

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NOS.575 TO 578 OF 2021
WITH
ORIGINAL APPLICATION NOS.608 & 609 & 616 OF 2021
WITH
ORIGINAL APPLICATION NO.735 OF 2021**

ORIGINAL APPLICATION NO.575 OF 2021

Shri Santosh Anant Panchal.)
Age : 43 Yrs, Occu.: Sub Inspector)
(State Excise), I-2, Mumbai and residing at)
A-9, Vaibhavdeep Co-op.Hsg.Soc.,)
Karve Road, Near Baghshala Maidan,)
Gokul Bungalow, Dombivli (W), 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. Shri Vinod Sudam Jadhav.)
Presently working as Sub Inspector,)
State Excise in the office of Inspector)
State Excise, I-2, Mumbai City,)
Sewree Excise Station, Sewree Fort)
Road, Sewree (E), Mumbai – 15.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.576 OF 2021

Shri Ravi Ramchandra Kolse.)
 Age : 54 Yrs, Occu.: Sub Inspector)
 (State Excise), U Division, Beat No.1,)
 Mumbai Suburban and residing at)
 Building No.5, Room No.697,)
 Government Colony, Bandra (E),)
 Mumbai – 400 051.)...**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. Shri Appa Madan Chavan.)
 State Excise, U Division,)
 Mumbai Suburban, Andheri,)
 Mumbai.)...**Respondents**

WITH**ORIGINAL APPLICATION NO.577 OF 2021**

Shri Anil Ramesh Shinde.)
 Age : 42 Yrs, Occu.: Sub Inspector)
 (State Excise), C-2 Mumbai and)
 residing at Government Colony, B-150/8,)
 Bandra (E), Mumbai – 400 051.)...**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. Shri Rafiq Mamud Shaikh.)
R/at Sub Inspector, State Excise)
C-2, Mumbai City, Sewree Excise)
Station, Sewree Fort Road,)
Sewree (E), Mumbai – 15.) **...Respondents**

WITH

ORIGINAL APPLICATION NO.578 OF 2021

Shri Ramkrushna Bhikaji Lanjekar.)
Age : 48 Yrs, Occu.: Sub Inspector)
(State Excise), Ulhas Nagar 1, Thane and)
residing at R4/5, Government Quarters,)
2nd Floor, Room No.202, Buddha Vihar)
Road, Tilak Nagar, Chembur,)
Mumbai – 400 086.) **...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. Shri Prashant Krudhnarav Yerpude.)
Presently working as Sub Inspector,)

State Excise in the office of Inspector)
 State Excise, PWD Compound,)
 Next to Central Hospital,)
 Ulhasnagar Camp-3.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.608 OF 2021

Shri Ravindra Gopal More.)
 Age : 53 Yrs, Occu.: Sub Inspector)
 (State Excise), C Division, Beat No.1)
 Mumbai City and residing at 1201, Rajas)
 Residency, Pantnagar, Ghatkopar (E),)
 Mumbai – 400 075.)...**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. Shri Pratap Mahadev Kharbe.)
 Sub Inspector , (State Excise), C-1)
 Division, Mumbai City,)
 Shivadi Warehouse, Shivadi Fort)
 Road, Shivadi, Mumbai – 400 015.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.609 OF 2021

Shri Ankush Baburao Burkul.)
 Age : 53 Yrs, Occu.: Sub Inspector)

(State Excise), In the Office of)
 Superintendent of State Excise, Roha,)
 Alibagh, Raigad.)...**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. Shri Pratap Mahadev Kharbe.)
 Sub Inspector , (State Excise), C-1)
 Division, Mumbai City,)
 Shivadi Warehouse, Shivadi Fort)
 Road, Shivadi, Mumbai – 400 015.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.616 OF 2021

Shri Vishwas Laxman Gadade.)
 Age : 44 Yrs, Occu.: Circle Officer,)
 R/at Ashiyana Village, Katrang-Khopoli,)
 Tal.: Khalapur, District : Raigad.)...**Applicant**

Versus

1. The District Collector.)
 Raigad.)
2. Shri C.S. Khot.)
 Circle Officer, Khopoli,)
 Tahasil Office Khalapur,)
 District : Raigad.)
3. Shri Tushar M. Kamat.)

Circle Officer Vavoshi,)
 Tahasil Office Khalapur,)
 District : Raigad.)

4. Shri Kiran G. Patil.)
 Circle Officer Chowk,)
 Tahasil Office Khalapur,)
 District : Raigad.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.735 OF 2021

Shri Jitendra K. Mazgaonkar.)
 Age : 55 Yrs, Occu.: Sub Inspector in the)
 Office of State Excise, Panvel City,)
 District : Raigad and residing at House No.)
 1034-B, Mora Koliwada, Near Fish Market,)
 Uran, District : Raigad.)...**Applicant**

Versus

1. The Commissioner.)
 State Excise Department, Mumbai,)
 Having Office at 2nd Floor,)
 Old Custom House, SBS Road, Fort,)
 Mumbai – 400 023.)
3. Shri Shivaji Shripati Gaikwad.)
 Aged : Adult, working as)
 Sub Inspector, Flying Squad No.2,)
 Panvel, District : Raigad and)
 Transferred in place of Applicant,)
 State Excise, Inspector of Panvel,)
 144-17, High Point Co-op.Hsg.Soc,)
 Ltd., Lasdanvala Complex, Sewree)
 Road, Opp. Takka Naka, Old Panvel,)
 Maharashtra – 410 208.)...**Respondents**

**Mr. S.S. Dere a/w Mr. M.B. Kadam, Advocate for Applicants in
 O.A.Nos.575 to 578/2021.**

Mrs. Punam Mahajan, Advocate for Applicants in O.A.Nos.608 & 609/2021.

Mr. A.V. Bandiwadekar with Mr. K.R. Jagdale, learned Advocates for Applicant in O.A.No.616/2021.

Mr. Arvind V. Bandiwadekar, Advocate for Applicant in O.A.No.735/2021.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents in O.A.Nos.575 to 578/2021 & O.A.Nos.608 & 609/2021.

Mrs. A.B. Kololgi, Presenting Officer for Respondents in O.A.No.735/2021.

Shri D.B. Khaire, Advocate for Respondent No.3 in O.A.575, 577 & 608/2021.

Mr. M.D. Lonkar, Advocate for Respondent No.3 in O.A.No.576/2021.

Mr. C.T. Chandratre, Advocate for Respondent Nos.3 & 4 in O.A.No.616/2021.

Mr. K.R. Jagdale, Advocate for Respondent No.2 in O.A.735/2021.

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

DATE : 13.01.2022

JUDGMENT

1. In all these Original Applications, the challenge is to the transfer order on the common ground that Applicants are entitled to 6 years' tenure in a post, but transferred on completion of 3 years' tenure without there being compliance of Section 4(5) 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). Since issue involved in all these O.As. is common, they are decided by common Judgment.

2. The Applicants in all these O.As (except in O.A.No.616/21) are serving on the post of Sub-Inspector, State Excise and by common transfer order dated 09.08.2021 passed by Commissioner, State Excise, Mumbai, they are transferred to different places on the ground that they have completed normal tenure of 3 year in a post held by them at the time of impugned transfer order. Whereas, Applicant in O.A.No.616/2021 is serving in the cadre of Circle Officer. He was serving as Circle Officer, Khopoli, Tahasil Karyalaya, Khalapur, District Raigad and transferred as Circle Officer, Indapur Tahasil Office, Mangaon, District Raigad.

3. Following Chart shows the post vis-à-vis tenure of the Applicant previously held, present posting after transfer, posting of private Respondent in the matter of transfers of Sub-Inspector, State Excise Department.

Sr.No.	O.A.No.	Applicant Name	Previous Posting	Option submitted by Applicant	Place of Present Transfer	Posting of Private Respondent
1	575/2021	Mr. Santosh Anant Panchal	1) Mumbai Surban (01.06.2012 to 03.07.2016) (4 Year 1 Month) 2) Ratnagiri (04.06.2016 to 08.10.2017) (1 Year 4 Month) 3) Mumbai City (27.12.2017 to 09.08.2021) (3 Years)	1) T-1 Mumbai Suburban 2) T-2 Mumbai Suburban 3) L-1 Mumbai Suburban 4) A-1 Thane 5) A-2 Thane 6) B-1 Thane 7) B-2 Thane 8)E-2 Thane 9) F-1 Thane 10) F-2 Thane	Pune	Mr. Vinod S. Jadhav trasfer by promotion by order date 27.08.2021 at I-2 Mumbai city
2	576/2021	Mr. Ravi Ramchandra Kolse	1) Thane (19.10.2011 to	1) O-1 Mumbai Suburban	Hingoli	Mr. Appa Madan Chavan

			09.06.2015) (3 Years 8 Month) 2) Thane (10.06.2015 to 10.05.2018) (3 Years) 3) Mumbai Surban (11.05.2018 to 09.08.2021) (3 Years)	2) O-2 Mumbai Suburban 3) Q-2 Mumbai Suburban 4) T-1 Mumbai Suburban 5) T-2 Mumbai City 6) V-1 Mumbai Suburban 7) W-2 Mumbai Suburban 8) B-2 Thane 9) Kalyan-2 Thane 10) F-2 Thane		transferred by order date. 09.08.2021 U-1 Mumbai Surban
3	577/2021	Mr. Anil R. Shinde	1) Thane (Feb 2012 to May 2015) (3 Years 3 Month) 2) Mumbai Surban (June 2015 to May 2018) (3 Years) 3) Mumbai City (08.05.2018 to 09.08.2021) (3 Years)	1) L-1 Mumbai Suburban 2) O-2 Mumbai Suburban 3) U-1 Mumbai Suburban 4) W-2 Mumbai Suburban 5) B-2 Thane 6) C-1 Thane 7) C-2 Thane 8) D-1 Thane 9) F-2 Thane 10)Kokan Division Flying Squad	Satara	Mr. Rafiq Mamud Shaikh (transfer promotion order date 27.08.2021) C-2 Mumbai City
4	578/2021	Mr. Ramkrishna Bhikaji Lanjekar	1) Thane (Feb 2012 to May 2015) (3 Years 3 Month) 2) Mumbai Surban (June 2015		Dhule	Mr. Prashant K. Yerpude (Transferd by promotion date 27.08.2021 to

			to May 2018) (3 Years) 3) Mumbai City (08.05.2018 to 09.08.2021) (3 Years)			Ulhasnagar Thane
5	608/2021	Mr. Ravindra Gopal More	1) Mumbai Surban (May 2012 to May 2015) (3 Years) 2) Mumbai Surban (May 2015 to 08.05.2018) (3 Years) 3) Mumbai City (08.05.2018 to 09.08.2021) (3 Years 3 Months)	1) O-1 Mumbai Suburban 2) O-2 Mumbai Suburban 3) K-1 Mumbai Suburban 4) L-1 Mumbai Suburban 5) T-1 Mumbai Suburban 6) Q-2 Mumbai Suburban 7) U-1 Mumbai Suburban 8) J-2 Mumbai Suburban 9) Palghar-1 10) F-2 Thane	Nashik	
6	609/2021	Mr. Ankush B. Burkul	1) Mumbai (01.06.2012 to 31.05.2015) (3 Years) 2) Thane (01.06.2015 to 08.05.2018) (3 Years) 3) Raigad (22.05.2018 till 09.08.2021) (3 Years 4 Months)	1) J-2 Mumbai Suburban 2) K-1 Mumbai Suburban 3) V-1 Mumbai Suburban 4) U-2 Mumbai Suburban 5) W-2 Mumbai City 6) F-2 Thane 7) Ambarnath-2 Thane 8) Vasai-2 Palghar 9) I-1	Satara	Mr. Sidhram M. Sankpal by order 09.08.2021 Roha, Dist : Raigad

				Mumbai City 10) C-2 Mumbai City		
7	735/2021	Mr. Jitendra K. Mazgaonkar	1) Mumbai Surban (Oct 2011 to 30.05.2015) (3 Years 6 Months) 2) Mumbai City (01.06.2015 to 08.05.2018) (3 Years) 3) Raigad (09.05.2018 to 09.08.2021) (3 Years 3 Months) (3 Years) 2)Thane (01.06.2015 to 08.05.2018) (3 Years) 3) Raigad (22.05.2018 till 09.08.2021) (3 Years 4 Months)	1) K-1 Mumbai Suburban 2) B-2 Thane City 3) F-Thane 4) Q-2 Mumbai Suburban 5) L-2 Mumbai Suburban 6) R-1 Mumbai Suburban 7) O-2 Mumbai Suburbane 8) F-1 Thane 9) U-1 Mumbai Suburban 10)Panvel gramin -1 Raigad	Aurangabad	Mr. Shivaji Shripati Gaikwad Transfer order date 09.08.2021 Panvel-1 Dist : Raigad

4. Whereas in O.A.No.616/2021, the Applicant is serving in the cadre of Circle Officer and by impugned transfer order dated 09.08.2021, he is transferred from the post of Circle Officer, Khopoli Tahasil Office, Khalapur, District Raigad to Circle Officer, Indapur Tahasil Office, Mangaon, District Raigad inter-alia contending that he too, has not completed 6 years' tenure, and therefore, the impugned transfer order is bad in law.

5. In the matter of transfer of State Excise Sub-Inspectors, the Commissioner, State Excise transferred 150 Excise Sub-Inspectors who have completed 3 years in a post by order dated 09.08.2021 after the

recommendation of Civil Services Board for their transfers. The Applicants have already joined the place where they are transferred.

6. Heard Mr. S.S. Dere a/w Mr. M.B. Kadam, Advocate for Applicants in O.A.Nos.575 to 578/2021, Mrs. Punam Mahajan, Advocate for Applicants in O.A.Nos.608 & 609/2021, Mr. A.V. Bandiwadekar a/w Mr. K.R. Jagdale, learned Advocates for Applicant in O.A.No.616/2021, Mr. Arvind V. Bandiwadekar, Advocate for Applicant in O.A.No.735/2021, Mrs. K.S. Gaikwad, Presenting Officer for Respondents in O.A.Nos.575 to 578/2021 & O.A.Nos.608 & 609/2021, Mrs. A.B. Kololgi, Presenting Officer for Respondents in O.A.No.735/2021, Shri D.B. Khaire, Advocate for Respondent No.3 in O.A.575, 577 & 608/2021, Mr. M.D. Lonkar, Advocate for Respondent No.3 in O.A.No.576/2021, Mr. C.T. Chandratre, Advocate for Respondent Nos.3 & 4 in O.A.No.616/2021 and Mr. K.R. Jagdale, Advocate for Respondent No.2 in O.A.735/2021.

7. The bone of contention is about extent of tenure in a post in Group 'C' employee of non-secretariat post as to whether it is 3 year or 6 year in the light of Section 3 of 'Transfer Act 2005'. Section 3 of 'Transfer Act 2005' is as follows :-

“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.”

Whereas Section 4(5) of 'Transfer Act 2005' is as under :-

4(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of immediately superior Competent

Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

8. Admittedly, Applicants have completed 3 years’ tenure in a post previously occupied by them before transfer.

9. The common submission of the learned Advocate for the Applicants is that the Applicants are entitled to two full tenures (six years) in a post held by them in the light of first proviso to Section 3(1) of ‘Transfer Act 2005’, but Applicants being transferred only on completion of one tenure in a post, the impugned transfer orders are in contravention of ‘Transfer Act 2005’. The learned Advocate for the Applicants have also pointed out that admittedly, the Respondents have not taken recourse of Section 4(5) of ‘Transfer Act 2005’, but Applicants are transferred as if they were due for transfer under the misconception that their tenure is only three years, and therefore, in absence of compliance of Section 4(5) of ‘Transfer Act 2005’, all these transfer orders are liable to be quashed.

10. In this behalf, learned Advocate for the Applicants heavily placed reliance on the Judgment of Hon’ble High Court in ***Writ Petition No.10330/2019 (Sachin S. Raut Vs. State of Maharashtra) decided on 08.11.2019***. Reference is particularly made to Para No.10 of the Judgment wherein it has been observed “In the present case, admittedly, the petitioner is a Class-III (Group-C) employee. He is in a non-secretariat service. As such, he has right to complete two full tenures at the office.”

11. Whereas it was common submission advanced by the learned Presenting Officer as well as learned Advocates appearing for private Respondents that Applicants are entitled to 3 years’ tenure only in a post and 1st proviso to Section 3(1) of ‘Transfer Act 2005’ cannot be interpreted in a manner that the Government servants are entitled to 6 years’ tenure in a post or in that office or department as a legally vested right. They further submits that the tenure of all Group ‘A’, ‘B’ and ‘C’

Government servants in a post shall be 3 years as specifically provided in Section 3(1) of 'Transfer Act 2005', and therefore, first proviso appended to it cannot enlarge the scope of main enactment which specifically provides for 3 years' tenure in a post. Accordingly to learned Advocates for private Respondents, the scope of first proviso is very limited which at the most gives discretion to the Government / Competent Authority to continue a Government servant of Group 'C' from non-secretariat services to continue for maximum period of two full tenures may be on the same post or on two post together at that office or department, but no such vested right is conferred to have two full tenures in a post. In this behalf, Shri D.B. Khaire and Shri M.D. Lonkar, learned Advocates for private Respondents referred to the decision rendered by Division Bench of this Tribunal in O.A.No.376/2007 decided with **O.A.No.377/2007 (Murlidhar C. Patil Vs. Government of Maharashtra & Ors.) decided on 4th October, 2007** wherein Tribunal discussed the aim and object of 'Transfer Act 2005' in detail and observed and in Para No.92 of the Judgment held that "Thus, it cannot be said that Group 'C' Government servant gets a right to be posted in a post for a period of 6 years. The legislature in its wisdom has used word "Office" and not "Post" in this proviso, which is a pointer to our conclusion. In our considered view, Group 'C' Government employee can be posted in a particular office for 6 years and in post for 3 years. Apart, reliance is heavily placed on the Judgment of Hon'ble High Court **(2016) 1 MLJ 45 [Santosh N. Dalal Vs. State of Maharashtra & Ors.]** which is directly on the issue involved in the present O.As. In Para No.12 of the Judgment, the Hon'ble High Court interpreted Section 3(1) along with its proviso and ultimately concluded in Para No.12 of the Judgment that "Thus, the provision of Section 3(1) with two provisos does not show that any right is conferred on Group 'C' employee from non-secretarial service to work at one situation for six years."

12. As such, there are two decisions of Hon'ble High Court. **Sachin Raut's** case was decided on 08.11.2019 and **Santosh Dalal's** case was

decided on 6th May, 2015 taking contrary view or interpreting Section 3(1) in different manner. It appears that while deciding **Sachin Raut's** case, the decision in **Santosh Dalal's** case was not brought to the notice of Hon'ble High Court.

13. Faced with the above situation, Shri Bandiwadekar, learned Advocate for the Applicants sought to contend that when there are contrary decisions of coordinate Benches, the Tribunal need to follow the one which in its view is better in point of law and not necessarily bound to follow the decision later in point of time. In this behalf, he referred to the decision of Hon'ble Bombay High Court **1994 MLJ 1669 [Kamleshkumar I. Patel Vs. Union of India & Ors.]** in which it has been held that Court is not necessarily bound to follow the decision of Hon'ble Supreme Court later in point of time, but must follow the one which in its view is better in point of law where there are contrary decisions emanating from Benches of co-equal strength. According to him, the decision in Sachin Raut's matter reflects correct position of law.

14. As regard scope of proviso and its function, Shri Bandiwadekar, learned Advocate for Applicants referred **(2004) 6 SCC 708 [Union of India Vs. Sanjay Kumar Jain]**. Smt. Punam Mahajan, learned Advocate for Applicants referred to the decision of Hon'ble Bombay High Court **(2012) 1 AIR BOM R 230 [Purushottam G. Bhagwat Vs. State of Maharashtra & Ors.]** on the point of interpretation and scope of proviso.

15. As regard interpretation and scope of proviso, the Hon'ble Bombay High Court in **Purushottam Bhagwat's** case in Para Nos.8, 9 and 12 held as under :-

“8. By now, it is a settled principle of law that all the provisions of the statute are required to be construed in harmony with one another and construction has to be done in such a manner that each provision in the statute will have its play. Construction of the provision cannot be done in a manner, which, while giving effect to one provision of the statute, will make another provision redundant or nugatory. Reliance in this respect

can be made on the judgment of the Apex Court in the case of (*British Airways V/s Union of India*), (2002) 2 SCC 95 : A.I.R. 2002 SC 391, paragraph 7 of which reads thus :
 “While interpreting a statute the Court should try to sustain its validity and give such meaning to the provisions which advance the object sought to be achieved by the enactment. The Court cannot approach the enactment with a view to pick holes or to search for defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the Court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting a statute the Courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation.”

9. It is also a cardinal principle of law that the words used in the provisions of the statute must be interpreted in their plain grammatical meaning. Reliance in this respect can be placed on the judgment of the Apex Court in the case of (*Satheedevi v. Prasanna*), (2010) 5 SCC 622 : A.I.R. 2010 SC 2777.

12. We are unable to accept the contention of Shri A.S. Deshpande, the learned counsel for the respondent no.3, that the proviso to Sub-section (4) would permit a transfer at any time, without recording reasons, to the post which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave and that the proviso would govern the substantive provision. The function of the proviso has been defined by the Apex Court in the recent judgment of (*Nagar Palika Nigam v. Krishi Upaj Mandi Samiti*), A.I.R. 2009 S.C. 187. The Apex Court observed thus :

‘8. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in (*Mullins v. Treasurer of Survey*) 1880 (5) Q.B.D. 170, referred to in (*Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha*), A.I.R. 1961 S.C. 1596 and (*Calcutta Tramways Co.Ltd. v. Corporation of Calcutta*), A.I.R. 1965 S.C. 1728; when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the

enactment and ordinarily, a proviso is not interpreted as stating a general rule. 'If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso.' Said Lord Watson (West Derby Union v. Metropolitan Life Assurance Co.), 1897 A.C. 647 (H.L). Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. See (A.N. Sehgal v. Raje Ram Sheoram), 1992 Supp (1) SCC 304 : A.I.R. 1991 3 SCC 442 : A.I.R. 1991 S.C. 1538 and (Kerala State Housing Board)."

16. Whereas, in **Sanjay Kumar Jain's** case (cited supra), in Para No.11, Hon'ble Supreme Court held that "The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. The proviso to Section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible to several possible meanings, it may be controlled by the proviso."

17. To begin with in **O.A.No.376/2007 decided with O.A.No.377/2007 (Murlidhar Patil's case)**, the Division Bench of this Tribunal examined the scheme and object of 'Transfer Act 2005' in the light of Heydon's Rules (Mischief Rules) and while interpreting Section 3 and its proviso, in Para Nos.91 and 92 held as under :-

91. Having held that tenure of 3 years posting is guaranteed, we now proceed to consider the 1st proviso to Section 3 of the Act as this proviso, if read, gives an impression that for group 'C' government servants 6 years posting is provided. If we apply the analogy of Section 3(1) then we have to hold that for 'C' group government servant tenure is of 6 years but if we look at the proviso, itself properly, then 6 years posting is not a fixed one. The legislature in its wisdom has used term "full tenure" at that 'office' after the term, "from the post held". Thus, the reference to the post held is in relation to an office where he is working. The word 'post' is defined in Clause (9) of Section 2 but the Act nowhere defines term "tenure" and 'office'.

92. Having noted the meaning of term 'office', (supra), we take up for consideration the effect of 1st proviso to Section 3. In our considered view that a group 'C' government employee can be posted in a particular office for 6 years, and in 'post' for 3 years. We illustrate it. In a

Collectorate, there are different branches, such as Revenue, Land Reforms, Land Acquisition etc. A government servant of group 'C', if working in the Land Acquisition branch, on his completion of 3 years, can be posted to another branch under the control of the Collector, and in such eventuality the total tenure will be 6 years and on completion of 6 years in the office of Collector, such government servant, has to be transferred from that 'post' in the office. Thus, it cannot be said that group 'C' government servant gets a right to be posted in a post for a period of six years. The legislature in its wisdom has used word "office" and not "post" in this proviso, which is a pointer to our conclusion. It cannot be forgotten that the Act has defined word "post". In spite of this the legislature with definite purpose have used "office".

18. Thus, as seen from the Judgment of Division Bench of this Tribunal, in O.A.No.376/2007, after careful examination of the scheme and object of 'Transfer Act 2005' and on interpretation of proviso to Section 3(1) of 'Transfer Act 2005', the Tribunal has categorically held that a Government servant of Group 'C' has no right to be posted in a post for a period of 6 years which interpretation seems to be in consonance of the entire scheme of 'Transfer Act 2005'.

19. This issue of tenure of 3 years or 6 years to Group 'C' Government servant of non-secretariat post has come up for deliberation in **Santosh Dalal's** matter (cited supra). Wherein Hon'ble High Court in concurrence with the findings of Division Bench in O.A.No.376/2007 concluded the issue stating that provision of Section 3(1) with two provisos, does not show that any right is conferred on Group 'C' employee from non-secretariat service to work at one station 6 years. It was a matter of transfer of Inspectors of weight and measures in Group 'C' non-secretariat service in Legal Metrology Department and on completion of 3 years, they were transferred. True, in the said matter, the provisions of Section 4(5) of 'Transfer Act 2005' were also invoked in view of the direction given by the Minister that it was not desirable to continue such Inspectors on the same post for more than 3 years.

20. Shri S.S. Dere, learned Advocate for the Applicants sought to distinguish the decision in **Santosh Dalal's** case *inter-alia* contending

that the facts are distinguishable since in that matter, Section 4(5) of 'Transfer Act 2005' was invoked. The learned Advocate for the Applicants appearing in the matter also adopted the submission advanced by the learned Advocate Shri S.S. Dere. The learned Advocates for the Applicants further sought to contend that the subsequent decision of Hon'ble High Court in **Sachin Raut's** matter (cited supra), it being subsequent decision holds the field. In this behalf, they referred Para No.10 of the Judgment in **Sachin Raut's** case.

21. As pointed out by Shri A.V. Bandiwadekar, learned Advocate for the Applicants where there are conflicting decisions of coordinate Benches, the Court should follow the one which in its view is better in point of law. Therefore, one needs to see which Judgment in the opinion of Tribunal is better in point of law.

22. In the present matter, the question is about interpretation of Rule 3(1) in the light of provisos appended to it. Needless to mention, the intention of legislature is primarily to be gathered from the scheme of enactment. The general rule of construction of enactment/section containing proviso is to construe them together without making either by them redundant or otiose. It is only in a case where enacting portion of Section is not clear or ambiguous, the proviso appended to it may give indication as to its true meaning. Where main provision is clear, its effect cannot be cut down by the proviso, since a proviso does not travel beyond the provisions to which it is appended to. In other words, where on fair construction of provision, there is no ambiguity, a proviso cannot expand or limit it. Suffice to say, as a general rule, proviso is added to a Section to qualify or create exception to what is in the enactment and ordinarily a proviso is not interpreted as stating general rule.

23. Now reverting back to the provisions of Section 3(1) of 'Transfer Act 2005', it specifically provides that for All India Service Officers and for all Group 'A', 'B' and 'C' State Government servants, the normal tenure in

the post shall be 3 years. Whereas 'Post' means the job or seat of duty to which Government servant is assigned or posted as defined in Section 2(g) of 'Transfer Act 2005'. It is thus manifest that the tenure of Government servants 'A', 'B' and 'C' Group in a post shall be 3 years. It appears that the tenure of 3 years is fixed in public interest since if Government servant is continued on some post for a more period, there is likelihood of creation of vested interest and it would certainly affect public administration. As such, from the point of transparency, fairness and for impartial functioning, three years' tenure seems to have been fixed. Undoubtedly, now transfers are governed and regulated by 'Transfer Act 2005' and it is not left to the whims and caprice of the Government or competent authority. Suffice to say, keeping in mind public interest and to keep interference of executive or politicians at bay, three years' tenure is guaranteed under the 'Transfer Act 2005'. At the same time, the exception is carved out by Section 4(5) of 'Transfer Act 2005' for mid-tenure in special cases after recording reasons in writing with the approval of competent transferring authority. As stated above, in Section 3(1) of 'Transfer Act 2005' for all Government servants of Group 'A', 'B' and 'C', the normal tenure is fixed 3 years. In so far as 1st proviso is concerned, all that it speaks that when such employee is from non-secretariat services in Group 'C', such employee shall be transferred from the post held on completion of two full tenures at that Office or Department to another Office or Department. As such, it can be said as enabling proviso which may allow a Government servant for two tenures in that Office or Department in one post or together. But in any case, he is transferable on completion of 2 full tenures at that Office or Department to another Office or Department. In other words, such employee can be kept at Office or Department for 6 years, but no such right is conferred on Group 'C' employee from non-secretariat post to have 6 years' tenure in a post. As observed by Division Bench of this Tribunal in O.A.No.376/2007, the legislature in its wisdom has used word 'Office' and not 'Post' in this proviso, which is indicative of the intention of legislature that a Government servant in Group 'C' belonging

to non-secretariat services has no vested right of 6 years' tenure in a post. If intention of legislature was to guarantee 6 years' tenure in one go to Group 'C' non-secretariat post, in that event, the legislature would have enacted so in specifically in the enactment, but it is not so. The legislature purposely covered that area by appending proviso. Therefore, the proviso has to be read and interpreted with main Section so as to have purposive construction and to give full effect to the intention of the legislature. As rightly pointed out by Shri Chandratre, learned Advocate for the Respondents in reference to **AIR Online 2014 SC 10 [Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu]**, the law is trite that when the main enactment is clear and unambiguous, a proviso can have no effect so as to exclude from the main enactment by implication what clearly falls within its express terms. As such, it will have to be held that provision of Section 3(1) of 'Transfer Act 2005' with its proviso, does not confer any legal right much less legally vested right upon Group 'C' employee from non-secretariat post to work at one station for 6 years.

24. Indeed, this issue is no more *res-integra* in view of decision of Hon'ble High Court in **Santosh Dalal's** case where on examination of scheme of Act in Para No.12, Hon'ble High Court 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."

25. In so far as **Sachin Raut's** case is concerned, in Para No.10, Hon'ble High Court has held as under :-

"10. In the present case, admittedly, the petitioner is a Class-III (Group-C) employee. He is in a non secretariat service. As such, he has right to complete two full tenures at the office. The petitioner, it appears is transferred on 01.07.2015 from Savali Vihir, Tl. Rahata to M.P.K.V. Rahuri. His two full terms would be completed on 30th June, 2021. We may not consider at this stage the transfer order dated 17.07.2018 from one department to another at M.P.K.V. Rahuri."

26. The perusal of the Judgment in **Sachin Raut's** case reveals that indeed, it was a case of mid-term transfer. The Petitioner therein was an employee of Mahatma Phule Krushi Vidyapith and was transferred by order dated 01.08.2019 from Rahuri University to Agriculture College, Dhule and not general transfer which are to be effected in the month of April or May in terms of 'Transfer Act 2005'. In the present case, the Applicants have admittedly completed three years' tenure in a post. In view of Covid-19 pandemic situation, the Government of Maharashtra by G.R. dated 29.07.2021 had extended the period of issuance of transfer orders of Government servants who have completed normal tenure upto 9th August, 2021. As such, the present matter does not pertain to mid-tenure transfer, as was a case in **Sachin Raut's** matter. It appears that the decision in **Santosh Dalal's** case rendered in 2015 was not brought to the notice of Hon'ble High Court while deciding **Sachin Raut's** case. Be that as it may, with due respect in my humble opinion, it will have to be concluded that a Government servant of Group 'C' from non-secretariat service have no such legally vested right to work at one station for six years.

27. Needless to mention that a Government servant holding transferrable post have no vested right to remain posted at one place or other and transfer is an incidence of a Government service. Unless transfer order is in contravention of express provisions of 'Transfer Act 2005' or malicious, the Tribunal should not interfere with it.

28. Curiously, material to note that, all the Applicants (except O.A.No.616/2021) were regularly transferred after completion of 3 years' tenure from one post to another post, as seen from the Chart. They are continued in Thane and Mumbai Region including Suburb for 9 to 10 years and till date, their entire service is restricted to Thane, Mumbai Region. During this period, they were transferred on completion of 3 years' tenure from one post to another Office but did not raise any such grievance of entitlement to 6 years' tenure in a post at any point of time. It is for the first time, now they have raised hue and cry probably because of they are transferred to other part of the State, which seems to be not comfortable to them. Admittedly, these Applicants belong to State Cadre and transferable throughout the State. If contention advanced by the learned Advocate for the Applicants is accepted, then perhaps they will spend entire career in one Region i.e. Mumbai or Thane, which is most favoured option of a Government servant. If administrative exigency requires their posting at different places and are transferred on completion of 3 years' tenure, such transfer can hardly be questioned. The continuation of such employee for a longer period will also not in public interest and administration.

29. The learned Advocate for the Applicants also sought to assail the impugned transfer orders on the common ground that the options given by them in terms of G.R. dated 09.04.2018 were not considered and on that count, the transfer order is unsustainable in law, I find no substance in this submission. In the first place, all that G.R. dated 09.04.2018 speaks for calling options from the Government servants who were due for transfer and if possible, they can be given posting as per

options, but it is not a vested right. Needless to mention, administrative directions or guidelines does not confer any legally enforceable right to quash transfer order unless it is shown to be vitiated by *malafides* or made any violation of statutory provisions and so long as official status is not affected adversely and there is no infraction of any career prospects such as seniority, pay scale, etc. as observed by Hon'ble Supreme Court in **(2004) 11 SCC 402 [State of Uttar Pradesh & Ors. Vs. Gobardhan Lal]**.

30. Apart, material to note that in all O.As (except O.A.No.616/2021), the Applicants who are serving on the post of Sub-Inspector, State Excise have given 10 options only from Mumbai and Thane, as seen from the Chart though they already worked in these region for almost 9 to 10 years. Here again, if in such situation, options were to be accepted, that would lead to situation where a Government servant will retire in same Region and other Government servants who are serving in other Region for example, Marathwada, Vidarbha will get no opportunity to work in Mumbai or Thane Region. Suffice to say, the grievance raised about non-consideration of options given by the Applicants is totally unsustainable. They want to remain glued to Mumbai or Thane Region only for entire service, which will not be conducive from the point of public administration.

31. In O.A.Nos.608 & 609 of 2021, Smt. Punam Mahajan, learned Advocate for the Applicants sought to contend that the Commissioner, State Excise transferred the Applicants on the basis of letter dated 25th May, 2021 issued by Government wherein general directions were given by the Government to transfer the Government servants who have completed 9 years' service in one Region to another Region. According to learned Advocate for the Applicants, said directions cannot override Maharashtra Government Allotment of Revenue Divisions for appointment by nomination and promotion to the post in Group 'A' and Group 'B' Rules, 2021 (hereinafter referred to as 'Rules of 2021' for

brevity). Insofar as this issue is concerned, the Applicant being of Group 'C' Government servant, there would be no question of applicability of 'Rules of 2021'. That apart, in the present case, the Applicants are transferred having completed normal tenure of 3 years in a post in consonance with provisions of 'Transfer Act 2005' and not on the basis of the letter dated 25.05.2021.

32. As regard O.A.No.616 of 2021, it is arising from transfer of Circle Officer by order dated 31.05.2018 having completed 3 years' tenure in a post. Respondent No.2 is posted in place of the Applicant, and therefore, he is joined as necessary party. Whereas, Respondent Nos.3 & 4 are joined on the ground that they were posted on the options given by the Applicant. In so far as options are concerned, material to note that while submitting options, the Applicant though required to give 10 options, has given only 2 options and both from Tahasil Office Khalapur. He is already serving as Circle Officer, Khopoli Tahasil Office, Khalapur and despite this position again, he sought posting as Circle Officer, Vavoshi Tahasil Office, Khalapur and Chowk Tahasil Office, Khalapur. As such, he too, wants to remain glued in Tahasil Office Khalapur only. Since he is already working in Kahalapur Tahasildar Office jurisdiction, the competent authority deem it appropriate to transfer him as Circle Officer, Indapur Tahasil Office, Mangaon, District Raigad. This being the position, the denial of options as claimed by the Applicant cannot be said unfair much less illegal. Indeed, it being transferable post, the Applicant have no vested right to continue in one Office only for years together, which would be detrimental to public administration, since possibility of creation of vested interest cannot be ruled out. Therefore, the submission advanced by the learned Advocate for the Applicant that the transfer is in violation of G.R. dated 09.04.2018, which in fact does not confer any such legally vested right, holds no water.

33. Shri Bandiwadekar, learned Advocate for the Applicant appearing in O.A.No.616/2021 further made feeble attempt to pick-hole in the

formation of Civil Services Board (CSB) on the ground that Collector himself was Chairperson of CSB as well as competent authority for issuance of transfer order. Secondly, constitution of CSB is not in consonance with G.R. dated 31.01.2014 issued by Government. It is rightly pointed out by learned P.O. that the Collector has rightly constituted CSB in terms of Clause 3.2 of G.R. dated 31.01.2014 as well as letter issued by Commissioner dated 19.04.2014 for Group 'C' employees. Only because Collector was Chairperson of CSB which approved the transfer of the Applicant and also acted as competent transferring authority, that *ipso-facto* will not vitiate the transfer order, particularly when CSB was comprising of 3 other members. As such, no *malafides* can be attributed in impugned transfer order and there is no such contravention of express provisions of law so as to render impugned transfer order illegal.

34. The totality of aforesaid discussion of law and facts leads me to sum-up that Government servant of Group 'C' from non-secretariat post though can be continued at one station for six years, but he has no such legally vested right. His guaranteed tenure in a post is 3 years. The Applicants are transferred after completion of 3 years' tenure in post. As such, the challenge to the transfer orders holds no water and all these O.As deserves to be dismissed. Hence, the order.

ORDER

All these Original Applications stand dismissed with no order as to costs.

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

Mumbai
Date : 13.01.2022
Dictation taken by :
S.K. Wamanse.

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