

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.34 OF 2017

DISTRICT: - JALGAON.

Shri Chandrakant Bhaskar Tayade,

Age-49 years, Occu. : Lawyer
R/o 15, Leelawati Banglow Highway,
Sakri Fatta, Sakri Road,
Bhusawal.

.. APPLICANT.

V E R S U S

- 1. The State of Maharashtra,**
Through the Principal Secretary of
Home Ministry, Mantralaya,
Mumbai.
 - 2. Director of Public Prosecution (M.S.),**
Mumbai.
 - 3. The Assistant Director of Public
Prosecutor,** Old B.J., Market
3rd Floor "D" Wing,
Room No. 4,6& 8 Jalgaon,
Dist. Jalgaon.
 - 4. The District Magistrate & Dist. Collector,**
Collector Office Jalgaon,
Dist. Jalgaon.
- .. RESPONDENTS.

APPEARANCE : Shri. Veshal V. Udhan, learned
Advocate holding for Shri B.R. Kedar,
learned Advocate for the applicant.

: Shri S.K. Shirse – learned Presenting
Officer for the respondents.

CORAM : **JUSTICE M.T. JOSHI, VICE CHAIRMAN**
AND
: **ATUL RAJ CHADHA, MEMBER (A)**

DATE : **15TH MARCH, 2019.**

ORDER**[Per :Justice M.T. Joshi, Vice Chairman]**

1. Heard Shri Veshal V. Udhan, learned Advocate holding for Shri B.R. Kedar, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents.

2. By the present Original Application the applicant is seeking following relief: -

“B] The impugned order dated 30/11/2016, passed by the respondent No. 4, thereby terminating services of the applicant as Spl. Assistant Public Prosecutor and removing his name from the panel of Spl. Public Prosecutor of Jalgaon District, bearing No./दंडप्र/कावी/४९२३४/१६, may kindly be quashed and set-aside, and by allowing the original application, the respondent No. 1 to 4 may kindly be directed to reinstate the applicant in service and on panel of the Spl. Assistant Public Prosecutor of Jalgaon Dist. with due date effect, and consequential benefits.”

3. The applicant was empanelled as Special Assistant Public Prosecutor by the respondent No. 3, the Assistant Director of Public Prosecutor, Jalgaon, on temporary basis along with some other persons vide order dated 20.1.2011, a

copy of which is placed on record at Annexure 'A-1', page-17. Vide impugned communication dated 23.02.2016, Annexure 'A-2', page-20 he was communicated that the work is withdrawn from him and, therefore, with effect from 24.02.2016 he should not look after the Court work. Hence, the present Original Application.

4. According to the applicant, after receipt of the said impugned letter he had made representation to respondent No. 4 praying for his reinstatement. Thereupon, on 18.03.2016 he received communication from respondent No. 2 calling his explanation regarding a report made by the then Joint Civil Judge Junior Division & JMFC, Raver dated 3.2.2016 & 4.2.2016, copies of which are placed on record at Annexure "A-4" Collectively. It was submitted that on the basis of the *ex parte* report, the respondent No. 2 has taken impugned decision. No opportunity of participating in the enquiry was given to him. The applicant served for 5 years preceding the impugned letter and only because of the strained relation of the Judicial Officer, the applicant was removed from the job. The impugned order, therefore, according to him, is illegal and is passed under the colourable

exercise of power by violating justice and equity and, therefore, liable to be set aside.

5. Respondent No. 3 has filed his affidavit in reply. He has submitted that the applicant is not a Government employee, but was empanelled as Special Assistant Public Prosecutor. The Maharashtra Civil Services Rules are not applicable to him. He was removed from the panel on the basis of certain internal enquiry. In the circumstances, it was submitted that the order cannot be challenged.

6. Upon hearing both the sides, in our view, the present Original Application is not tenable and, therefore, without going into the merit of the case, the same is dismissed for the following reasons: -

REASONS

7. Section 14 (1) of the Administrative Tribunals Act, 1985 runs as under: -

“14. Jurisdiction, powers and authority of the Central Administrative Tribunal.—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court⁴⁶ [***] in relation to—

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation⁴⁷ [or society] owned or controlled by the Government;

(c)”

8. The pleadings of the applicant and his prayer as quoted supra would show that he was empanelled for working as Special Assistant Public Prosecutor. The copy of the representation made by him to the respondent No. 2, the

Director of Public Prosecution, M.S., Mumbai, dated 28.3.2016 at page-28 would show that he used to receive honorarium on daily work basis. Respondent No. 2 in paragraph No. 3 in his affidavit in reply has further detailed that the applicant was entitled to honorarium of Rs. 1000/- per day on the basis of effective hearing.

9. It would thus be clear that the present applicant is not a Government servant and, as such, the present dispute cannot be called as a service matter pertaining to the services as provided by Section 14 (1) of the Administrative Tribunals Act, 1985 as reproduced supra.

10. In the circumstances, the present Tribunal would have no jurisdiction to deal with the issue involved in the present O.A. Hence, the following order: -

ORDER

The present Original Application is dismissed without any order as to costs.

(ii) The applicant would be at liberty to seek remedy at a proper forum.

MEMBER (A)

VICE CHAIRMAN

PLACE : AURANGABAD.

DATE : 15TH MARCH, 2019.

O.A.NO.34-2017(DB-Termination)-HDD-2019