

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.583 OF 2023

**DISTRICT : MUMBAI
SUBJECT : Transfer**

Shri Ajay Vasant Dalvi.)
Age : 54 Yrs, Working as Inspector of)
State Excise 'E' Division, Mumbai City.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Chief Secretary.)
General Administration Department,)
Madam Cama Road, Mumbai – 32.)
2. Additional Chief Secretary,)
Home Department (State Excise),)
Madam Kama Marg, Hutatma)
Rajguru Chowk, Mantralaya,)
Mumbai – 400 032.)
3. Commissioner of State Excise,)
Old Custom House, 2nd Floor,)
Shahid Bhagatsing Marg,)
Fort, Mumbai – 400 023.)
4. Shri Dattatraya R. Shinde.)
Inspector Flying Squad No.1,)
Superintendent of State Excise,)
Raigad, Alibaug.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.

CORAM : DEBASHISH CHAKRABARTY, MEMBER-A

DATE : 24.01.2024

JUDGMENT

1. The Applicant who is serving on the post of 'Inspector of State Excise' has challenged by invoking provisions of 'Section 19' of 'The Administrative Tribunals Act 1985' the Transfer Order of Home Department dated 19.05.2023 by which he has been transferred from 'E Division', Mumbai City District to M/s. Nagpur Distilleries, Nagpur District

2. The Applicant was represented by Smt. Punam Mahajan, learned Advocate; while Respondents 1 to 3 were represented by Shri A.J. Chougule, learned Presenting Officer.

3. The learned Advocate for Applicant stated that Applicant was promoted to the post of 'Inspector of State Excise' and posted in Ahmednagar District under 'Nasik Division' on 27.03.2017. The Applicant had made several representations on 03.01.2019, 24.09.2019 and 22.06.2020 requesting for transfer to 'Konkan-2 Division', as he was suffering from 'Heart Ailment'.

4. The learned Advocate for Applicant further stated that due to 'Covid-19 Pandemic'; the State Government had issued GAD GR dated 07.07.2020 whereby the period of 'General Transfers : 2020' was extended till 31.07.2020. The General Transfers 2020 were to be done only to an extent of 15% of total filled-up posts. The period for General Transfers 2020 was further extended by the GAD GR dated 23.07.2020 upto 10.08.2020.

5. The learned Advocate for Applicant then submitted that the request of Applicant was finally considered and by Transfer Order of Home Department dated 06.08.2020, he came to be allotted to 'Konkan-2 Division'.

6. The learned Advocate for the Applicant then submitted that to the best of the knowledge of Applicant, all other 'Administrative Departments' considered only those Government Servants who had completed or were likely to complete 'Normal Tenure' of 3 years as on 31/05/2023 as eligible for 'General Transfers 2023'. However, Respondent No.3 for extraneous reasons had issued letter dated 20/04/2023 mentioning that officers serving under the 'Commissioner of State Excise, Mumbai' who had been transferred upto 10/08/2020 will also be considered for 'General Transfers : 2023'. The action of Respondent No.3 was thus totally contrary to the provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

7. The learned Advocate for Applicant further stated that Applicant had submitted representation on 04/05/2023 and given 6 Options. The Applicant's request was however not considered and he came to be posted to M/s. Nagpur Distilleries, Nagpur by the Transfer Order of Home Department dated 19/05/2023. The Respondent No.4 has been transferred in place of the Applicant although he was also not due for 'General Transfers 2023'.

8. The learned Advocate for the Applicant stated that Applicant could have been accommodated on any of the 6 Options considering the genuine difficulties of the Applicant i.e. (i) 'Heart Ailment' of Applicant and (ii) 'Brain Tumor' of the Mother of Applicant. She claimed that GAD GR dated 09/04/2018 was applicable to the Applicant.

9. The learned Advocate of Applicant further proceeded to argue that Applicant was entitled for 'Normal Tenure' of 03 years on the present posting as 'Inspector of State Excise' in 'E' Division, Mumbai City'. The Applicant was transferred on the present post on 10.08.2020 and had completed only 2 years 9 months at the time of Transfer Order of Home Department dated 19.05.2023. The Transfer Order of Home Department

dated 19.05.2023 thus is 'Mid-Tenure' transfer of the Applicant for which 'Special reasons' or 'Exceptional Circumstances' must exist and it just cannot be 'Administrative Exigency'. Therefore, the case of Applicant does not at fall under 'Administrative Exigency'. Thus, the Transfer Order of Home Department dated 19.05.2023 is bad in law and is liable to set aside on this ground alone. The learned Advocate of Applicant then proceeded to argue that Transfer Order of Home Department dated 19.05.2023 came to be issued before completion of the 'Normal Tenure' of 3 years of the Applicant and evidently, there was no compliance of 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'.

10. The learned Advocate of Applicant further argued that the case of the Applicant was not placed before the Civil Services Board (CSB), though it was mandatory to do so and Transfer Order of Home Department dated 19.05.2023 was issued in violation of the express observations of the Hon'ble Supreme Court of India in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**.

11. The learned Advocate of Applicant then proceeded to argue that the Transfer Order of Home Department dated 19.05.2025 of Applicant came to be issued only for some extraneous reasons and was a clear case of 'Colourable Exercise' of 'Statutory Powers' by the Competent Transferring Authority.

12. The learned Advocate for the Applicant concluded her arguments by stating that the challenge to Transfer Order of Home Department dated 19.05.2023 by which the Applicant was posted to M/s. Nagpur Distilleries, Nagpur be quashed and set aside on grounds that it was (i) 'Mid-Tenure' Transfer, (ii) 'Non-Observance' of GAD G.R. dated 09.04.2018 and (iii) 'Undue Accommodation' of 'Respondent No.4'.

13. The learned PO relied on the Affidavit-in-Reply dated 27.06.2023 filed on behalf of Respondent No.2 and stated that Respondent No. 3 had published the Seniority List on 20.04.2023 of officers of the cadre of Inspector of State Excise who were due for 'General Transfers : 2023' along with list of likely to be available posts. The learned PO stressed that Applicant had submitted application on 04.05.2023 giving 6 Options which were all in Mumbai Suburban District. Learned PO further stated that Applicant had not challenged the Seniority List of officers due for 'General Transfers : 2023' when it was published by Respondent No.3 on 20.04.2023. The learned PO contended that the Applicant had invoked 'Section 19' of 'The Administrative Tribunals Act 1985' only after he did not get any posting as per 6 Options which were all in Mumbai Suburban District. The Applicant was aware that he may be transferred because Respondent No.3 had published on 20.04.2023 the Seniority List of officers eligible for 'General Transfers : 2023' which also mentioned that the officers included were those whose earlier Transfer Orders had been issued upto 10.08.2020 on account of 'Covid-19 Pandemic'.

14. The learned PO further stated that in respect of the cadre of 'Inspector of State Excise', the Additional Chief Secretary of State Excise Department was 'Competent Transferring Authority' and 'Hon'ble Chief Minister of Maharashtra State' was the next 'Superior Transferring Authority' as per Home Department GR dated 16.09.2016. Further, vide Home Department GR dated 19 May, 2017, the powers of next 'Superior Transferring Authority' for 'Mid-Term' and 'Mid-Tenure' transfers which were with 'Hon'ble Chief Minister of Maharashtra State' came to be delegated to 'Hon'ble Minister Incharge of State Excise Department'. Thereafter, the Home Department GR dated 11.04.2022 again reiterated that all powers of 'General Transfers' and 'Mid-Term' & 'Mid-Tenure' transfers for the cadre of 'Inspectors of State Excise' were vested with the 'Hon'ble Minister Incharge of State Excise Department'.

15. The learned PO then submitted that by Home Department GR dated 14.06.2016, the 'CSB' has been constituted under chairmanship of 'Additional Chief Secretary State Excise Department' for consideration of proposals for transfer of officers in cadre of 'Inspector of State Excise'. Accordingly, the meeting of 'CSB' under chairmanship of 'Additional Chief Secretary, State Excise Department' was held on 03.05.2023. The 'CSB' had considered cases of officers in cadre of 'Inspector of State Excise' who were eligible for 'General Transfers : 2023' as was mentioned in letter dated 20.04.2023. The 'CSB' had recommended the case of Applicant as well as other eligible officers for 'General Transfers : 2023'. The 'CSB' had specifically recorded that many officers in the cadre of 'Inspector of State Excise' who had been posted by Transfer Orders upto 10.08.2020 on account of 'Covid-19 Pandemic' and thus had completed more than 2 and 9 months will also be considered for 'General Transfers : 2023' because over stay of such officers in cadre of 'Inspector of State Excise' would create vested interests, since their role was directly related to collection of 'Government Revenues'.

16. The learned P.O. finally summarized his arguments by stating that due procedure was followed while issuing Transfer Order of Home Department dated 19.05.2023 of Applicant. The case of Applicant was considered by 'CSB' and its recommendations were approved by the 'Competent Transferring Authority' and next 'Superior Transferring Authority' both of which were the 'Hon'ble Minister In-charge of State Excise Department' as per Home Department GR dated 11.04.2022. Therefore, there is no merit in the case of Applicant.

17. The arguments of learned Advocate for Applicant and the learned PO on behalf of Respondents were heard at length, as per provisions of 'Section 22' of the 'Administrative Tribunals Act 1985'.

18. The Transfer Order of Home Department dated 19.05.2023 of the Applicant is an instance of 'Mid-Tenure' transfer because of the

cascading impact of GAD GR dated 07.07.2020 by which the period of 'General Transfers : 2023' came to be extended initially upto 31.07.2020 and later upto 10.08.2020 in the midst of unprecedented occurrence of 'Covid-19-Pandemic'. The Applicant was accordingly transferred belatedly on 10.08.2020 along with change of 'Revenue Division' from 'Nasik Division' to 'Konkan-2 Division' and was posted as Inspector of State Excise in 'E-Division', Mumbai City District. The period of 'Normal Tenure' of 3 years of the Applicant under Section 3(2) 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') should therefore have been reckoned from 10.08.2020; which was the last date for 'General Transfers : 2020'. The 'General Transfers : 2023' of 'Inspectors of State Excise' as per Section 3(1)(a) consequently could have been undertaken only after 10.08.2023. However, 'Covid-19 Pandemic' which was 'Black Swan Event' had led to temporary disruption of administrative functions which included the 'General Transfers : 2020'. Hence, after 'Covid-19 Pandemic' had got over, it would have been prudent on the part of GAD to issue appropriate clarification before commencement of procedures for 'General Transfers : 2023' about how to count 'Normal Tenure' of 3 years of those Government Servants who were last transferred upto 10.08.2020, so as not to lead to cascading non-implementation of 'Section 3(1)' of 'Transfer Act 2005'. Be that as it may; in the absence of any appropriate clarification from GAD prior to commencement of procedures for 'General Transfers : 2023', in case of Applicant, it was still reckoned from 10.08.2020 as per 'Minutes of Meeting' of CSB held on 03.05.2023. However, it recorded that officers in the cadre of 'Inspector of State Excise' who had completed 2 years and 9 Months' like Applicant would be eligible to be transferred during 'General Transfers : 2023' albeit by invoking provisions of Section 4(4)(ii) and 4(5) of the 'Transfer Act 2005' so as to prevent vested interests being created resulting in adverse impact on collection of 'Government Revenues'.

19. The CSB by seeking to invoke Section 4(4)(ii) and Section 4(5) of the 'Transfer Act 2005' to effect the 'Mid-Tenure' transfer of 'Inspectors of State Excise' certainly did not attempt to disguise them as 'General Transfers : 2023' though they came to be effected during the months of 'April and May'; which is earmarked time span under Section 4(4) for transfers of those Government Servants who have completed 'Normal Tenures' of 3 Years. However, in law, there is no express bar for 'General Transfers' and 'Mid-Tenure' transfers of Government Servants to be effected concomitantly in 'April and May' though it would be necessary to observe the provisions of Section 4(4)(ii) & Section 4(5) always and every time including if such 'Mid-Tenure' transfers are required to be done during 'April and May' after observing the policy guidelines of GAD Circular dated 11.02.2015. In the aforesaid context, therefore, transfer of Applicant is admittedly 'Mid-Tenure' transfer though it was effected on 19.05.2023 along with that of many other 'Inspectors of State Excise' who were to be due for 'General Transfers : 2023' only after 10.08.2023. The 'Hon'ble Minister Incharge of State Excise Department' was competent to exercise the provisions of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' for which 'Special Reasons' and 'Exceptional Circumstances' had to be recorded. Interestingly, the 'CSB' recorded this 'Special Reasons' and 'Exceptional Circumstances' to be prevention of vested interests being created and for securing 'Government Revenues'. However, it is an undeniable fact that protection of 'Government Revenues' is the duty and responsibility of all Government Servants as they are to abide by provisions of MCS (Conduct) Rules 1979 and it could not have been made applicable exceptionally to any particular class of Government Servants such as 'Inspectors of State Excise'.

20. The 'Mid-Term' and 'Mid-Tenure' transfers under Section 4(4)(ii) and 4(5) of 'Transfer Act 2005' have to be done invariably by the 'Competent Transferring Authority' with prior approval of the next 'Superior Transferring Authority'. The 'Statutory Powers' of the 'Competent Transferring Authority' in case of 'General Transfers' may be

delegated as these are categorized as per 'Groups 'A to D' and 'Scales of Pay' of Government Servants under provisions of Section 6 of 'Transfer Act 2005'. However, there is no such enabling provision for delegation of powers vested with the next 'Superior Transferring Authority' under Section 4(4)(ii) read with Section 4(5) under the 'Transfer Act 2005'. Hence, serious question of law come to the fore as to how these 'Statutory Powers' which necessitate prior approval of next 'Superior Transferring Authority' came to be delegated to the 'Hon'ble Minister In-charge of State Excise Department' juxtaposing them with his own 'Statutory Powers' as 'Competent Transferring Authority'. The Transfer Order of Home Department dated 19.05.2025 of Applicant was issued as per such delegated 'Statutory Powers' under Home Department G.R. dated 11.04.2022. The 'Competent Transferring Authority' cannot be delegated powers of 'Mid-Term' & 'Mid-Tenure' transfers by the next 'Superior Transferring Authority' so as to vest him with unabridged authority which undermines the letter and spirit of law under the 'Transfer Act 2005'. Hence, all such approvals of 'Mid-Term and 'Mid-Tenure' transfers of 'Inspectors of State Excise' during 'General Transfers 2023' are rendered vulnerable and infirm in the eyes of law. However, as there is no specific challenge to the validity of Home Department GR dated 11.04.2022 in present proceedings under 'Section 19' of the 'Administrative Tribunals Act 1985', no adversarial orders are required to be passed in respect of all such 'Mid-Term' & 'Mid-Tenure' transfers of 'Inspectors of State Excise'. Nonetheless; it is imperative that appropriate remedial action is taken in this regard by Additional Chief Secretary, State Excise Department with concurrence of GAD as it is the nodal 'Administrative Department' for implementation of the 'Transfer Act 2005'.

21. The Transfer Order of Home Department dated 19.05.2023 by which Applicant has been transferred from post of Inspector of State Excise in 'E' Division, Mumbai City to M/s. Nagpur Distilleries, Nagpur District has been independently challenged under 'Section 19' of 'The

Administrative Tribunals Act 1985' and is thus liable to be quashed and set aside purely on point of law for reasons mentioned above, as it has been approved by the 'Minister In-charge of the State Excise Department' while co-exercising 'Statutory Powers' of both 'Competent Transferring Authority' and next 'Superior Transferring Authority' under the 'Transfer Act 2005'.

22. The Applicant was aware that he would be soon due for 'General Transfers 2023' but after completing 3 years of 'Normal Tenure' on the post of Inspector of State Excise in 'E' Division, Mumbai City on 10.08.2023 and even gave 6 Options of postings which were all in Mumbai Suburban District. As rightly contended by the respondents, all 6 Options given by Applicant were only for 'Territorial Charges' in Mumbai Suburban District and it is only on being transferred to M/s. Nagpur Distilleries, District Nagpur that 'Section 19' of 'The Administrative Tribunals Act 1985' came to be invoked by the Applicant.

23. The 'Mid-Term' transfer of Applicant to M/s. Nagpur Distilleries, District Nagpur however cannot be upheld since it has been approved by the 'Minister In-charge of State Excise Department' as both 'Competent Transferring Authority' and next 'Superior Transferring Authority'. The 'Minister-in-Charge of State Excise' may have been under the bonafide belief that 'Statutory Powers' under 'Section 4(4)(ii)' and 'Section 5' of the 'Transfer Act 2005' had been delegated to him as per provisions of law by Home Department GR dated 11.04.2022. The Transfer Order of Applicant dated 19.05.2023 to M/s. Nagpur Distilleries, District Nagpur nonetheless is liable to be quashed and set aside as 'Statutory Powers' have not been exercised in accordance with the letter and spirit of law under 'Transfer Act 2005'. The Applicant's case has also to be considered against the backdrop of higher precedence required to be given to those Government Servants who have serious 'Heart Ailments' as per contents of 'Statement 2' of 'Annexure-1' of GAD GR dated 09.04.2018, as the Applicant suffers from 'Ischemic Heart Disease' and

had undergone 'Coronary Angioplasty' on 10.04.2015. The Applicant's 'Heart Function' was just about 25% when recorded in 2018 by team of Specialist Doctors from Grant Government Medical College & Sir J.J. Group of Hospitals, Mumbai. The Applicant has valuable right to be able to access proper treatment for his serious 'Heart Ailments'. Therefore, Additional Chief Secretary, State Excise Department to give compassionate consideration to the case of Applicant and issue Transfer Order to post Applicant on any 'Vacant Post' in either Mumbai City or Mumbai Suburban Districts having 'Light Duties' assigned for Inspector of State Excise. Hence, the following Order.

ORDER

- (i) The Original Application is Allowed.
- (ii) The Transfer Order of Home Department dated 19.05.2023 of Applicant is quashed and set aside.
- (iii) The Transfer Order of Applicant to be issued within Four Weeks for any 'Vacant Post' in either Mumbai City or Mumbai Suburban Districts having 'Light Duties' assigned for Inspector of State Excise.
- (iv) No Order as to Costs.

Sd/-
(DEBASHISH CHAKRABARTY)
Member-A

Mumbai

Date : 24.01.2024

Dictation taken by :

S.K. Wamanse.

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