

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.218 OF 2017

DISTRICT : THANE

Shri Ujwal Vitthal Deshmukh,)
Age 55 years, Awal Karkoon (SGY) in the office of)
Tahsildar, Murbad, District Thane)
R/o Shree Ganraj Tower, Prashant Nagar, Naupada,)
Thane (West))..Applicant

Versus

1. The District Collector,)
Court Naka, Thane (W))
2. The State of Maharashtra,)
Through Principal Secretary (Revenue),)
Revenue & Forest Department,)
Mantralaya, Mumbai 400032)
3. Shri Suresh Raoji Rokde,)
Circle Officer, Kalyan, Tal.Kalyan, District Thane)..Respondents

Shri A.V. Bandiwadekar – Advocate for the Applicant

Miss Savita Suryawanshi – Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman

CLOSED ON : 6th November, 2017

PRONOUNCED ON : 24th November, 2017

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Miss Savita Suryawanshi, learned Presenting Officer for the Respondents.

2. The applicant is serving in the cadre of Awal Karkun. Admittedly the post of Circle Officer and Awal Karkun are interchangeable and are a feeder cadre for promotion to the post of Naib Tahsildar.

3. By order dated 31.12.2013, Exhibit 'A' page 21 of the OA, the applicant was posted as Circle Officer, Tehsil Office, Kalyan and he had joined.

4. During applicant's tenure of service as Circle Officer, Kalyan, Shri Ravindra Shantaram Shirose has lodged a complaint to the Anti Corruption Bureau that one Shri Sharad Padwal who was assistant of Talathi (Talathi's surname also happened to be Padwal), represented to him that for approval of mutating entry as regards rights of applicant, an amount of Rs.15000/- shall be required because part of that amount had to be paid to present applicant.

5. The Anti Corruption Bureau arrested Shri Sharad Padwal while applicant was not arrested. An offence was registered and even Special Case No.17 of 2015 was initiated against various accused including the applicant.

6. According to the applicant he was in no way shown involved. By order dated 15.12.2016 passed below Exhibit 12 in Special Case No.17 of 2015, the Learned Special Judge discharged the applicant, holding that

evidence adequate enough to show the involvement of the applicant for framing charge against him was not found.

7. By this OA the applicant has prayed for relief in the nature of restoring the status quo as was created upon implementation of order dated 31.12.2013 (copy whereof is at Exhibit 'A' page 21 of the OA), for posting the applicant as Circle Officer at Kalyan. By amended prayer applicant has prayed that order dated 31.12.2014 (copy whereof is at Exhibit 'L' page 94AA of the OA), by which one Shri Suresh Raoji Rokade (Respondent No.3) was posted as Circle Officer, Kalyan which post was initially held by the applicant, be set aside.

8. It is seen that during pendency of present O.A, the disciplinary proceeding was put in motion against applicant, and it has been completed and applicant has been censured. Thereafter, applicant's suspension was revoked by order dated 22.4.2016 and applicant was posted as Head Clerk in the office of Tahsildar, Murbad.

9. Today learned PO has tendered copy of order dated 31.10.2017, by which punishment order against the applicant is confirmed by dismissing applicant's appeal.

10. Now this Tribunal has to consider as to whether the applicant is entitled to claim the posting at the same post including the place where he was posted by order dated 31.12.2013 Exhibit 'A' page 21 of the OA.

11. Learned Advocate for the Applicant has placed reliance on order dated 18.11.2016 passed by this Tribunal in OA No.240 of 2016 Shri Shivraj R. Rathod Vs. The State of Maharashtra & Ors., whereby this

Tribunal was pleased to direct the said applicant that he be again posted on the said post from which he was placed under suspension.

12. Now the question to be considered is as to whether an employee has right to a particular "posting" at the same "Venue" and is entitled for relief of status quo ante as to 'posting' and "Venue" as it existed prior to suspension, upon eventual withdrawal or review or setting aside of the order of suspension.

13. It is evident that applicant's grievance on the date of filing of OA was against his suspension. During pendency of OA, the suspension has been revoked and he has been posted at Murbad. Thereafter, he has decided to challenge the order of posting the Respondent no.3 (which was done by order dated 31.12.2014 Exhibit 94AA) in the post and venue where applicant was posted at the time of his suspension.

14. With the object of securing the relief referred to in foregoing para, applicant has amended the Original Application and sought the relief in terms of prayer clause (d) which is seen at page 18A of OA on the basis of the averments contained in para nos.6.31 to 6.39.

15. Therefore, now the applicant wants that Respondent No.3's posting by order dated 31.12.2014 be set aside and an order for giving him posting at Kalyan as Circle Officer, by order dated 31.12.2013 Exhibit 'A' to be restored by an order in the nature of status quo ante.

16. The State has opposed present OA by raising various pleas. Though the amended OA is not replied by filing separate reply, reliance is placed on the reply which is already filed by the State as the reply takes care of

amended OA. The plea which tends to oppose the restoration or status quo ante is summarized as below:

After suspension the post at Kalyan was liable to be filled and is accordingly filled in. Whenever an employee is suspended as per the policy decision of the Government notified through circular dated 20.4.2013, he ought not be posted in the same position / posting, rather he be posted on any other non-executive posting.

It is seen that the policy of the State Government declared through Government Circular dated 20.4.2013, copy whereof is at Exhibit R-1 at page 105, annexed to the Government's affidavit in reply.

17. This circular dated 20.3.2013 is not challenged by amendment of present OA or by filing separate OA.

18. Whenever suspension of a Government servant is ordered and an employee loses a particular position i.e. posting, restoration of an employee to the same position could be craving or an aspiration of the employee, however, whenever it is sought an employee has to show a legal right for that expectation or demand.

19. Now for enabling a Government servant to pray and get restoration as craved, such expectation has to be shown to be based on any provision of statutory law or a rule framed by an authority who is competent authority to frame such a rule, or alternatively such claim ought to be based on a binding precedent of Honourable High Court or Honourable Supreme Court.

20. Applicant has failed to show a legal right to the effect that whenever suspension is revoked or set aside, reinstatement on the same post and venue is liable to be done as a necessary consequence.

21. In an eventuality when the propriety and justiciability of order of suspension is scrutinized by executive or by Court or Tribunal and is adjudicated to be unjust, mala fide, wholly unjustified and aimed at dislodging or displacing an employee from any particular position, a prayer for restoration/restitution or grant of status quo ante shall stand on a totally different foundation, whether or not restoration/restitution is supported by a statute or law, or a precedent.

22. In the present case it is not the applicant's plea that the order of suspension due to which the applicant was displaced or dislodged from his posting as Circle Officer at Kalyan, was coached or propelled due to acts of personal favour or mala fides of any other individual or personal vendetta of anyone including suspending authority.

23. It is not the applicant's case that the suspension was aimed at a design, object or intention of displacing or dislodging the applicant from his posting as Circle Officer at Kalyan with or was resorted with object to accommodate some other employee or the Respondent No.3.

24. Had it been applicant's the plea that he was displaced by using suspension as a device, on account of factual mala fides, may be that the applicant could had an arguable case and in that event any such claim of applicant could have been scrutinized on the basis of such a claim on its own merits depending on pleadings and evidence/proof in support of those pleadings, inter alia on the ground of violation of guarantee of fairness and also on the ground of guarantee of human dignity under Article 14 and 21 of the Constitution of India.

25. It may eventually happen in the event a plea and situation as described in aforesaid para exists and is proved to be so, and the employee proves the plea of mala fides and vendetta, such employee may be able to stake a claim and argue to pray for restoration or a status quo ante. Yet whether an applicant would get a relief, by way of maintenance or restoration of status quo ante is at present a hypothetical matter. This question may have to be adjudicated whenever issue to that effect is raised with appropriate and adequate pleadings and proof of facts.

26. Suspension and transfer are inevitable and un-compoundable incidences of employment. In the event charges of misconduct/offence etc., are proved to be false and action of suspension is found/adjudicated to be ab initio void, unjust and issued vindictively, by way of victimization and mala fide, a delinquent, if advised, may think of initiation of proceedings for damages towards any civil wrong done to him by any particular individual. However as of today, total restitution of posting and venue does not have a foundation even as a fiction in service jurisprudence, even by extension of construction of Articles 14, 16 and 21 of the Constitution of India for conserving human dignity of an individual citizen.

27. A prayer for restoration of a posting prior to suspension appears to be an extremely difficult proposition. Even grant of such relief on the basis of a statutory law or a judge made law operating as a binding precedent under Article 141 of the Constitution of India if and when cited, shall have to depend upon actual findings based on adjudication.

28. The reasonableness and fairness in the matter of posting has always to be viewed with the limitation of wide open inherent powers of executive of doing executive business.

29. Applicant's strong and fervent reliance on judgment in OA No.240 of 2016 dated 18.11.2016 needs to be dealt with.

30. Applicant is not able to show from the judgment in OA No.240 of 2016 that the judgment contains any discussion as to reasons or grounds which are the foundation of the order in the nature of status quo ante since it has to be seen as a relief in the nature of restitution.

31. Relief of Restitution presupposes a crystallized right. Posting and transfer are matters of inherent executive power and a rare species/matter, which could be controlled or governed by issue of writs, except under Law or a settled law of precedent.

32. The most guiding factor or parameter of scrutiny while considering a case for restitutive relief would be a need propelled due to gravity and magnitude of arbitrariness as may be demonstrated on facts of the case. Court & Tribunal would not feel helpless, powerless or astute to restore status-quo-ante, if dislodgement was/is the object behind suspension, and not just by an order of choice of the court or Tribunal.

33. It has to be always borne in mind that a Government servant does not have vested or an absolute right to any particular post.

34. Hence, this Tribunal has to hold that, if mala fides are absent, restoration and status quo ante ought never to be granted.

35. In the background of foregoing discussion, it has to be held that an employee does not have nor there can be a vested right in an employee to claim that he should be or he must be retained on the very post from

where he was suspended. Therefore, judgment in OA No.240 of 2016 has to be viewed as a matter of judicial notice of facts of given case by the Tribunal and on fact the applicant in said case had adequately levered the discretionary part of the power of doing effective justice by molding the relief. Reasons which have led to exercise of said discretionary power and order are not shown to be recorded or explicit and eloquently to be spelt out from said judgment. Moreover, existence of such reasons may be presumed. However, in absence of reasons, said order cannot be cited as precedent, either before the Government or before this Tribunal. Hence, the operative order contained in OA No.240 of 2016 is like a decree and like a “judgment in personem” and not like a precedent as a “judgment in rem”. Hence, said order passed in OA No.240 of 2016 cannot be cited and used as a precedent and need not rather cannot be followed.

36. As has emerged, applicant’s claim for restoration of status quo ante is not based on any legal right of class or category whatsoever.

37. Hence, this Tribunal has to conclude by holding that the applicant has failed to make out case worth interference and grant of relief in the nature of status quo ante.

38. The Original Application has no merit and is dismissed.

39. Parties are directed to bear own costs.

Sd/-
(A.H. Joshi, J.)
Chairman
24.11.2017

Dictation taken by: S.G. Jawalkar.