

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 334 OF 2016

DISTRICT : THANE

Shri Rajendra Kisanrao Shirsath,)
Excise Inspector (now under suspension))
'C' Division, Thane.)
R/o: 2401, SIGNIA OCEAN,)
Next to D-Mart, Sector 10A, Airoli,)
Navi Mumbai – 8.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
[Excise], Home Department,)
Mantralaya, Mumbai 400 032.)

2. Shri Abhijeet D. Deshmukh,)
Working as Inspector of State Excise,)
'C' Division, Dist-Thane.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondent no. 1.

Shri M.D Lonkar, learned advocate for Respondent no. 2.

CORAM : Shri Justice A.H Joshi (Chairman)

RESERVED ON : 14.11.2017

PRONOUNCED ON : 24.11.2017

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant, Shri A.J Chougule, learned Presenting Officer for the Respondent no. 1 and Shri M.D Lonkar, learned advocate for Respondent no. 2.

2. Perused the record annexed to the Original Application, to the reply, rejoinder etc. tendered at the time of hearing.

3. Applicant has challenged the order of transfer of the Respondent no. 2 in the vacancy which had occurred on account of applicant's suspension. This Tribunal had passed order on 9.4.2015 in O.A 148/2015. This Tribunal directed in para 6 of the order as follows:-

“6. Considering the submission that if the vacancy is filled-in third party interest may be involved in case prayer for interim relief is considered at a later stage, the Respondent is put to the notice that if the vacancy due to suspension of the applicant is to be filled in, the Government should keep in mind the submissions which are quoted in foregoing paragraph.”

4. On 31.1.2015, Crime No. 21/2015 was registered in Kopri Police Station at the instance of one Smt Punam Takatsingh Patil for offences punishable under Section 354-A (1)(i)(iv) read with Sec. 506 of I.P.C.

5. According to the applicant, the complaint is false and was aimed at harassing the applicant. According to the applicant simultaneously to the investigation, preliminary enquiry in the same manner was initiated. Thereafter, by order dated 2.3.2015 applicant was suspended. During suspension, by impugned order dated 2.7.2015, Respondent no. 2 was posted in the vacant post which had arisen on account of applicant's suspension. The transfer order was implemented and Respondent no. 2 has joined on the said post.

6. The transfer of Respondent no. 2 in the vacancy which had occurred on account of applicant's suspension is challenged by averments contained in ground nos 6.21, 6.23, 6.24 and 6.25. Instead of describing these averments, it shall be useful to quote them at verbatim.

GROUNDS:-

6.21) That from the facts stated above chronologically, it is clear that the transfer of the Respondent no. 2 in the vacancy which arose on account of the suspension of the Petitioner, has been effected on the basis of his request application dated 9.4.2015. Thus, it is the request transfer order, which according to the Petitioner, legally could not have been issued by the Respondent no. 1 in the month of July, 2015. This is because as per the view expressed by the Hon'ble Tribunal in such matters, it is held that such request transfer can be effected only during general transfer season. Thus, the impugned order on this ground is nonest and bad in law.

6.23) That the impugned order of transfer in addition to the request of the Petitioner, makes a reference to the fact that the same is issued on administrative ground, but without elaborating or specifying the said so called administrative ground. That as stated above according to the Petitioner, no mid-term and mid-tenure transfer of the Government servant can be issued merely on administrative

ground. That admittedly the Respondent no. 2 was not due for transfer.

6.24) That even otherwise, there was no reason for the Respondent no. 1 to accept the request of the Respondent no. 2 for his transfer to 'C' Division in Dist-Thane in place of the Petitioner, when the Respondent no. 1 knew that there is 'Lis' pending in the Hon'ble Tribunal in the form of O.A no 148 of 2015 filed by the Petitioner challenging the order of suspension. Thus strictly speaking it was not the clear vacancy.

6.25) That in the context of the aforesaid situation / position, if the Respondent no. 1 wanted to oblige the Respondent no. 2 for being posted in Thane during mid-term and mid-tenure from Mumbai Suburban then in that event, the Respondent no. 1 should have thought of transferring the Respondent no. 2 in any of the 5 vacant posts of Inspector of State Excise such as Ulhasnagar, Dombivali, Flying Squad-2, Thane, Dahanu and Divisional Flying Squad, Konkan Division, where the additional charge was given to other officer in addition to their regular posting. That in respect of those vacancies, it is not that there was any litigation in any Court of law pending at the instance of any Government servant. Thus, those were the clear vacancies.

7. The Original Application is opposed by the Respondent-State by filing affidavit in reply. The averment in various paragraphs quoted hereinabove, summary whereof is as follows:-

- (i) It is a fact that Respondent no. 2 was transferred on his request and it is a mid-term transfer.
- (ii) The vacancy which had occurred on account of suspension of the applicant cannot be kept vacant indefinitely.
- (iii) Moreover, a Government servant who is suspended does not have a vested right to be reposted in the same vacancy, nor the post can be kept vacant indefinitely.

8. According to the applicant, the suspension order dated 2.3.2015 was later on revoked by order dated 2.7.2016 and applicant has been posted at Pune, copy thereof is brought on

record by the applicant at page 95. The said order is not challenged by any amendment etc. in the present Original Application and the applicant seems to be satisfied with the relief claimed by him. He probably believes that if the transfer and posting of Respondent no. 2 is set aside, he would automatically get restoration to the post formerly held by him.

9. Admittedly by another order dated 16.2.2017, applicant is again suspended. Applicant challenged the suspension order dated 16.2.2017 by filing Original Application no. 262/2017. The said O.A is partly allowed and Respondents therein are directed to take a review of applicant's suspension.

10. The competent reviewing authority has declined to review applicant's suspension and said decision is communicated to the applicant through letter dated 22.9.2017. Applicant has made representations to the Government against the decision of the Review Committee on 12.10.2017 and the same is pending.

11. Learned Advocate for the applicant has placed reliance on the following judgments:-

- (i) Judgment of Hon'ble Bombay High Court dated 17.12.2014 in STATE OF MAHARASHTRA & ORS Vs. Dr (Ms) PADMASHRI S. BAINADE & ORS, W.P No. 9781/2014.
- (ii) Judgment of Hon'ble Bombay High Court, Aurangabad Bench dated 8.10.2011 in RAMAKANT B. KENDRE Vs. STATE OF MAHARASHTRA & ORS, 2012 (1) Mh.L.J 951
- (iii) Judgment dated 4.10.2007 in O.A no 356/2007 & Ors, Shri MURLIDHAR C. PATIL & ORS Vs. GOVERNMENT OF MAHARASHTRA & ORS.

12. In the background that applicant was initially suspended, was reinstated and now he is again under suspension, applicant's challenge to the order of posting Respondent no. 2 in his place is for all purpose of academic nature, inasmuch that as on the day of the decision of present O.A entire discussion is as regards hypothesis as to whether applicant would be reinstated and on what date and in that eventuality should he get restoration or status quo-ante as existed on the day of his first suspension.

13. On facts of present case, the applicant has not pleaded nor he is able to show that his suspension was aimed at his dislodgement from the said post. Asking for relief in the nature of restitution, is not done in the present case and barely asking for quashing and setting aside of transfer and posting of another Government servant, just because he is posted to occupy the position which was held by the applicant is nothing but chasing a mirage.

14. Applicant has not shown that a Government servant does not have right or restitution as regards posting,

15. It is well settled that like a Suit barely for declaration or a claim for declaratory relief, as could be entertained in the Court of Chancery in England is not triable by courts in India, unless actual relief for decree cannot be granted in favour of the relator. Hence, relief that Respondent no. 2's posting is contrary to law cannot be entertained in absence of some and actual relief for which prayer is made and consequential relief as contained in the O.A is totally incomplete in the Indian scenario and a statutory forum like this Tribunal.

16. Hence the Original Application does not merit any more indulgence than what is already granted. Hence O.A is dismissed with costs.

Sd/-
(A.H Joshi, J.)
Chairman

Place : Mumbai
Date : 24.11.2017
Dictation taken by : A.K. Nair.