

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.579 OF 2021

DISTRICT : MUMBAI

Shri Pramod Bhanudas Patil.)
Age : 51 Yrs, Occu.: Working as)
Sub-Inspector (State Excise), Q-2,)
Mumbai Suburban and residing at)
Deepkunj Society, M. Phule Road,)
Bhoirwadi, Dombivili (West),)
District : Thane.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
State Excise Department, Mantralaya)
Mumbai – 400 032.)
2. The Commissioner.)
State Excise Department, Old)
Custom House, 2nd Floor, SBS Road,)
Fort, Mumbai – 400 023.)
3. Rajesh Suresh Shinde.)
Age : 46 Yrs, Occu.: Service,)
Residing at Kurla Nehru Nagar,)
Kurla (E), Mumbai – 400 024.)...**Respondents**

Mr. S.S. Dere, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents 1 & 2.

Mr. D.B. Khaire, Advocate for Respondent No.3.

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

DATE : 10.12.2021

JUDGMENT

1. The challenge is to the transfer order dated 09.08.2021 whereby Applicant is transferred from the post of Sub-Inspector, State Excise, Q-Division, Mumbai Suburban to Beed invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this O.A. is as under :-

The Applicant is serving in the cadre of Sub-Inspector, State Excise in Group 'C'. He was posted as Sub-Inspector, State Excise, Q-Division, Mumbai Suburban by order dated 18.05.2018. He claims to be entitled to six years' tenure in the said post w.e.f. 08.05.2018 in terms of proviso 1st to Section 3 of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' (hereinafter referred to as 'Transfer Act 2005' for brevity). However, by transfer order dated 09.08.2021, the Respondent No.2 – Commissioner, State Excise transferred him from Mumbai Suburban to Beed, Aurangabad Division. The Applicant has challenged this transfer order dated 09.08.2021 in this O.A. *inter-alia* contending that the same is in contravention of 1st Proviso to Section 3 of 'Transfer Act 2005'. The Respondent No.2 – Commissioner, State Excise posted Respondent No.3 – Rajesh Shinde in place of Applicant at Q-Division, Mumbai Suburban.

3. The Respondent No.2 – Commissioner, State Excise opposed the O.A. by filing Affidavit-in-reply contending that the Applicant has completed 9 years' tenure in Division and 6 years' tenure in Mumbai Suburban on the same post and was liable for transfer out of Division. Accordingly, the matter was placed before Civil Services Board (CSB) which recommended for the transfer of Applicant in terms of letter dated 25.05.2021 issued by Home Department whereby instructions were issued to transfer Sub-Inspector, State Excise out of Division who have completed 9 years in Division.

4. The Respondent No.3 also opposed the O.A. by filing Affidavit-in-reply *inter-alia* denying that the impugned transfer order dated 09.08.2021 transferring the Applicant from Mumbai Suburban to Beed and his posting in place of Applicant do not suffer from any legal infirmity in view of the stand taken by Respondent No.2.

5. Shri S.S. Dere, learned Advocate for the Applicant sought to assail the impugned transfer order on the following grounds :-

(i) The Applicant being posted as Sub-Inspector, Q-Division, Mumbai Suburban by order dated 08.05.2018, he is entitled to 6 years' tenure, it being Group 'C' Non-Secretariat Services post in terms of 1st Proviso of Section 3 of 'Transfer Act 2005'.

(ii) Since impugned transfer order is issued curtailing the tenure of 6 years ensured in law, it requires compliance of Section 4(5) of 'Transfer Act 2005', which is admittedly missing.

(iii) At the time of transfer from present post (Q-Division, Mumbai Suburban), the Applicant has given 10 options, but none of the option was considered and he is transferred far away in Aurangabad Division. According to him, the options ought to have been considered in terms of G.R. dated 09.04.2018 which *inter-alia* provides for transfer on counseling by giving preference to the options given by a Government servant.

6. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer has pointed out that Applicant has admittedly completed 6 years' tenure as Sub-Inspector, State Excise in Mumbai Suburban and he was due for transfer in general transfers. Accordingly, by transfer order dated 09.08.2021, he has been rightly transferred. She further submits that in terms of letter dated 25.05.2021 issued by Home Department, the Sub-Inspector, State Excise who have completed 9 years in Division was required to be transferred out of Division and Applicant has admittedly

completed 9 years in Mumbai Division considering his previous posting at Raigad. As regard options, she submits that all the options sought by the Applicant were from Mumbai and Thane only where he has already served for 9 years, and therefore, he is rightly transferred out of Division.

7. Whereas, Shri D.B. Khaire, learned Advocate for the Applicant for Respondent No.3 also support the impugned transfer order and adopted the submissions advanced by the learned P.O.

8. Needless to mention, transfer is an incidence of Government service and no Government servant has vested right to claim particular post for a particular period, since it falls within the domain of executives. However, now transfers of Government servants are governed and regulated by 'Transfer Act 2005' and those are not left to the whims and caprice of the executives. The 'Transfer Act 2005' *inter-alia* provides for normal tenure of a Government servant and also provides for mid-term or mid-tenure transfer where it is necessitated considering administrative exigencies or a special case with the approval of next preceding competent transferring authority as contemplated under Section 4(5) of 'Transfer Act 2005'.

9. In view of submissions advanced at the Bar, the issue posed for consideration is to whether the Applicant was entitled to 6 years' tenure afresh in the post of Sub-Inspector, State Excise, Q-Division, Mumbai Suburban from his posting order dated 08.05.2018 or was due for transfer having completed normal tenure contemplated under the provisions of 'Transfer Act 2005'.

10. At this juncture, it would be apposite to reproduce Section 3 of 'Transfer Act 2005', which is as under :-

“3(1) For all India Service Officers and all Groups A, B and C State Government Servants or employees, the normal tenure in a post shall be three years :

Provided that, when such employee is from the non-secretariat services, in Group C, such employee shall be transferred from the post held, on his completion of two full tenures at that office or department, to another office or Department :

Provided further that, when such employee belongs to secretariat services, such employee shall not be continued in the same post for more than three years and shall not be continued in the same Department for more than two consecutive tenures.”

11. Whereas as per Section 2(g), “post” means the job or seat of duty to which a Government servant is assigned or posted. As per Section 2(h), “secretariat services” means the State services belonging to the Mantralaya Departments. As per Section 2(i), “Transfer” means posting of a Government servant from one post, office or Department to another post, office or Department.

12. Admittedly, the Applicant is Group ‘C’ employee and belongs to non-secretariat services. If Applicant’s transfer is found mid-tenure, in that event only, there would be necessity of compliance of Section 4(5) of ‘Transfer Act 2005’. Otherwise if it is found that the Applicant has completed two full tenures and was due for transfer, in that event, obviously there would be no question of attracting Section 4(5) of ‘Transfer Act 2005’. Therefore, the crux of the matter is whether Applicant was due for transfer at the time of impugned transfer order.

13. Now, let us see earlier tenure of the Applicant, which is as under :-

अनु.क्र.	पदनाम	शासकीय सेवक कोणत्या ठिकाणी सेवा केली याबाबतचा तपशील			
		कार्यालयाचे नाव व ठिकाण	कधीपासून	कधीपर्यंत	कालावधी वर्ष / महिने
१	दुय्यम निरीक्षक व (अकार्यकारी)	मे.नेव्हीताड डिस्टिलरी सीएल-१ विभाग, बोरीवली, जि. रायगड	२०१२	२०१५	३ वर्षे
२	दुय्यम निरीक्षक व (अकार्यकारी)	मे. युनायटेड स्पिरिट्स लि. एफएल-१ घटक, पवई, जि. मुंबई उपनगरे	२०१५	२०१८	३ वर्षे
३	दुय्यम निरीक्षक व (अकार्यकारी)	व्यु विभाग, मुंबई उपनगरे	०८/०५/२०१८	आजपर्यंत	३ वर्षे

14. Explicitly, the Applicant was holding the post of Sub-Inspector, State Excise in Mumbai Suburban initially at Powai from 2015 to 2018 for 3 years, and thereafter, as Sub-Inspector, State Excise, Q-Division, Mumbai Suburban from 08.05.2018 onward for 3 years. Before his posting at Powai, he was at Raigad for 3 years. As such, even assuming that a Government servant in Group 'C' from Non-secretariat services is entitled to 2 full tenures as per 1st Proviso to Section 3, in that event also, the Applicant has admittedly completed 2 full tenures in Mumbai Suburban in view of his 3 years' earlier tenure at Powai from 2015 to 2018. This being the position, the question of 6 years' tenure from previous transfer order dated 08.05.2018 at Q-Division, Mumbai Suburban does not survive. If the submission advanced by the learned Advocate for the Applicant that his client is entitled to 6 years' tenure afresh from his transfer order dated 08.05.2018 is accepted, it would amount to exceeding maximum 2 full tenures in that Office or Department, which is not at all intended even by 1st Proviso to Section 3 of 'Transfer Act 2005', which is relied by the Applicant in the present matter.

15. Suffice to say, considering the Applicant's initial tenure at Powai from 2015 to 2018 and thereafter his 2nd tenure from 2018 to 2021 at Q-Division, Mumbai Suburban, he has completed 2 full tenures in the Department and consequently, was due for general transfer. In the teeth of 1st Proviso of Section 3 of 'Transfer Act 2005', the submission advanced by the learned Advocate for the Applicant that Applicant was entitled to 2 full tenure from Order dated 08.05.2018 is totally misconceived, fallacious and contrary to the aim and object of Section 3 of 'Transfer Act 2005'.

16. Indeed, the Applicant has completed 9 years in Mumbai Division, considering his initial tenure of 3 years at Raigad and in terms of letter dated 25.05.2021 (Page No.105 of P.B.), he was transferred out of Division. By the said letter issued by Home Department, the policy

decision was taken to transfer State Excise Sub-Inspectors out of Division who had completed 9 years in same Division. Therefore, the transfer of the Applicant at Beed, Aurangabad Division cannot be faulted with.

17. Needless to mention, since the Applicant has already completed 2 full tenures and was due for transfer, the question of attracting Section 4(5) of 'Transfer Act 2005' does not survive.

18. Now, it comes to the grievance of not considering options given by the Applicant. In this behalf, pertinent to note that this ground is raised during the course of argument only and there is no such specific pleadings about not considering options in O.A. Be that as it may, the perusal of options given by the Applicant reveals that he had given 10 options and out of it, 2 are from Thane and remaining 8 are from Mumbai Suburban. True, as per G.R. dated 09.04.2018 issued by Government for transfer on counseling, the options given by a Government servant need to be considered. However, it is subject to the administrative convenience, exigencies and vacancies. The options cannot be claimed as of right. Indeed, what G.R. stated as under :-

“नागरी सेवामंडळाने समुपदेशाद्वारे बदलीची शिफारस करतांना कर्मचा-यांचा पसंतीक्रम, प्राधान्यक्रम व यापूर्वी कोणकोणत्या ठिकाणी सेवा केली या बाबी विचारात घेताना प्रशासनाची निकडदेखील विचारात घेणे आवश्यक असल्याने सर्वानाच पसंतीक्रमाच्या ठिकाणीच बदली करणे शक्य होणार नाही.”

19. It is thus explicit from the options given by the Applicant that he does not want to leave Mumbai Division and has not given options out of Mumbai Division (Konkan Division) though the post is transferrable throughout Maharashtra. Therefore, where considering the vacancies situation and administrative exigencies, the Applicant is transferred to Beed after completion of normal tenure, no exception can be taken to such transfer order. There is no violation of express provisions of 'Transfer Act 2005' nor impugned transfer order can be said motivated or

colourable exercise of powers. The challenge to the transfer order is, therefore, devoid of merit.

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

ORDER

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

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 10.12.2021

Dictation taken by :

S.K. Wamanse.

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