

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.632 OF 2023

DISTRICT : MUMBAI

Sub.:- Transfer

Shri Rakesh Kisan Pawar.)
Age : 46 Yrs, Working as Sub-Inspector,)
State Excise, R/o. Abhyuday Nagar,)
MHB Colony, Kala Chowki, Mumbai – 33.)...**Applicant**

Versus

1. Commissioner, State Excise)
Department, Old Custom House,)
2nd Floor, SBS Road, Fort,)
Mumbai – 400 023.)
2. The State of Maharashtra.)
Through Principal Secretary,)
State Excise Department,)
Mantralaya, Mumbai – 400 032.)
3. Shri Suhas Zanjurne,)
Sub-Inspector, 'W' Division,)
Malvani Excise Station,)
Bit No.1, Marve Road, Malad (W),)
Mumbai – 400 069.)...**Respondents**

Shri D.B. Khaire, Advocate for Applicant.

Smt. A.B. Kololgi, Presenting Officer for Respondents 1 & 2.

Shri A.A. Gharte, Advocate for Respondent No.3.

CORAM : DEBASHISH CHAKRABARTY, MEMBER-A

DATE : 24.01.2024

JUDGMENT

1. The Applicant who is working as Sub-Inspector of State Excise has invoked provisions of Section 19 of The Administrative Tribunals Act

1985 to challenge the Transfer Order of Home Department dated 04.05.2023 by which he has been transferred from 'W' Division of Mumbai Suburban District to M/s. Jai Bhavani Cooperative Sugar Mills Ltd., Beed.

2. The learned Advocate for the Applicant stated that the Applicant was promoted to the post of 'Sub-Inspector of State Excise' in 2012 and thereafter had worked at 'Check Post' in Talasari, District Thane. Applicant was transferred from 'Check Post' in Talasari, District Thane to 'W' Division of Mumbai Suburban District by Transfer Order of Home Department dated 03.07.2016.

3. The learned Advocate for the Applicant further stated that Applicant was subsequently transferred as 'Sub-Inspector of State Excise' to 'FL01, Raigad' from 'W' Division of Mumbai Suburban District by Transfer Order of Home Department dated 10.08.2020. Applicant had challenged this Transfer Order of Home Department dated 10.08.2020 by filing OA No.435 of 2020 and it was allowed by Order dated 30.07.2021. The Applicant was consequently by Transfer Order of Home Department dated 11.08.2021 was reposted to his earlier post of 'Sub-Inspector of State Excise', in 'W' Division of Mumbai Suburban District.

4. The learned Advocate for the Applicant stated that the list of Sub-Inspectors of State Excise who were eligible for 'General Transfers 2023' was published by 'Commissioner of State Excise, Mumbai' on 28.03.2023. The name of the Applicant was included in this Seniority List at 'Serial No.35'. The Applicant had immediately submitted representation to 'Commissioner of State Excise, Mumbai' on 03.04.2023 bringing to his notice that he was not due for 'General Transfers 2023'; as he has not completed his 'Normal Tenure' of 3 years in 'W' Division of Mumbai Suburban District. The Applicant had specifically mentioned in this representation that he had completed just 1 year and 7 months in

'W' Division of Mumbai Suburban District, as he was re-posted by Transfer Order of Home Department dated 11.08.2021 consequent to Order dated 30.07.2021 in OA No.435 of 2020.

5. The learned Advocate for the Applicant concluded his submission by stating that the principal ground to challenge to Transfer Order of Home Department dated 04.05.2023 was the contravention of Section 3(1)(a) of the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' by which the Applicant was entitled to have 'Normal Tenure' of 3 years with effect from 11.08.2021 in 'W' Division of Mumbai Suburban District.

6. The learned PO relied on the contents of the Affidavit-in-Reply dated 28.08.2023 filed on behalf of Principal Secretary, State Excise Department and Commissioner of State Excise, Mumbai. The learned PO stated that the post of 'Sub-Inspector of State Excise' is in Group-C. Further, as per the 'Recruitment Rules of Sub-Inspector of State Excise 2009', the cadre of 'Sub-Inspector of State Excise' is at 'State Level' and thus the Applicant was liable to be transferred to any post in Maharashtra.

7. The learned PO stated that Applicant was promoted as 'Sub-Inspector of State Excise' in 2012 and thereafter had been transferred to 'Check Post' in Talasari, District Palghar. The Applicant was posted out from Check Post in Talasari, District Palghar on 03.07.2016 and had been continuously serving in 'W' Division of Mumbai Suburban District for the period from July, 2016 to August, 2020 (4 Years and 1 Month) and now again from August, 2021 to May, 2023 (1 year and 8 Months). Hence, Applicant had worked in 'W' Division of Mumbai Suburban District for total of 5 Years and 9 Months.

8. The learned PO then submitted that the post of Sub-Inspector is an 'Uniform Service'. She stated that the post of Sub-Inspectors of State

Excise are categorized, as those which are 'Executive Posts' vested with powers of Field Inspections, Liquor Licenses and Registration of Criminal Offences, etc. and those which are 'Non-Executive Posts' given the powers for Supervision of Liquor Production Factory Gate Operations and Dispatch of Liquor etc. The Home Department by letter dated 25.05.2021 has given policy guidelines to 'Commissioner of State Excise, Mumbai' to effect transfer of 'Sub-Inspectors of State Excise' by rotational tenures between such 'Executive Posts' and 'Non-Executive Posts' earmarked for the cadre of 'Sub-Inspectors of State Excise'.

9. The main contention of the Applicant is that period of 'Normal Tenure' of 3 years in 'W' Division of Mumbai Suburban District should have been counted with effect from 11.08.2021 when he came to be re-posted there by way of Order dated 30.09.2021 in OA No.435/2020 after he had been transferred to M/s. Magnum Traders FL-1, Thane, District Raigad by Transfer Order of Home Department dated 10.08.2020. The Applicant had not joined this post at M/s. Magnum Traders FL-1, Thane, District Raigad but afterwards rejoined on the post in 'W' Division of Mumbai Suburban District on 11.08.2021. On the other hand, the principal argument of Principal Secretary, State Excise Department and the Commissioner of State Excise, Mumbai is that, the Applicant had served in 'W' Division of Mumbai Suburban District from July 2016 to August 2020 (4 Years and 1 Months) and then again from August 2021 to May 2023 (1 Year and 8 Months), and he had intentionally not joined on the post of Sub-Inspector of State Excise in M/s. Magnum Traders FL-1, Thane, District Raigad but forthwith rejoined in 'W' Division of Mumbai Suburban District on 11.08.2021 subsequent to Order dated 30.07.2021 in OA No.435/2020. Thus, 'Commissioner of State Excise, Mumbai' has stressed that the tenure of Applicant in 'W' Division of Mumbai Suburban District should be counted without any break from July, 2016 to May, 2023 which would mean consecutive two tenures of more than 6 years on 'Executive Post'. So, there is no merit in case of

Applicant to count separately 'Normal Tenure' of 3 years from 11.08.2021 under provisions of Section 3(1) of 'Transfer Act 2005'.

10. The Hon'ble High Court at Bombay has examined the issue at length in **(2016) 1 MLJ 45 [Santosh N. Dalal Vs. State of Maharashtra & Ors.]**. In Para 12, the Hon'ble High Court at Bombay had held as under :-

“12. The combined reading of provisions of sections 3(1) and 4(1) shows that the normal tenure in a post of a government servant shall be 3 years. The first proviso to section 3(1) of the Act shows that an employee of Group 'C' from non-secretariat service may be retained at that office or department for two full tenures (one full tenure consists of 3 years). The proviso does not give right to the employee to get two full tenures at that office or department but it only allows the employer, competent authority, to continue the Group 'C' nonsecretariat employee to continue at the office or department for six years. The second proviso shows that if the employee of Group 'C' is from secretariat service he cannot be continued in the same post for more than 3 years and he shall not be continued in the same department for more than two consecutive tenures. The plain reading of section 3(1) and both the provisos shows that Group 'C' employee who is not from secretariat service can be kept at that office or department for six year but he belongs to secretariat service he cannot be kept in the same post for more than three years though he can be kept in the same department for two consecutive tenures. These restrictions are in public interests. These provisions on one hand, show that the State, competent authority can use these provisions for keeping one employee at the same station for two full tenures but the State is not expected to continue him after completion of two full tenures. Thus, the provision of Section 3(1) with the two provisos, does not show that any right is conferred on Group 'C' employee from non-secretariat service to Work at one station for Six Years.”

[underline supplied]

11. The central point of consideration in Applicant's case thus is whether to separately count 'Normal Tenure' of 3 Years afresh from 11.08.2021 when he was re-posted in 'W' Division of Mumbai Suburban District based on Order dated 30.07.2021 in OA No.435/2020 or to count consecutive 'Normal Tenures' of 3 Years without interim period of break which had occurred from 10.08.2020 to 11.08.2021. The Applicant had not joined as Sub-Inspector of State Excise at M/s. Magnum Traders FL-1, Thane, District Raigad. Hence, answer to the above question would be found in how the period of willful 'Absence from

Duty' of the Applicant from 10.08.2020 to 11.08.2021 has been subsequently treated by the 'Competent Authority' who is 'Commissioner of State Excise, Mumbai' and whether any order has been issued to regularize it under relevant provisions of Maharashtra Civil Services (Leave) Rules 1981. If this period since 10.08.2020 to 11.08.2021 when Applicant was knowingly absent from duty has been subsequently regularized by 'Commissioner of State Excise, Mumbai', based on the request made by Applicant as 'Leave Due & Admissible' thus showing that Applicant continued to serve on the post of Sub-Inspector of State Excise in 'W' Division of Mumbai Suburban District from 10.08.2020 to 11.08.2021, then two consecutive 'Normal Tenures' of 3 Years which began in July, 2016 would have undoubtedly come to an end in July, 2022. In such eventuality, the Transfer Order of Home Department dated 04.05.2023 of Applicant lies beyond challenge as per the judgment above cited of Hon'ble High Court at Bombay. However, if decision about the period of willful 'Absence from Duty' of Applicant from 10.08.2020 to 11.08.2021 has been kept in abeyance by 'Commissioner of State Excise, Mumbai' and not been regularized even though requested by Applicant, then as on the date of Transfer Order of Home Department dated 04.05.2023 by default the 'Truncation of Tenures' gets established and Applicant's date of re-joining on 11.08.2021 after order in OA No.435/2021 dated 30.07.2021 will have to be considered as beginning of new tenure in 'W' Division of Mumbai Suburban District with 'Normal Tenure' of 3 Years which is to get over on 11.08.2024. As no evidence came to be submitted with regard to status of period of willful 'Absence from Duty' by Applicant from 10.08.2020 to 11.08.2021, the 'Commissioner of State Excise, Mumbai' is directed to ascertain this and accordingly implement the Transfer Order of Home Department dated 04.05.2023 of the Applicant to M/s. Jai Bhavani Cooperative Sugar Mills, Beed. However, if the Applicant's period of willful 'Absence from Duty' from 10.08.2020 to 11.08.2021 had not been regularized as on the date of Transfer Order of Home Department dated 04.05.2023 even though it was sought by him, then Applicant would justiciably be entitled

to complete the 'Normal Tenure' of 3 Years on post of 'Sub-Inspector of State Excise' in 'W' Division of Mumbai Suburban District with effect from 11.08.2021, which will have to be extended beyond 11.08.2024 for accommodation of the additional period which was not available to him on account of Transfer Order of Home Department dated 04.05.2023 as it becomes an entitlement of the Applicant granted by way of order passed in 'Judicial Review'. The Respondent No.3 who came to be posted in place of Applicant in 'W' Division of Mumbai Suburban District will consequently have to be posted on any other 'Vacant Post' of Sub-Inspector, State Excise in either Mumbai City District or Mumbai Suburban District.

ORDER

- (i) The Original Application is partly Allowed.
- (ii) The 'Commissioner of State Excise, Mumbai' as per directions to complete the exercise in respect of the Applicant within Four Weeks.
- (iii) 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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