery by these wine shops. This is found to be rampant in Pune district. In the background of the Election Code of Conduct and the law and order situation, it is necessary that this situation be reversed urgently. Hence, I would recommend that Shri B.H. Tadvi, Superintendent State Excise Pune should be transferred immediately as he is unable to handle the district which shows all signs of violation of Excise norms, leading to deterioration of the reputation and image of the Excise department. Hence, he may be transferred immediately to any of the districts where there is vacancy of the Superintendent State Excise e.g. Sindhudurg and the Superintendent's charge be given to Divisional Deputy Commissioner till this vacancy is filled up in general transfer.

Submitted for your kind information and necessary action please.”

9. In so far as the submission advanced by the learned Advocate for the Applicant adverted to above is concerned, material to note that it is only on 08.04.2019 i.e. after surprise inspection by Commissioner, State Excise in the night of 07.04.2019 on next day i.e. on 08.04.2019 belatedly, the Applicant submitted the report to the Collector for taking appropriate action of cancellation of License of 12 Wine Shops (which includes the Wine Shops noted by Commissioner, State Excise in her letter dated 08.04.2019 addressed to Principal Secretary).

10. As such, it is only after surprise inspection by Commissioner of State Excise, the Applicant seems to have taken some action belatedly by forwarding report to the Collector on 08.04.2019 only to save his skin. Admittedly, the Code of Conduct for Parliamentary Elections 2019 was implemented w.e.f.10.03.2019. The Applicant being District Head of Excise Department ought to have been vigilant to check illegalities in the sale of liquor and ought to have forwarded the report to the Collector much earlier immediately, when it was already brought to his notice.

11. In this behalf, significant to note that the documents produced by the Applicant himself (Page Nos.91 to 108 of P.B.) reveals that the Excise Inspector working under the Applicant had submitted report addressed to the Applicant about the sale of liquor beyond stipulated time by various liquor shops on 01.04.2019. Thus, the Applicant was aware about these rampant illegalities in liquor business during the enforcement of Code of Conduct and was expected to submit report to the Collector immediately for the cancellation of License as contemplated under Section 142 of Maharashtra Prohibition Act, 1949 which *inter-alia* empowers Collector to suspend the License of liquor shops. However, the Applicant did not take any such steps immediately though the illegalities were brought to his notice and it is only on 08.04.2019 i.e. after the visit of Commissioner, State Excise, he had submitted report to the Collector. As such, there are reasons to say that the Applicant failed to act diligently and to discharge the duties in efficient manner.

12. True, as pointed out by the learned Advocate for the Applicant, the Hon'ble High Court in Writ Petitions filed by liquor shop owner stayed the action initiated by the Collector for suspension of License by grant of interim stay on 15.04.2019 on the ground that the order passed by Collector was not in consonance with the requirement of Section 142 (1) of Maharashtra Prohibition Act. The grant of stay to the action initiated by the Collector is totally different aspect with which here we are not concerned. The material and relevant point is the inaction on the part of Applicant against erring liquor shop owners though the illegalities were in his knowledge. The said blatant illegalities were noticed by the Commissioner, State Excise during her surprise visit to the shops and formed opinion that such situation may lead to deterioration of the law and order position in the background of the enforcement of Code of Conduct and scheduled Parliamentary Elections of May, 2019. Suffice to say, the submission

advanced by the learned Advocate for the Applicant that the action is punitive and the Applicant cannot be faulted with, holds no water.

13. **As to Ground Nos. (b) and (c) :-**

The learned Advocate for the Applicant sought to assail the decision of CSB on the ground that the Commissioner, State Excise being herself complainant, she should not have acted as Member of CSB and secondly, there was no meaningful deliberation amongst the members of the CSB. In the first place, the Commissioner, State Excise who gave the surprise visit to the liquor shops and submitted report to the Principal Secretary cannot be termed as a complainant. She was administrative head at State level and having noticed the illegalities in the liquor business as well as inefficiency in the functioning of the Applicant to keep check on the liquor shop she was bound to act swiftly. Therefore, she cannot be termed as a complainant, as one understood in common parlance. She being Commissioner of State Excise was bound to take note of the alleged illegalities and inefficiency of the Applicant and in that capacity, she had submitted the report to the Principal Secretary in official capacity and for betterment of administration. This being the position, she cannot be termed as a complainant, much less disqualified to be a member of CSB. She acted in dual capacity as a Commissioner of State Excise as well as member of CSB in terms of G.R. dated 14.06.2016.

14. As per G.R. dated 14.06.2016, the CSB shall consist three members viz. Principal Secretary, State Excise Department, Commissioner, State Excise Department and Deputy Secretary / Joint Secretary (Services) of General Administrative Department. This being the position, it cannot be said that the Commissioner, State Excise Smt. Prajakta Lavangare should not have presided over CSB. There is nothing to suggest that the action initiated by her is actuated by the

malice or prejudice. She was functioning in her official capacity. I, therefore, see no substance in the submission advanced by the learned Advocate for the Applicant that Smt. Prajakta Lavangare should not have worked as a Member of CSB.

15. The learned Advocate for the Applicant also sought to criticise the manner in which CSB had recommended to transfer the Applicant from Pune to Sindhudurg. Needless to mention that where there exist extra-ordinary situation, then it requires extra-ordinary solution without waste of time. Smt. Valsa Nair Sinha, Principal Secretary, State Excise and Chairperson of CSB was on official tour to USA from 14<sup>th</sup> April, 2019 to 21<sup>st</sup> April, 2019, as seen from Government order dated 08.04.2019 (Page No.133 of P.B.). Therefore, she was consulted through Whatsapp Messenger by remaining two members viz. Smt. Geeta Kulkarni, Deputy Secretary, GAD and Smt. Prajakta Lavangare, Commissioner of State Excise as a member of CSB. Smt. Valsa Nair Sinha was apprised about the situation and urgent action for transfer of the Applicant from Pune to Sindhudurg. Accordingly, she gave her approval through Whatsapp Messenger. The hard copy of exchange of messages is at Page No.36 of P.B. It is on this background, the CSB recommended to transfer the Applicant as an administrative exigency as well as in public interest in view of serious illegalities noticed by Smt. Prajakta Lavangare, Commissioner, State Excise through her surprise visit to the liquor shops in the night.

16. Needless to mention that the role of CSB is recommendatory authority and final decision always rests with the executive. The CSBs are established for transparency in the transfer as well as in other service matters of the public servant in terms of directions issued by Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**. As the situation was warranting urgent action, the approval of Chairperson was taken on Whatsapp Messenger, as it was not possible to wait for

meeting in congregation. Thus, it was the need of an hour, and therefore, the approval of Smt. Valsa Nair Sinha was obtained through Whatsapp Messenger. She had also filed Affidavit explaining all these things and on her return from Tour, she appended the signature on minutes of CSB. Therefore, it cannot be said that the procedure adopted by CSB suffers from any legal infirmity much less to vitiate the decision. The communication and deliberation either can be in physical meeting or through interactive communication with the help of advanced technology. Suffice to say, the submission advanced by the learned Advocate for the Applicant is devoid of merit.

17. **As to Ground No.(d) :-**

True, there is no signature of Principal Secretary of the Department on the proposal of transfer placed before Hon'ble Minister for approval. As stated above, Smt. Valsa Nair Sinha, who was Principal Secretary was on official Tour to U.S.A, and therefore, her signature does not find place in the proposal placed before the Hon'ble Minister. No doubt, it should have been routed through In-charge Principal Secretary of State Excise. But in my considered opinion, its absence itself will not render the decision ultimately taken by the Minister as well as by Hon'ble Chief Minister invalid.

18. True, as per Section 6 of 'Transfer Act 2005', the Competent Authority is Minister of the Department in consultation with Secretary, as pointed out by learned Advocate for the Applicant. He sought to refer the decision of Hon'ble Bombay High Court in ***Writ Petition No.9844/2018 (Santosh Thite Vs. State of Maharashtra) decided on 04.02.2019***. In that case, in Para No.15 of the Judgment, the Hon'ble High Court held that the Hon'ble Minister can exercise his powers as a Competent Authority under Section 6 only after consultation with the Secretary of the concerned Department. In the said matter, the impugned order of transfer was assailed mainly

on the ground that no special case was made out and the transfer order was passed only under the caption “administrative reason”. It is in that context, in absence of reasons for transfer, the impugned order of approval was quashed.

19. Apart, turning to the facts of the present case, as stated above, Smt. Valsa Nair Sinha was on official Tour at USA and she was already consulted through Whatsapp Messenger and had given approval for transfer of the Applicant from Pune to Sindhudurg. Such consultation through Whatsapp Messenger can be deemed as a consultation with Principal Secretary in the present situation. As such, this is not a case that the Principal Secretary of the Department was not at all consulted or bye-passed. The Principal Secretary was not available to sign the proposal physically but consultation was very much there in view of any approval through Whatsapp Messenger as a member of CSB. This being the position, it cannot be said that there was no consultation with Principal Secretary as sought to contend by learned Advocate for the Applicant.

20. **As to Ground No.(e) :-**

Shri A.V. Bandiwadekar, learned Advocate further sought to assail the impugned transfer order on the ground of absence of prior approval to the same by Election Commission. There is no dispute that the Code of Conduct for Parliamentary Elections were imposed w.e.f. 10.03.2019. The Election Commission of India had issued instructions of do's and don'ts. In so far as the transfer issue is concerned, the following are the instructions, as seen from letter dated 07.01.2007 issued by Election Commission of India (Page Nos.67 to 69 of P.B.). The following Paragraph of the letter is relevant for the purpose of this O.A.

“The Commission directs that there shall be a total ban on the transfer of all officers/officials connected with the conduct of the election. These include but are not restricted to:-

- (i) The chief Electoral Officer and Additional/Joint Deputy Chief Electoral Officers;
- (ii) Divisional Commissioners;
- (iii) The District Election Officers, Returning Officers, Assistant Returning Officers and other Revenue Officers connected with the Conduct of Elections;
- (iv) Officers of the Police Department connected with the management of elections like range IGs and DIGs, Senior Superintendents of Police and Superintendents of Police, Sub Divisional level Police officers like Deputy Superintendents of Police and other Police officers who are deputed to the Commission under section 28A of the Representation of the Police Act 1951;
- (v) Other officers drafted for election works like sector and zonal officers, Transport cell, EVM cell, Poll material procurement & distribution cell, Training cell, Printing Cell etc. Senior officers, who have a role in the management of election in the State, are also covered by this direction.
- (vi) The transfer orders issued in respect of the above categories of officers prior to the date of announcement but not implemented till the time when model code came into effect should not be given effect to without obtaining specific permission from the commission.
- (vii) This ban shall be effective till the completion of the election process.
- (viii) In those cases where transfer of an officer is considered necessary on account of administrative exigencies, the State Government may, with full justification, approach the Commission for prior clearance.
- (ix) No appointments or promotions in Government / Public Undertaking shall be made during this, period, without prior clearance of the Commission.”

21. Turning to the facts of the case, the Respondent sought to make two-fold submission. First, the Chief Electoral Officer, Maharashtra State was consulted and in pursuance of telephonic talk and instructions from Chief Electoral Officer, M.S, a proposal was mooted for the transfer of the Applicant immediately. Thus, the Respondent sought to contend that the Chief Electoral Officer was consulted

before issuance of transfer order. Second submission is that, indeed, the Applicant was not posted for any election work, and therefore, there was no necessity for the approval of Election Commission for his transfer. In this respect, at the end of the matter, the Respondent has placed on record short Affidavit sworn by Punam H. Wagde, Joint Secretary, State Excise stating that the Applicant was not directly connected with the conduct of Loksabha Election of 2019, and therefore, it was not necessary to seek prior clearance of the Election Commission while transferring the Officers not connected with the conduct of the Election.

22. Here, it would be apposite to reproduce Para No.11(1) of reply about consultation of Chief Electoral Officer, which is as follows :-

**“11(1).** Hon’ble Chief Electoral Officer, Maharashtra called the office of the Hon’ble Chief Secretary office on 12.04.2019 regarding the proposal of the transfer of the applicant and said that the transfer must be effected immediately. Then through the official note, Hon’ble Chief Secretary directed Principal Secretary, State Excise to do the needful. Copy of note of the office of Hon’ble Chief Secretary is enclosed hereto and marked as **Exhibit R-7**. And as per directions of the Hon’ble Chief Electoral Officer, Maharashtra and Hon’ble Chief Secretary the proposal along with the recommendations of the Civil Service Board, was submitted to the competent authority.”

Whereas, Para No.7 of the Affidavit filed by Smt. Punam H. Wagde (Page No.137) is as follows :-

**“7.** It is respectfully submitted that, the applicant was not directed connected with the conduct of the Loksabha Election – 2019. As, the Election Commission’s directions regarding ban on transfers are related to the transfer of officers concerned with the conduct of the election, it is not necessary to seek prior clearance of the Election Commission while transferring the officers not connected with the conduct of the Election. Therefore, prior clearance of the Election Commission was not obtained while sanctioning the mid-term transfer of the applicant. It is humbly submitted that, as per G.R. dated 31.05.2019, the officers appointed for conduct of the election are given emolument. The copy of the G.R. regarding sanctioning of the emolument, dated 31.05.2019 is annexed hereto and marked as Exhibit R-2. Since the applicant was not appointed for conduct of election, the emolument was not given to the applicant.”

23. As such, the Respondent sought to contend that, in the first place, the Chief Electoral Officer was consulted prior to issuance of transfer order and at the same time contends that the approval of Election Commission is not required, as the Applicant was not connected with the conduct of the Elections.

24. The instructions issued by Election Commission of India by letter dated 07.01.2007 are reproduced above, which makes it quite clear that those instructions are applicable for the transfer of the officials who are connected with the conduct of Elections. The list of such officials which is illustrative is also mentioned in the letter dated 07.01.2007. Thus, it is manifest that the idea was not to disturb the officials who are connected with the conduct of Elections, such as District Election Officers, Returning Officers, Assistant Returning Officers, etc. to ensure the completion of election process without any hindrance because of transfer of the officials connected with the election duty. Whereas, in the present case, the Applicant was working as Superintendent, State Excise. There is absolutely nothing to indicate that any work related to election was allotted or assigned to the Applicant. Indeed, the Respondent had filed the Affidavit of Smt. Punam H. Wagde wherein it is clearly stated that the Applicant was not appointed for conduct of Election, and therefore, prior clearance of Election Commission was not required. As such, it is manifest from the letter issued by Election Commission dated 07.01.2007 that it is only in case of officials connected with the conduct of Election, prior clearance of Election Commission is required to transfer them.

25. Even assuming for a moment that, prior clearance of the Election Commission was required before the transfer of the Applicant, in that event also, in my considered opinion, at the most it would be irregularity for which the Government may be answerable to Election Commission, if Election Commission calls for any such

breach of its direction. The learned Advocate for the Applicant could not point out any express provision of law to show that, in absence of prior clearance of Election Commission that *ipso-facto* render the transfer order illegal.

26. For the aforesaid reasons, I have no hesitation to sum-up that it cannot be said that for want of prior clearance of Election Commission, the impugned transfer order is illegal.

27. As state earlier, a public servant has no vested right to continue on a particular place, as the transfer is an incidence of service and the Tribunal should not interfere with the transfer orders which are made in public interest and for administrative reasons, unless the transfer orders are made in violation of statutory rules or provisions. In the present case, the proposal was approved by the CSB and Hon'ble Chief Minister being Highest Competent Authority accorded its sanction, as contemplated under Section 4(5) of 'Transfer Act 2005'. Needless to mention whether the reasons which weighed with the authority for arriving at subject to satisfaction would qualify it as an exceptional circumstance or special case, depends upon the facts of each case and it cannot be reduced into strait-jacket formula. There could be diverse consideration from the point of administrative exigencies on the basis of which the decision is required to be taken by the executive and Court cannot substitute its opinion for that of Competent Authority. As the code of conduct for Parliamentary Election 2019 were in force in view of the illegalities in the sale of liquor in City, the executive thought it appropriate to transfer the Applicant having failed to control illegal sale so that law and order situation should not be deteriorated. Such decision can hardly be termed stigmatic or punitive and need not be interfered with.

28. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court in **Civil Appeal No.1010-1011 of 2004**

**(Union of India Vs. Sri Janardhan Debanath & Anr., decided on 13.02.2004)** wherein it has been observed as follows :-

*“12. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The Writ Petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.”*

29. As such, in view of the legal principle enunciated by Hon'ble Supreme Court in **Janardhan Debanath's** case (cited supra), it would be inappropriate to insist for holding an elaborate enquiry for the purpose of transfer where his immediate transfer is warranted in public interest or exigencies of administration to maintain law and order situation in City, which was otherwise likely to be deteriorated because of rampant illegal sale of liquor.

30. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned transfer order holds no water and O.A. deserves to be dismissed. Hence, the following order.

**ORDER**

The Original Application is dismissed with no order as to costs.

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

Mumbai

Date : 16.09.2019

Dictation taken by :

S.K. Wamanse.

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