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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.204 OF 2014
IN
WRIT PETITION NO.2276 OF 2013

Captain Diwakar Prasad	..Applicant.
Vs.	
The State of Maharashtra & Ors.	.Respondents.

Mr. Ramesh Ramamurthy for Applicant.
Mr. D.A. Nalawade, Govt. Pleader for Respondent-State.

CORAM: B.R. GAVAI &
A.S. GADKARI, JJ.

DATE: 13th April 2015.

P.C.:

1 This Notice of Motion is taken out for seeking stay to the transfer order.

2 Since transfer is an incidence of service, we are not inclined to interfere with the transfer order.

3 Insofar as the prayer clause (c) is concerned, the Applicant has prayed for direction to consider him for promotion without reference to chargesheet. We find that the relief prayed in the Notice of Motion cannot be granted. Whether to consider the candidate for promotion or not would

always depend upon the service conditions which govern the employment of the candidate. If service condition provides that a person chargesheeted should not be considered for promotion, mandamus cannot be granted to do something contrary to service condition.

4 In any case Mr. Nalawade, the learned Government Pleader submits that the Applicant was considered for promotion, however, he was found not suitable for promotion. He further submits that since no suitable candidate is found, a public notice is issued for inviting application for suitable candidate.

5 In that view of the matter, nothing survives in the motion. The Notice of Motion is rejected.

(A.S. GADKARI, J.)

(B.R. GAVAI, J.)