

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.679 OF 2016 WITH
MISCELLANEOUS APPLICATION NO.444 OF 2016 IN
ORIGINAL APPLICATION NO.679 OF 2016
(Subject : Transfer)**

DISTRICT : MUMBAI

Shri Rajesh Manikrao Bhapkar,)
Working as Excise Sub-Inspector,)
Residing at 127/24, Shrikrushna Sadan Niwas,)
Khatu Lane, Takyaward, Behind Ram Mandir,)
Kurla, Mumbai 400 070.)

..APPLICANT

VERSUS

1. State of Maharashtra,)
Through Chief Secretary,)
Mantralaya, Mumbai 400 032.)
2. Additional Chief Secretary,)
Home Department,)
Mantralaya, Mumbai 400 032.)
3. The Commissioner,)
State Excise Duty, Maharashtra State,)
Mumbai, Old Octroi House,)
Second Floor, Shahid Bhagatsingh Marg,)
Fort, Mumbai 400 023.)

4. Smt. Sakshi Sameet Bhosale,)
 Excise Sub-Inspector,)
 State Excise Duty, Q-1, Division,)
 Mumbai Suburban, Behind Nandeeep)
 Garden, Kalanagar Front of Bus Stop,)
 Wandre (E), Mumbai.)

....RESPONDENTS

Smt. Punam Mahajan, learned Counsel for the Applicant.

Smt. K.S. Gaiwkad, learned Presenting Officer and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents No.1 to 3.

Shri B.A. Bandiwadekar, learned Counsel for the Respondent No.4.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 10.11.2016.

J U D G M E N T

1. Heard Smt. Punam Mahajan, learned Counsel for the Applicant, Smt. K.S. Gaiwkad, learned Presenting Officer and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents No.1 to 3 and Shri B.A. Bandiwadekar, learned Counsel for the Respondent No.4.

2. Learned P.O. Smt. K.S. Gaikwad was holding for learned C.P.O. on 10.10.2016 and 14.10.2016 and requested that learned C.P.O. may be heard for the Respondent Nos.1 to 3. Learned Counsels for the Applicant and the Respondent

No.4 were heard fully on 10.10.2016 and the matter was kept for arguments of learned C.P.O. on 14.10.2016 and again on 25.10.2016. However, as learned C.P.O. was not present on both the occasions, when the matter was called out and learned P.O. expressed her inability to argue on behalf of the Respondent Nos.1 to 3, the matter was closed for orders on 25.10.2016. The Respondents No.1 to 3 file Miscellaneous Application No.444 of 2016 on 10.11.2016, which was allowed and learned C.P.O. was heard on behalf of these Respondents.

3. The Applicant in this O.A. has challenged his transfer by order dated 03.07.2016 from Mumbai to Solapur and also the order dated 03.07.2016, posting the Respondent No.1 in his place as Excise, Sub-Inspector, Q-1 Division, Mumbai.

4. Learned Counsel for the Applicant argued that the Applicant was posted as Excise Sub-Inspector, Q-1 Division, Mumbai by order dated 02.02.2013. The post of Sub-Inspector in State Excise Department is a Group 'C' post. Under first proviso to Section 3(1) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delays in Discharge of Official Duties Act, 2005 (the Transfer Act) a non-secretariat Group 'C' employee is entitled to two full tenures of three years in an office or department. The Applicant has not completed 6 years when he was transferred from Mumbai to Solapur. Also, the order is issued in the month of July (and not in April or May). As such, exceptional circumstances and special reasons for the

Applicant's transfer were required and approval of immediately superior transferring authority mentioned in table of Section 6 of the Transfer Act was necessary under Section 4(4)(ii) of the aforesaid Act. The impugned order does not mention any exceptional circumstances or special reasons for transferring the Applicant. Learned Counsel for the Applicant contended that the order is issued in violation of Section 4(4)(ii) and 4(5) of the Transfer Act. Learned Counsel for the Applicant argued that the Respondent No.4 has been transferred on her request without there being any exceptional circumstances or special reasons to transfer her in place of the Applicant. Learned Counsel for the Applicant relied on the judgment of Hon'ble Bombay High Court dated 07.03.2013 in Writ Petition No.5465 of 2012, wherein it is mentioned that vague, hazy and meager expression such as "on administrative ground" cannot be a compliance of the provision of Section 4(5) of the Transfer Act.

5. Learned Counsel for the Respondent No.4 argued that the Respondent No.4 was posted to Mumbai on account of her request to be posted in a place where her husband was working. This is as per the policy of the State Government to post husband and wife at the same place. As the Applicant was transferred out of Mumbai, the post in Mumbai was vacant, and the Respondent No.4 was posted there.

6. Learned C.P.O. argued on behalf of the Respondent No.1 to 3 that the transfer order of the Applicant was issued on 03.07.2016. As it was a mid-term transfer order, it was

issued with the approval of Hon'ble Chief Minister and was thus issued in full compliance with the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act. Special reasons/exceptional circumstances which have been considered are mentioned in the affidavit-in-reply dated 30.08.2016. These were as follows :-

“The minutes also says that in the State of Maharashtra various regions like Vidarbha, Marathwada and Konkan especially border districts of these regions, flying squads vacant posts, important liquor/spirit manufacturing units and border check posts are special sensitive locations for the department, therefore it is necessary to fill up the vacant posts in the above locations in order to check the transfer of illegal liquor effectively. Therefore the principal is set that the vacancies is to be filled by considering optimum working Sub Inspectors in each divisions of the state.”

Learned C.P.O. stated that the Applicant has been working in Mumbai for last 11 years and it was necessary to transfer him out of Mumbai.

7. In the affidavit-in-reply filed on behalf of the Respondent No.3 dated 30.08.2016, the following explanation is given for issuing impugned order dated 03.07.2016 in a month other than April or May :-

“10. With reference to para no.6.9, I say and submit that due to some unavoidable circumstance the Nagri Seva Mandal could not meet in May but, considering the necessity of transfer the meeting held on 14th June 2016. As per the meeting of Nagri Seva Mandal held on 14th June 2016. The record of minutes of meeting of Nagri Seva Mandal enumerates that those Sub Inspectors working for more than 3 years on same post are necessary to be transferred on administrative grounds. It is

also mentioned that in un exceptional circumstances some Sub Inspectors are required to be transfer under the Rule of couple arrangement.” (Sic.)

It is clear from the above, that the Respondent No.3 considers that posting husband and wife together amounts to exceptional circumstances. The concerned Mantralaya file was placed before me for perusal on 25.07.2016 and I had noted as below:-

“Learned Chief Presenting Officer has produced the concerned Mantralaya file for my perusal. It is seen that though the transfer order has the approval of the Hon’ble Chief Minister, the note put up by the concerned department does not mention anything as to why these orders have been issued in a month other than April – May.”

From this, it is clear that the reason of transfer of the Applicant out of Mumbai was not mentioned, when the decision was taken to transfer him out with the approval of Hon’ble Chief Minister. In fact, exceptional circumstances or special reasons should have been mentioned in the proposal, as required by second proviso to Section 4(4) of the Transfer Act. Similarly, there is no doubt, that the post of Excise Sub-Inspector is a Group ‘C’ post. Order dated 08.07.2016 issued by the Respondent No.3 regarding training of State Excise Sub-Inspector, clearly mentions that the post of Sub-Inspector is a Group ‘C’ post. As per first proviso to Section 3(1) of the Transfer Act, a Group ‘C’ non-secretariat employee is entitled to a tenure of six years in a post. The minute of the Civil Services Board meeting dated 14.06.2016, gives reasons for transfer of the Applicant and the Respondent No.4 as below :-

19. Shri R.M. Bhapkar 'बदलीस नियत असल्याने'
 52. Smt. S.S. Bhosale 'पती-पत्नी एकत्रीकाणाबाबत विनंतीनुसार'

The Applicant was working in Mumbai from February 2013 as Sub-Inspector while the Respondent No.4 was working in Raigad since 30.05.2016. Both had not completed their tenures of six years as Sub-Inspector and the order was issued in the month of July. The fact that the Applicant was earlier working as Constable in Mumbai was not mentioned in the note placed before Civil Services Board or Hon'ble Chief Minister. Under Section 4(4)(ii) exceptional circumstances and special reasons were required to be mentioned. Similarly for mid-tenure transfer, under Section 4(5), special reasons should have been mentioned. The transfer order of the Applicant does not mention any exceptional circumstances or special reasons and is based on wrong premise that he had completed his tenure. The order is clearly violative of Section 4(4)(ii) and Section 4(5) of the Transfer Act. As regards, the Respondent no.4, she has been transferred on her request. For accommodating the Respondent No.4, the law could not have been violated in case of the Applicant. The Respondents could have accommodated the Respondent No.4, without being unjust as regards the Applicant. Hon'ble High Court in Writ Petition No.5465 of 2012 has held that :-

"The exercise of exceptional statutory power has to be transparent, reasonable and rational to serve objective of the Act, as far as possible, in public interest. Mantralaya requirements of the provision under Section 4(5) of the Act cannot be ignored or bye-passed. The

exceptional reasons for the special mid-term or premature transfer ought to have been stated in writing. Vague, hazy and meager expression such as “on administrative ground” cannot be a compliance to be considered apt and judicious enough in the face of mandatory statutory requirements.”

In the present case, it is quite clear that there were no exceptional circumstances or special reasons to transfer the Applicant in the month of July and before completion of his tenure. The impugned order has been passed to accommodate the Respondent No.4 and is based on faulty premise that tenure of an Excise Sub-Inspector is three years, while by judgment dated 30.09.2013 in a Group of O.A.Nos.717 of 2013 etc., this Tribunal has clearly held that the normal tenure of an Excise Sub-Inspector is 6 years in a post. Impugned orders both dated 03.07.2016 in respect of the Applicant and the Respondent No.4, cannot be sustained and are quashed and set-aside. The Respondent No.3 will post the Applicant back to Q-1, Division, Mumbai within 7 days from the date of this order.

8. This Original Application is allowed accordingly, with no order as to costs. Miscellaneous Application was allowed and is also disposed of with no order as to costs.

Sd/-
(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 10.11.2016
Typed by : PRK