

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11464 OF 2014

Shri Anil Prabhakar Dalvi

.. Petitioner

Vs.

The State of Maharashtra & Anr.

.. Respondents

Ms. Swati P. Manchekar for petitioner.

Mr.S.S.Bhende, AGP for respondent nos.1 and 2.

**CORAM : ANOOP V. MOHTA,
K.R.SHRIRAM, JJ.**

DATE : 23RD MARCH, 2015

P.C.

1 Rule made returnable forthwith and heard finally.

2 The petitioner, who is about to retire on 30th September 2015, has challenged impugned order dated 24th November 2011 passed by the Maharashtra Administrative Tribunal (MAT) and also the order of transfer dated 31st May 2014 issued by respondent no.2. MAT rejected the application by overlooking the submissions of the petitioner that he suffers from heart ailment for which had undergone Open Heart By-pass Surgery in 2009 and has been not keeping good health since then and is also about to retire. MAT has rejected the application mainly on the ground that the petitioner is working at Khopoli since 24th April 2011 and has completed

three years service and therefore is due for transfer. The competent authority also approved the said order of transfer. The petitioner, however, being dissatisfied with the order, preferred the present writ petition on 16th December 2014. The respondents by their reply dated 10th February 2015, resisted the prayer and supported the impugned order.

3 The fact that the petitioner is retiring in the month of September 2015 is relevant and required to be considered in favour of the petitioner. The provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and the related circular, provide protection against the order of transfer where the employee who is due for transfer after completion of tenure at a station of posting or post has less than one year for retirement. Therefore, in the interest of justice and as the protection is now available to the petitioner, he needs to be excluded from being transferred.

4 The learned counsel appearing for the petitioner has also made statement that the petitioner is in service as Inspector of State Excise, M/s. Mohan Rocky Spring Water Brevaries, Khopoli, Dist. Raigad even after the order of transfer. The petitioner, being a heart patient, has expressed difficulties to perform hectic activities or onerous duties which involves

constant movements from one place to another in the post of Inspector of Excise, Flying Squad which is an executive post. The post where the petitioner is working at Khopoli is a non-executive post.

5 Therefore, we are inclined to interfere with the transfer order. Taking overall view of the matter, we are inclined to pass the following order :

- (i) The impugned order dated 24th November 2014 and transfer order dated 31st May 2014 are quashed and set aside.
- (ii) The respondents are directed to permit the petitioner to work at Khopoli and/or nearby area, if any, till his retirement in September 2015.

6 The petition is disposed of with liberty. No costs.

(K.R. SHRIRAM, J.)

(ANOOP V MOHTA, J.)