

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

**TRANSFER APPLICATION NO.25/2024
(WRIT PETITION NO.6400/2024)**

DISTRICT:- DHULE

Pravin s/o. Ashok Bhadak,
Age : 51 years, Occ : Service as
State Tax Officer, G.S.T.Bhavan,
Kalyan, Sai Vihar Building, Shivaji Path,
Kalyan West, Tq. Kalyan, Dist. Thane. **...APPLICANT**

V E R S U S

1. The State of Maharashtra,
Through Additional Chief Secretary,
Department of Finance,
Mantralaya, Mumbai-32.

2. The Commissioner of State Tax,
GST Bhavan, Mazgaon, Mumbai-10.

3. Special Sales Tax Commissioner,
Goods and Service Tax Bhawan,
Mazgaon, Mumbai-10.

4. The Commissioner of State Tax,
Thane Zone, Thane. **...RESPONDENTS**

APPEARANCE :Shri Sanket N. Suryawanshi,
Counsel for Applicant.

:Shri M.B.Bharaswadkar, Chief
Presenting Officer for respondents.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN

Decided on : 21-10-2024.

ORDER

1. Heard Shri Sanket N. Suryawanshi, learned Counsel for the applicant and Shri M.B.Bharaswadkar, learned Chief Presenting Officer for the respondent authorities.

2. Applicant is presently serving as Establishment Officer at G.S.T. Office Kalyan. His erstwhile posting was at Nandurbar as State Tax Officer Class-II at GST Office Nandurbar. He was given the additional charge of Dhule District for the post of Assistant Commissioner of State Tax Class-I. While he was working at Dhule, on complaint of one Shri Chetansing Kalyansing Rajput, A.C.B. trap was laid against him pursuant to which the criminal prosecution as well as the departmental enquiry has been initiated against him. Applicant was suspended on 24-07-2020. On 07-07-2021, he came to be reinstated on non-executive post of Establishment Officer at G.S.T. Office Kalyan and since then he is working in the said office.

3. It is the case of the applicant that, his father who is an Ex-Military Man and presently aged about 84

years is suffering from several health complications necessitating the applicant to make a request for his posting at Dhule or nearby Dhule i.e. Nandurbar, Malegaon or Jalgaon. It is the further case of the applicant that his children are taking education at Dhule and his daughter is in 12th standard. The examination of 12th being crucial for his daughter, on the said ground also the applicant was keen in getting transferred at Dhule. Additionally, his mother is also pretty old and is presently bedridden. For all these reasons applicant had requested for his transfer either to Dhule or nearby Dhule so that he can take care of his ailing father and also give moral support to his daughter. Such a representation was made by the applicant on 07-03-2023. The representation so made by the applicant came to be accepted at the time of annual general transfers made by respondents.

4. In the common order of transfer dated 27-07-2023 the applicant came to be transferred at Dhule. After the transfer order was passed, one Chetansing Rajput filed O.A.No.730/2023 before this Tribunal seeking stay to the transfer of the applicant at Dhule. On 08-08-2023 interim order was passed in the said O.A. whereby the respondent

nos.1 and 2 in the said O.A. were directed not to relieve respondent no.3 i.e. the present applicant until further orders. Applicant appeared in the said matter and contested it. The matter came to be decided on 11-03-2024 and it was dismissed by this Tribunal. Against the said order Chetansing Rajput approached the Hon'ble Bombay High Court Bench at Aurangabad by filing Writ Petition No.3236/2024 and the same has been dismissed by the Hon'ble High Court.

5. It is the grievance of the applicant that even after dismissal of Writ Petition No.3236/2024 the respondents have not relieved the applicant from Kalyan to resume the duties at the transferred place at Dhule. It is the contention of the applicant that, he preferred representations dated 07-04-2024 and 08-04-2024 with the respondents praying for giving effect to the transfer order passed on 27-07-2023 and to allow the applicant to resume the duties at transferred place. Since the said representation has not been considered by the respondents the applicant has approached this Tribunal by filing the present O.A.

6. Respondents have failed to file affidavit in reply to the present O.A. within the given time. The O.A., therefore, has been heard without reply of the respondents.

7. Shri Sanket Suryawanshi, learned Counsel appearing for the applicant argued that, for the genuine difficulties of the applicant his request was considered by the respondents and accordingly in the annual general transfers effected on 27-07-2023 he was transferred in GST Office at Dhule. Learned Counsel submitted that, because of the O.A. filed by one Chetansing Rajput the transfer order was not given effect to. Learned Counsel further argued that the O.A.No.730/2023 since has been dismissed by this Tribunal, in fact there is no impediment for the respondents to give effect to the transfer ordered vide common transfer order issued on 27-07-2023.

8. Learned Counsel submitted that though the Tribunal after dismissal of the O.A.No.730/2023 on request of the applicant continued the effect of interim order passed on 08-08-2023 for the period of next four weeks and though after dismissal of the Writ Petition No.3236/2024, again request was made for continuation of the said order the Hon'ble High Court vide order passed on

03-04-2024 has rejected the said prayer by observing that, *“we do not see any reason to continue the interim relief further.”* Learned Counsel submitted that, in view of the order passed by the Hon’ble High Court as aforesaid, in fact there is no reason for the respondents not to relieve the applicant from the GST Office Kalyan and permit him to resume duties at the place of his transfer at Dhule.

9. Learned Counsel submitted that the departmental enquiry against him is being conducted at Nashik. He further submitted that none of the witness is from Dhule and there is no likelihood of tampering of any evidence by the applicant which may be adduced in the departmental enquiry as well as in the criminal prosecution. As such, according to the learned Counsel, the respondents, without any good reason have not relieved the applicant from GST Office Kalyan. Learned Counsel in the circumstances prayed for allowing the application thereby directing respondent no.2 to relieve the applicant from GST Office Kalyan in order to report and take charge at GST office Dhule as per the order of transfer dated 27-07-2023.

10. Learned CPO has invited my attention to the findings recorded by this Tribunal while deciding O.A.No.730/2023. Learned CPO pointed out that the Tribunal has criticized the order passed by the respondents giving transfer to the applicant at GST Office Dhule. He invited my attention to observations made by this Tribunal in paragraphs 49 onwards of the said order and the findings recorded by the Tribunal against the point no.3. The decision rendered by this Tribunal in O.A.No.730/2023 is produced on record. While deciding the said O.A. along with other issues the following point was framed by the Tribunal:

“Whether the impugned order of transfer to the extent of respondent no.3 (i.e. the present) dated 27-07-2023 is proper, correct and legal.”

Same is answered in negative.

11. This Tribunal while deciding the O.A.No.730/2023 has made the following observations in paragraph 49 and 50 of the said judgment. I deem it appropriate to refer both the said paragraphs as it is which read thus:

“49. I do not agree with the submissions made on behalf of learned counsel for respondent No. 3. If for the reinstatement purpose the Government Circular dated 20.04.2013 takes care the image of the Government. It is difficult to accept that if the Government is likely to be defamed by reinstating a person at the same place where the action was taken about the suspension, would have no defamatory effect, if the said Government servant after his reinstatement at the different place brought again to the same place where he was suspended in connection with the serious charges of the corruption.

50. It is difficult to digest that within a period of two years of reinstatement if the said Government servant is brought by way of so called request transfer order at the same place, the image of Government would not be maligned. In addition to maligning the image of the Government possibility of tampering with the evidence cannot be ruled out altogether. In my considered opinion, the impugned order of transfer dated 27.07.2023 is not proper, correct and legal. Accordingly, I record my finding to point No. 3 in negative.”

12. This Tribunal has thus recorded negative finding on the aforesaid issue meaning thereby that the order dated 27-07-2023 is held improper and illegal. In paragraph 50 of the order which we have reproduced hereinabove the Tribunal has expressed a candid remark that the impugned order is not proper, correct and legal. It has also been observed by the Tribunal that if the applicant is transferred at Dhule where the disciplinary action was initiated against the applicant and criminal

case for the offence under the Prevention of Corruption Act is pending, it would not give a very good signal if the applicant is reposted at Dhule.

13. As noted hereinabove, interim order was passed in the aforesaid O.A. on 08-08-2023 whereby respondent nos.1 and 2 were directed not to relieve the applicant until further orders from the Tribunal. After the O.A.No.730/2023 was dismissed by the Tribunal the effect and operation of said interim order was extended for the period of next four weeks from the date of said order i.e. 11-03-2024.

14. I deem it appropriate to reproduce the discussion made by Tribunal in paragraph 51, 52 and 53 also which is relevant in so far as the request made by the applicant in the present O.A. is concerned, which read thus:

“51. In view of the discussions in foregoing paragraphs, however, the applicant is not a person aggrieved in terms of the provisions of Section 19 (1) of the Act of 1985 and he has no locus standi to challenge the impugned order of transfer of respondent No. 3. Unfortunately, the applicant is not entitled for the relief as sought for. Even then since the parties to the Original Application have addressed to this Tribunal on both the aspects,

it is necessary to record my finding to point No. 3 also.

52. *Suo moto powers are used by the Courts when they notice the violations of constitutional rights are not being adequately addressed by the State authorities. The use of suo moto powers by the Courts is criticised often. The debate around suo moto powers has also been extended to the Tribunals. The Tribunal is a quasi-judicial body; an administrative institution had partial judicial powers. The Tribunals are set up to aid Courts with speedy disposal of the cases. The Administrative Tribunals does not have a suo moto powers. Therefore, even recording the finding to point No. 3 in negative, no effective order can be passed Suo moto to quash and set aside the impugned order.*

53. *By interim order dated 08.08.2023, the respondent Nos. 1 and 2 are directed not to relieve the respondent No. 3 until further orders of this Tribunal and in the meanwhile, it would be open for the respondents to give posting to respondent No. 3 at some place other than Dhule and the said interim relief is still in force as on today. In view of the peculiar facts and circumstances of the case and since this Tribunal has recorded the finding to Point No. 3 in negative to the effect that the impugned order is not proper, legal and correct, it would be just and proper to continue the interim order for a period of four weeks from the date of this order to enable the parties to approach the Hon'ble High Court, if so desire.*

15. It has been argued by the learned Counsel for the applicant that, interim order was operating when the Writ Petition filed by Chetansing Rajput was heard by the

Hon'ble High Court. After dismissal of the said Writ Petition though the request was made on behalf of the said petitioner for continuation of the said interim order the said request has been refused by the Hon'ble High Court. Learned Counsel submitted that, thus direction issued 'not to relieve the applicant' is no more in existence and as such the respondent no.3 must have relieved the applicant from GST Office Kalyan in order to facilitate joining of the applicant at transferred place at Dhule.

16. Though it is true that, the interim order dated 08-08-2023 is now no more existing, observations made by this Tribunal in paragraph 49 to 53 of the order passed in O.A.No.730/2023 clearly reveal that this Tribunal has disapproved the order dated 27-07-2023 issued by respondent no.3 whereby the applicant was transferred to Dhule GST Office. In view of the observations so made by the Tribunal, the respondent State and the Commissioner of State Tax have rightly not given effect to the order dated 27-07-2023. It appears to me that the applicant also cannot insist for giving effect to the said order in view of the finding recorded by this Tribunal in the judgment and order passed in O.A.No.730/2023.

17. It cannot be lost sight of that this Tribunal has recorded an unambiguous finding that the order of transfer dated 27-07-2023 whereby the applicant was transferred at Dhule is improper, incorrect and illegal. Though the present applicant also approached the Hon'ble High Court by filing Writ Petition, he has not endeavored for getting set aside the aforesaid finding. In the circumstances, it does not appear to me that, any case is made out by the applicant so as to allow his O.A. and thereby direct respondent no.2 to relieve the applicant from GST Office Kalyan in order to report and take charge at Dhule as per the said transfer order dated 27-07-2023.

18. It has to be, however, further stated that this Tribunal has not disapproved the transfer of the present applicant from GST Office Kalyan, the disapproval is to the transfer of the applicant at Dhule. In the interim order passed by this Tribunal it has been specifically observed that it would be open for the respondents to give posting to respondent no.3 i.e. present applicant at some place other than Dhule. In the representation dated 08-03-2023 submitted by the applicant in response to which the order of transfer dated 27-07-2023 came to be issued, the

applicant had prayed for his transfer at the first instance at Dhule and has also given options of Malegaon, Nandurbar and Jalgaon.

19. In the circumstances, the applicant may still request for his transfer at any of the aforesaid places, except Dhule, which would certainly be a solace for the applicant as he would be able to take care of his old aged ailing parents as well as take care of the education of his children even by discharging his duties at the said place. If any such request is made by the applicant, respondents are not precluded from favorably considering the same. Present T.A.No.25/2024, thus, stands disposed of in the aforesaid terms without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 21.10.2024.