

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.540 OF 2023

**DISTRICT: MUMBAI
SUBJECT: TRANSFER**

Mr. Rajendra Harishchandra Shinde,)
Age 57 years, DoB: 13.05.1966,)
Occ.: Sub Inspector State Excise at M-2, Mumbai)
Suburban, Mumbai.)
R/at: 11, Saraswati Bldg, Khamkar Lane,)
Sane Guruji Rd., Lalbagh, Mumbai 12.)... **Applicant**

Versus

1) The Commissioner,)
State Excise, M.S., Mumbai, Old Custom House,)
Second Floor, Shahid Bhagat Singh Marg,)
Fort, Mumbai.)

2) The Secretary,)
Home Department (State Excise),)
Mantralaya, Mumbai.)
Smt. Swapnali Shivaji Patil.)
C/o. The Commissioner, State Excise,)
M.S. Mumbai. Old Custom House,)
Second Floor, Shahid Bhagat Singh Marg,)
Fort, Mumbai.)... **Respondents**

Shri Kishor R Jagdale, learned Advocate for the Applicant.

Smt. Archana B. Kololgi, learned Presenting Officer for the Respondents.

CORAM : DEBASHISH CHAKRABARTY, MEMBER (A)

DATE : 31.01.2024.

JUDGMENT

1. The Applicant who is working as 'Sub Inspector of State Excise' has challenged Transfer Order of Home Department dated 04.05.2023 by which he is posted from 'M-2 Division' of Mumbai Suburban District to 'M/s. Winspri Enterprises' of Mumbai Suburban District.

2. The Applicant was represented by Shri K.R. Jagdale, learned Advocate and Respondents were represented by Smt. Archana B. Kololgi, learned Presenting Officer.

3. The learned Advocate for Applicant states that on 10.08.2020 the Applicant was transferred to the post of 'Sub Inspector of State Excise' in 'M-2 Division' of Mumbai Suburban District from 'N-1 Division' of Mumbai Suburban City. The learned Advocate for Applicant further states that on 28.03.2023 the 'Seniority List' of 'Sub Inspectors of State Excise' who were eligible for 'General Transfers 2023' came to be published by 'Commissioner of State Excise Mumbai'. In this list name of the 'Respondent No. 3' was not included; but name of the Applicant was placed at 'Serial No. 27'.

4. The learned Advocate for Applicant stated that Applicant would have completed 'Normal Tenure' of 3 years only on 10.08.2023. The 'CSB' thus had failed to appreciate the fact that Applicant was not eligible for 'General Transfer: 2023' as he had completed of only 2 Years and 9 Months on the post of 'Sub Inspector of State Excise' in 'M-2 Division' of Mumbai Suburban District.

5. The learned Advocate for Applicant further stated that recommendations made by 'CSB' on 03.05.2023 was contrary to provisions of Section 3(1), 'Section 4(4)(ii)' and 'Section 4(5)' of the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and stressed that under 'Section 5(1)(a)' there is provision for 'Extension of

Tenure' of 'Government Servants' who are due to retire within period of 'One Year' and such accommodation was also provided by way of policy guidelines GAD GR dated 09.04.2018.

6. The learned Advocate for Applicant then stated that 'Respondent No. 3' was transferred 'Mid Term' from 'M/s Kolhapur Sugar Mills District Kolhapur' to 'M-2 Division' of Mumbai Suburban District just to displace the Applicant. The learned Advocate for Applicant argued that 'CSB' was not supposed to consider the case of Applicant because he was entitled to be retained on the post 'Sub-Inspector of State Excise' in 'M-2 Division' of Mumbai Suburban District. The Transfer Order of Home Department dated 04.05.2023 was therefore bad in law and contrary to the provisions of 'Transfer Act 2005'. The Transfer Order of Home Department dated 04.05.2023 of Applicant was therefore an outcome of 'Arbitrary Exercise' of Statutory Powers by the 'Competent Transferring Authority' just to accommodate 'Respondent No. 3' on the post 'Sub-Inspector of State Excise' in 'M-2 Division' of Mumbai Suburban District.

7. The learned P.O. stated on basis of 'Affidavit-in-Reply' filed on behalf of 'Commissioner of State Excise Maharashtra State Mumbai on 23.06.2023 that the Applicant was working as 'Sub Inspector of State Excise' which is post in 'Group C' and was thus liable to be transferred anywhere in Maharashtra. Further learned PO stated that as per 'Rule 3(1)' of the 'Transfer Act, 2005' although 'Normal Tenure' of 3 years was not yet over but Applicant was well aware that he may be posted elsewhere during 'General Transfer 2023' and accordingly had even submitted representation on 28.03.2023 to 'Commissioner of State Excise Maharashtra State Mumbai'.

8. The learned PO further stated that although as per GAD GR dt.09.04.2018, the Government Servants with less than 'One Year' remaining for their retirement are not required to be transferred, but as Applicant was going to retire on 31.05.2024 and actual period of service

left was more than 'One Year' therefore Transfer Order of dated 04.05.2023 was issued by Home Department. The other 'Sub-Inspectors State Excise' whose names have been mentioned by Applicant, and whose similar requests were considered by 'CSB' to recommend 'One Year' extension were all going to retire within next 6 to 9 Months. Hence, 'Competent Transferring Authority' allowed them to continue on their posts as per provisions of 'Section 5(1)(a)' of the 'Transfer Act 2005' read with policy guidelines in GAD GR dated 09.04.2018.

9. The learned Advocate for the Applicant and learned PO for Respondents were heard at length about the applicability of provisions of Section 3(1); Section 4(4)(ii); Section 4(5) and Section 5(1)(a) of the 'Transfer Act 2005'.

10. The Applicant came to be posted as 'Sub Inspector of State Excise' at 'M-2 Division' of Mumbai Suburban District on 10.08.2020 during 'General Transfers 2020' in the midst of unforeseen circumstances arising out of 'Covid-19 Pandemic'. The period of 'Normal Tenure' of 3 years of the Applicant in 'M-2 Division' of Mumbai Suburban District counted from Transfer Order dated 10.08.2020 would thus have been over only on 10.08.2023. Be that as it may; it is pertinent to note that Applicant has done two consecutive tenures on 'Executive Posts' at proximate locations which are 'N-1 Division' and 'M-2 Division' both of Mumbai Suburban District. Now, Applicant has been posted in 'M/s. Winspri Enterprises' which although is 'Non Executive Post' but is located in Mumbai Suburban, District. The locations of 'Executive Posts' when Applicant served in 'N-1 Division' and 'M-2 Division' of Mumbai Suburban District were admittedly around 15 Kilometers while 'Non Executive Post' in 'M/s. Winspri Enterprises' of Mumbai Suburban, District is little further being located at distance of 18 Kilometers from his 'Place of Residence'. The Applicant therefore has not been put to any undue hardship which deserved to be taken into consideration by 'CSB' given that Applicant is due to retire on 31.05.2024. The case of

Applicant could also have been considered under Section 5(1)(a) of the 'Transfer Act 2005' read with GAD GR dated 09.04.2018 and his tenure in 'M-2 Division' of Mumbai Suburban District which was to come to an end on 10.08.2023 extended upto his retirement due on 31.05.2024.

11. The Transfer Order of Home Department dated 04.05.2023 of Respondent No.3 by which she is posted from 'M/s. Sugar Mills Kolhapur District Kolhapur' where she had been working since 25.08.2022 to post of 'Sub Inspector of State Excise' in 'M-2 Division' of Mumbai Suburban District has been issued under provision of 'Section 4(4)(ii)' and 'Section 4(5)' of 'Transfer Act 2005'. The Transfer Order of Home Department dated 04.05.2025 of Respondent No.3 was issued as per recommendation made by 'CSB' and thus cannot be held to be with 'Mala-Fides' against the Applicant or resulting from 'Arbitrary Exercise' of 'Statutory Powers' just because it was in place of Applicant who was serving in 'M-2 Division' of Mumbai Suburban District from 10.08.2020 onwards and due to retire on 31.05.2024. The 'Extension of Tenure' given to 'Government Servants' when they have less than 'One Year' for retirement is not an entitlement as it is to be considered only in 'Exceptional Cases' as per provisions of Section 5(1)(a) of the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' otherwise it can also become the 'Shield of Protection' for delinquent Government Servants.

12. The 'Competent Transfer Authority' while exercising 'Statutory Powers' during 'General Transfer 2023' under Section 4(4)(ii); and Section 4(5) of the 'Transfer Act 2005' must to have kept in mind the undue hardships which may have been suffered by Applicant if he was to be transferred outside of Mumbai Suburban District as he was due to retire on 31.05.2023 but it appears that 'CSB' refrained from considering the Applicant's case amongst those 'Exceptional Cases' which deserved to be recommended for 'Extension of Tenure' under 'Section 5(1)(a)' of the 'Transfer Act, 2005'.

13. The Transfer Order of Home Department dated 04.05.2023 of Applicant and that of Respondent No.2 need not be interfered with and set aside by making 'Hyper Technical Interpretation' of the provisions of Section 3(1) of 'Transfer Act 2005' which is about 'Normal Tenure' of 3 Years. The provisions of Section 3(1) of the 'Transfer Act 2005' are not to be understood as an infrangible assurance under law to Government Servants when read with provisions of Section 4(4)(ii) and Section 4(5) of the 'Transfer Act 2005'. Further grant of 'Extension of Tenure' on grounds of 'One Year' being left from date of retirement is also not to be considered as an unfettered entitlement of all Government Servants under 'Section 5(1)(a)' of the 'Transfer Act 2005'. Against this backdrop, it would be fair to appreciate that Applicant must have rendered meritorious service on various posts held by him as 'Sub Inspector of State Excise' in establishment of 'Commissioner of State Excise, Maharashtra State Mumbai' and thus must continue to do so while serving till his retirement on 31.05.2024 as 'Sub Inspector of State Excise' in 'M/s Winspri Enterprises' of Mumbai Suburban District.

ORDER

- (i) The Original Application is Dismissed.
- (ii) No Order to Costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Place: Mumbai
Date: 31.01.2024
Dictation taken by: A.G. Rajeshirke.

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