

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF AUGUST, 2018

PRESENT

THE HON'BLE MR. JUSTICE A.S.BOPANNA
AND
THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

WRIT PETITION NO.37016/2018 (S-KAT)

BETWEEN:

T M SRINIVAS
S/O. MUDALAGIRI GOWDA,
AGED ABOUT 50 YEARS
R./AT NO 938, 6TH CROSS,
BANASHANKARI 1ST STAGE,
2ND BLOCK, BANGALORE 560050.
WORKING AS
DEPUTY SUPERINTENDEINT,
EXCISE,
KORAMANAGALA SUB-DIVISION,
BANGLAORE -560002.
NOW UNDER SUSPENSION

... PETITIONER

(BY SRI MUHAMMAD SHAMIL, ADV. FOR
SRI AJIT P.B., ADV.)

AND:

1. THE COMMISSIONER,
EXCISE
OFFICE OF THE EXCISE
COMMISSIONER,
2ND FLOOR, TTMC, A BLOCK,
BMTC BHAVAN,
SHANTINAGAR,
BANGALROE 560027
2. THE STATE OF KARNATAKA
REPRESENTED BY
THE ADDITIONAL CHIEF SECRETARY,

FINANCE DEPARTMENT EXCISE,
VIDHANA SOUDHA,
DR. B R AMBEDKAR ROAD,
BANGLAORE 560001

3. BASAVARAJ DAVANAKATTE
DEPUTY SUPERINTENDENT,
EXCISE,
KORAMANAGALA SUB DIVISION,
BANGALROE 560034

... RESPONDENTS

(BY SMT. ANITHA N, HCGP.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 08.08.2018 IN A.NO.6172/2018 PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL AT BANGALORE (ANNEXURE-B).

THIS WRIT PETITION COMING ON FOR ORDERS, THIS DAY, **A.S. BOPANNA. J.**, MADE THE FOLLOWING:

O R D E R

Learned Government Advocate to accept notice for respondents No. 1 and 2 and file memo of appearance in four weeks. Considering the nature of disposal, notice to respondent No.3 is not necessary.

2. The petitioner is before this Court assailing the order dated 08.08.2018 passed in Application

No.6172/2018 by the Karnataka State Administrative Tribunal, Bengaluru ('the KSAT' for short).

3. The petitioner claiming to be aggrieved by the order dated 05.07.2018 and the Official Memorandum dated 17.04.2018 which were impugned at Annexures-A9 and A10 was before the KSAT. The KSAT on taking into consideration the fact that the petitioner has been reinstated into service after the suspension order dated 10.01.2018 was set aside by the KSAT through its earlier order dated 30.05.2018 passed in Application No. 1113/2018 was of the view that on such revocation of the suspension, the appropriate posting has been made and therefore the petitioner cannot raise any grievance in that regard.

4. Learned counsel for the petitioner while assailing the order passed by the KSAT as also the orders

impugned before the KSAT would contend that the petitioner was discharging his functions as Deputy Superintendent of Excise in the office at Koramangala Sub-division, Bengaluru, at the point of his suspension. In that view, it is contended that when the suspension order was set aside by the KSAT, reinstatement ought to have been effected in the same place or even at a place to which lien had been shifted. It is contended that the respondents on the other hand have posted the petitioner at Chamarajanagar which in fact is a malafide action of the respondents but the KSAT has not taken into consideration this aspect. Therefore the order passed by the KSAT calls for interference.

5. Learned Government Advocate would however seek to sustain the order passed by the KSAT. It is contended that the KSAT in fact has taken into consideration the order dated 30.05.2018 passed in

Application No. 1113/2018 by which the order of suspension had been set aside and on noticing that there was no specific direction with regard to posting to any particular place and when the order was to be implemented, the petitioner has been posted to a place where there was vacancy. Since through the office memorandum dated 17.04.2018 a general transfer of several officers had been made, in that circumstance the posting at Koramangala Sub-Division had been made by posting respondent No.3 herein to that position. In that view, it is contended that the order passed by the KSAT or the orders impugned therein does not call for interference.

6. In the light of the above, the fact that the petitioner was suspended through the order dated 10.01.2018 and the same was set aside by the KSAT only on 30.05.2018 in Application No. 1113/2018 is the

accepted position. In that circumstance, what is necessary to be taken note is as to whether the petitioner as a matter of right can claim to be posted in Koramangala Sub-Division itself irrespective of the subsequent developments. In any event, it is not in dispute that his lien had been shifted from that office though not to Chamarajanagar but to Chickaballapur. In any event much prior to the order dated 30.05.2018 being passed by the KSAT, the official respondents through the Office Memorandum dated 17.04.2018 had effected the transfers in the manner as indicated therein, by which several officers were transferred. Since the post to which the petitioner claims presently was already filled by transferring another officer, at the point when the order of the KSAT quashing the suspension order was being implemented since the post in Chamarajanagar was vacant, the petitioner has been accommodated therein.

In any event the post is of the same cadre and the petitioner is working as a Superintendent of Excise therein and there is no change or alteration of the service conditions. Therefore, the ultimate conclusion made by the KSAT cannot be considered as erroneous so as to call for interference.

7. However taking note of the submission made by the learned counsel for the petitioner with regard to certain domestic problems of the petitioner, due to which there would be difficulty in serving at Chamarajanagar, the petitioner is granted the liberty of filing an appropriate representation to the competent authority seeking consideration in that regard and to take a decision as to whether an alternative posting if any available could be given to the petitioner. If such representation is made by the petitioner, a decision in accordance with law shall

be taken on such representation in an expeditious manner, but not later than six weeks from the date on which such representation is made.

The petition is accordingly disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

AKC/bms