IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.44 OF 2021

Shri Kaustubh Hari Kurlekar,) .. **Applicant**

Versus

State of Maharashtra & 2 Ors.) **..Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 15.01.2021.

ORDER

1) Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondent.

2) The Applicant has challenged the transfer order dated 05.01.2021 whereby he is transferred from the post of Additional Superintendent of Prison, Taloja, Navi Mumbai to the post of Superintendent, Washim District Prison contending that though the impugned order 05.01.2021 is worded differently as reposting at Wahsim, in fact, it is transfer and the same being without the approval of Civil Service Board and Hon'ble Chief Minister, as is required under section 4 (5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act of 2005') the same is unsustainable in law.

3) Learned Advocate for the Applicant has pointed out that initially by order dated 29.06.2019, on promotion the Applicant was though shown posted at Washim, he was given posting at Taloja Central Prison, Navi Mumbai and before completion of normal tenure of three years, he is transferred without placing the matter before the Civil Service Board and without approval of Hon'ble Chief Minister. She, therefore, seeks interim stay to the order dated 05.01.2021. She further pointed out that the Applicant is due to retire in October 2021.

4) Per contra, learned P.O. Shri A.J. Chougle opposed grant of interim relief and tried to canvass that by order dated 29.06.2019, Applicant was temporarily posted at Taloja, and therefore, now by impugned order dated 05.01.2021 is simply sent to his

original post at Washim, and therefore. it is not the transfer which requires compliance of provision of 'Transfer Act 2005'.

5) True, in terms of order dated 29.06.2019, it appears that the permanent posting was given to the Applicant at Wahim but he was not at all posted at Washim and on the contrary, he was given posting at Taloja on administrative reasons. It is no where the case of the Respondent that Applicant was accommodated at Taloja on his request. This fact remains that Applicant had joined at Taloja in terms of order dated 29.06.2019. This being the position, he was entitled to have normal tenure at Washim.

6) No doubt in impugned order dated 05.01.2021, it is stated that Applicant is resent to his original post at Washim. This is nothing but camouflage to circumvent the provision of 'Transfer Act 2005'.

7) Once the Applicant is shown posted at Taloja by order dated 29.06.2019 he is entitled for normal tenure and for mid-term and mid-tenure transfer, there has to be compliance of approval of Civil Service Board and prior approval of Hon'ble Chief Minister as contemplated under section 4 (5) of 'Transfer Act 2005' which *inter-alia* empowers mid-term and mid-tenure transfer of Government servant in special case, after recording reasons in writing with prior permission of immediately preceding competent transfer authority (i.e Hon'ble Chief Minister) as mentioned in table of section 6 of Transfer Act 2005.

8) Admittedly, the matter was not placed before Civil Service Board as mandatory by Apex Court in ***T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732.*** Neither the same is approved by Hon'ble Chief Minister. The order dated 05.01.2021 is approved only by Hon'ble Home Minister which is not enough. Apart, special reasons as contemplated under section 4 (5) of 'Transfer Act 2005' are forthcoming.

9) Learned P.O. sought to justify impugned order stating that in view of certain serious complaints of mere administrative reasons, the Applicant was required to be shifted. True, the perusal of file by learned P.O. reveals that the Government was not happy with the functioning of the administration of Taloja Prison. At this juncture, it is not necessary to make comments upon the varsity of complaints, as in any case of complaints if necessitated transfer, respondents were bound to follow the provisions of 'Transfer Act 2005' which is completely missing.

10) In view of above, I am satisfied that *prima-facie* impugned order dated 05.01.2021 is nothing but transfer order and *prima-facie* it is in contravention of provision of 'Transfer Act 2005'.

11) In view of above interim relief as prayed in para 10 (a) of O.A. is granted.

12) Issue notice to Respondent before admission returnable on 15.01.2021.

13) Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

14) Applicant is authorized and directed to serve on Respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of Original Application. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

15) This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

16) The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.

17) In case notice is not collected within three days or service report on affidavit is not filed 3 days before returnable date, Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

18) S.O. to 12.02.2021. Hamdast granted.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

nmn

(G.C.P.) J 2260(B) (50,000—2-2015) [Spl.- MAT-F-2 E.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

M.A./R.A./C.A. No. of 20

I N

Original Application No. of 20

FARAD CONTINUATION SHEET NO.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

O.A.534/2020

Shri M.V. Patil ... Applicant
Vs.
The State of Mah. & Ors. ... Respondents

1. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. Pleading is complete and matter is ripe for hearing. Hence, adjourned for hearing at the stage of admission.

3. Interim relief granted by order dated 24.12.2020 to continue till next date.

4. S.O. to 19.01.2021.

Sd/-

(A.P. Kurhekar)
Member-J
15.01.2021

(skw)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

Date : 15.01.2021

O.A.No.638 of 2020

D. U. Rathod ....Applicant
Versus
The State of Maharashtra & Ors. ...Respondents.

1. Heard Shri K. R. Jagdale, learned Counsel for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

2. In terms of order passed by this Tribunal on 08.01.2021, one week's time was granted for issuance of appropriate posting order of the Applicant since his transfer is without giving any posting.

3. Learned P.O. submits that file is under consideration of the Government and necessary orders will be issued within a week.

4. Shri K.R. Jagdale, learned Counsel for the Applicant opposes the request made by learned P.O. stating that the Applicant is left without posting for more than two months.

5. Perusal of PEB Minutes dated 28.10.2020 reveals that there are allegations of corruption and sexual harassment against the Applicant, and therefore, PEB recommended for his transfer and to keep him in waiting . Accordingly, by order dated 28.10.2020, the Respondent No.2 is posted in the place of Applicant but no further order of posting of the Applicant was issued.

6. Though, the Applicant seems to have transferred on the allegation of misconduct, the Respondent No.1 is under obligation to pass further order about his posting which has been belated for long time. However, one week's time is lastly granted to Respondent No.1 to pass appropriate order.

7. S.O. to 22.01.2021.

Sd/-

(A.P. Kurhekar)
Member(J)

vsm

(G.C.P.) J 2959(B) (50,000—3-2017) [Spl.- MAT-F-2 E.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

M.A./R.A./C.A. No. of 20

I N

Original Application No. of 20

FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

Date : 15.01.2021

O.A.No.583 of 2020 with
O.A.No.584 of 2020 with
O.A.No.585 of 2020 with
O.A.No.586 of 2020
with
O.A.587 of 2020

B. R. Lokhande & Ors. ....Applicants

Versus

The State of Maharashtra & Ors. ...Respondents.

1. Heard Shri L. S. Deshmukh, learned Counsel for the Applicants and Smt. Archana B. K., learned Presenting Officer for the Respondents.

2. Learned P.O. for the Respondents submits that reply on behalf of the Respondent No.3 will be filed during the course of the day. Statement is accepted. It be taken on record.

3. The matter is adjourned for hearing at the stage of admission.

4. S.O. to 29.01.2021.

Sd/-

(A.P. Kurhekar)
Member(J)

vsm

(G.C.P.) J 1726(B) (20,000--10-2013) |Spl.- MAT-F-2 E.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

M.A./R.A./C.A. No. of 20

I N

Original Application No. of 20

FARAD CONTINUATION SHEET NO.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

Date: 15.01.2021

O. A. No.581 of 2020

G.A. Jagtap .....Applicant
Versus
The State of Maharashtra & Ors. .....Respondents.

1. Heard Smt Punam Mahajan, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. Learned Advocate for the Applicant has filed Affidavit-in-Rejoinder. It is taken on record.

3. The matter is adjourned for hearing at the stage of admission.

4. S.O. to 29.01.2021.

Sd/-

(A.P. Kurhekar)
Member (J)

NMN

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

Date : 15.01.2021

O.A.No.435 of 2019

R. K. Pawar ....Applicant
Versus
The State of Maharashtra & Ors. ...Respondents.

1. Heard Shri R.K. Ghadigaonkar, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondent Nos.1 to 3 and Smt. Punam Mahajan, learned Counsel for the Respondent No.4.

2. In present O.A., the Applicant has challenged the order dated 10.08.2020 transferring him from 'W-1 Division, Mumbai Suburban to M/s Magnum Traders, FL-1, Raigad contending that it is mid-term and mid-tenure in contravention of provision of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005) and secondly his options were not considered despite family difficulties.

3. When the matter was taken up by the Hon'ble Chairperson for admission, no interim relief was granted but it was suggested that the Respondents can accommodate the Applicant in Mumbai in view of service of his wife at Saifee Hospital, Mumbai and old age of mother. It is in this context, the matter was adjourned from time to time to facilitate appropriate modification order as the issue was under consideration of the Government.

4. Today, learned P.O. has tendered the order dated 15.01.2021 whereby the Government has approved modification to transfer order of the Applicant by giving him posting at M/s Maharashtra Bear & Wine Centre, FL-1, Mumbai .

5. Thus, it appears that the Government tried to accommodate the Applicant in Mumbai and accordingly issued order dated 15.01.2021.

6. In view of this development, infact the Applicant should remain satisfied as he is accommodated in Mumbai itself. However, learned Counsel for the Applicant requested to grant of time.

7. The Applicant is also present in the Tribunal. He seems not satisfied with the modification order dated 15.01.2021. The order dated 15.01.2021 is tendered on record and marked by letter 'X'.

8. In view of above, the Applicant should make stand clear as to whether he wants to withdraw O.A. or still he wants to proceed the matter on merit.

9. S.O. to 12.02.2021.

Sd/-

(A.P. Kurhekar)
Member(J)

vsm

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

Date : 15.01.2021

O.A.No.600 of 2017

S. G. Dhanawade ....Applicant

Versus

The State of Maharashtra & Ors. ...Respondents.

1. Heard Shri K.R. Jagdale, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

2. In this O.A., the Applicant is seeking deemed date of promotion. At the very outset, learned Counsel has pointed out that the Respondents in their reply in Para No.5 stated that proposal for grant of deemed date of promotion to the Applicant is already forwarded to the Government by letter dated 18.10.2016.

3. Learned Counsel for the Applicant, therefore submits that the Respondent No.1 should disclosed about further orders only proposal dated 18.10.2016.

4. Thus, it appears that the issue of deemed date of promotion is already referred to the Government but no orders are passed one way or others.

5. In view of above, learned P.O. is directed to take instructions from the Respondent No.1 to apprise the Tribunal about the decision on proposal dated 18.10.2016 if any.

6. If no such orders are passed on proposal dated 18.10.2016 till date, in that event Respondent No.1 should pass appropriate orders in accordance to law within two weeks from today so that if necessary, the matter can be decided on merit.

7. S.O. to 29.01.2021.

Sd/-

(A.P. Kurhekar)
Member(J)

(G.C.P.) J 2959(B) (50,000—3-2017)

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

M.A./R.A./C.A. No. of 20

I N

Original Application No. of 20

FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

Date : 15.01.2021

O.A.No.407 of 2013

M.R. Shaikh & Ors. ... Applicants
Vs.
The State of Maharashtra & Ors ... Respondents

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicants and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. The learned Counsel Shri M.D. Lonkar mentions that as per instructions received by him, the matter was taken up by the Association of Shop Inspector and the Government has probably came to the conclusion regarding the same and decided the matter. However, he proposes to ascertain and seeks adjournment by two weeks for the same.

3. The learned C.P.O. Ms. S.P. Manchekar mentions that she will find out if there is any progress regarding the same from the Respondents.

4. Adjourned to 28.01.2021.

Sd/-
(P.N. Dixit)
Vice-Chairman

prk

(G.C.P.) J 2959(B) (50,000—3-2017)

[Spl.- MAT-F-2 E.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

M.A./R.A./C.A. No. of 20

I N

Original Application No. of 20

FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

Date : 15.01.2021

O.A.No.35 of 2020 with O.A.No.62 of 2020

Dr. Dudhabhate B.T. & Ors. (O.A.35/2020
Dr. V.D. Shinde (O.A.62/2020) ... Applicants
Vs.
The State of Maharashtra & Ors ... Respondents

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicants in O.A.No.35/2020 and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents. Shri A.V. Sakolkar, learned Advocate for the Applicant in O.A.No.62/2020 is absent.

2. The learned C.P.O. mentions that as per her information the M.P.S.C. (Respondent no.2) has approached the Hon'ble High Court. However, she does not have the details of the same and thus she seeks adjournment by two weeks and to get the latest information.

3. Adjourned to 28.01.2021 for final hearing.

Sd/-
(P.N. Dixit)
Vice-Chairman

prk

(G.C.P.) J 2959 (A) (50,000—3-2017)

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

Original Application No. of 20 DISTRICT

..... Applicant/s

(Advocate .....)

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal' s orders

O.A. No.342 of 2020

R.M. Kale ..Applicant

Vs.

The State of Maharashtra & Ors. ..Respondents

Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. Ld. CPO, on instructions, mentions that respondents propose to submit the bill shortly. Therefore, she seeks adjournment till 23.2.2021.

3. By consent adjourned to 23.2.2021.

Sd/-
(P.N. Dixit)
Vice-Chairman
15.1.2021

(sgj)

(G.C.P.) J 2959 (A) (50,000—3-2017) [Spl.- MAT-F-2 E.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

Original Application No. of 20 DISTRICT

..... Applicant/s

(Advocate .....)

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

M.A. No.246 of 2020 in O.A. No.927 of 2017

Gulab D. Jadhav ..Applicant

Vs.

The State of Maharashtra & Ors. ..Respondents

Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. This MA No.246 of 2020 is filed by the applicant in person requesting to fix the date of hearing in OA No.927 of 2017. Today applicant is person is absent. However, he has requested his Advocate Shri B.A. Bandiwadekar, learned Advocate for the applicant in above OA No.927 of 2017 to appear before this Tribunal. He has requested to fix the date of hearing in the above OA.

3. The OA is fixed for hearing on 9.4.2021. Meanwhile Ld. PO mentions that she will find out the progress regarding the DE. MA stands disposed off accordingly.

Sd/-
(P.N. Dixit)
Vice-Chairman
15.1.2021

(sgj)

(G.C.P.) J 2959 (A) (50,000—3-2017) [Spl.- MAT-F-2 E.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

Original Application No. of 20 DISTRICT

..... Applicant/s

(Advocate .....)

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

C.A. No.63 of 2019 in O.A. No.1087 of 2014

S.S. Nalalwade ..Applicant

Vs.

The State of Maharashtra & Ors. ..Respondents

Heard Shri G.A. Bandiwadekar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. Ld. CPO mentions that MPSC has approached the Hon'ble High Court in W.P. No.199 of 2020 against the order dated 13.6.2019 passed by this Tribunal in the above OA. The same has been looked into by the Hon'ble High Court on 5.3.2020. The matter was fixed for hearing on 30.3.2020. Ld. CPO mentions that thereafter the matter has not been heard till date and according to her efforts are being made in this regard. She proposes to intimate the progress within two weeks.

3. S.O. to 28.1.2021 as last date for intimating the progress.

Sd/-
(P.N. Dixit)
Vice-Chairman
15.1.2021

(sgj)

(G.C.P.) J 2959 (A) (50,000—3-2017) [Spl.- MAT-F-2 E.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

Original Application No. of 20 DISTRICT

..... Applicant/s

(Advocate .....)

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

M.A. No.21 of 2021 in O.A. No.38 of 2021

Dr. V.V. Patil & Anr. ..Applicants

Vs.

The State of Maharashtra & Ors. ..Respondents

Heard Shri Omkar Kulkarni, learned Advocate for the Applicants and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. The applicants are prosecuting for the same cause of action. For the reasons stated in the MA, leave to sue jointly as prayed for is granted, subject to the Applicants paying requisite court-fees, if not already paid. MA disposed off accordingly.

Sd/-
(P.N. Dixit)
Vice-Chairman
15.1.2021

(sgj)

(G.C.P.) J 2959 (A) (50,000—3-2017) [Spl.- MAT-F-2 E.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

Original Application No. of 20 DISTRICT

..... Applicant/s

(Advocate .....)

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	O.A. No.38 of 2021 Dr. V.V. Patil & Anr. ..Applicants Vs. The State of Maharashtra & Ors. ..Respondents Heard Shri Omkar Kulkarni, learned Advocate for the Applicants and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents. 2. Applicants No.1 and 2 are working in the cadre of Medical Officer, Group A at Sangli and Nanded respectively. Ld. Advocate for the applicants mentions that as per his information the DPC was held in the recent past. However, he is not sure whether actually DPC took place or not. He seeks stay to the proceedings of the DPC. In this connection he seeks adjournment for collecting the facts before coming to this Tribunal. 3. At his request adjourned to 19.1.2021. Sd/- (P.N. Dixit) Vice-Chairman 15.1.2021 (sgj)