

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 390 OF 2018

DISTRICT: - PARBHANI.

Babu S/o. Bhagoji Dandegaonkar,
Age-48 years, Occu. : service,
R/o. At Post Shivni, Tq. Kinwat,
Dist. Nanded.

.. APPLICANT.

V E R S U S

- 1. The State of Maharashtra,**
Through : The Secretary,
Home Department,
Mantralaya, Mumbai.
- 2. The Additional Director General of
Police & Inspector General of Prison,**
Maharashtra State, Pune-01.
- 3. The Dy. Inspector General of Prison,**
Central Prison, Harsul,
Aurangabad.
- 4. The Superintendent,**
District Prison Class-2,
Parbhani.

.. RESPONDENTS.

APPEARANCE : Shri. Kakasaheb B. Jadhav, learned
Advocate for the applicant.

: Shri M.P. Gude – learned Presenting
Officer for the respondents.

CORAM : **B.P. PATIL, MEMBER (J)**

DATE : **25TH JANUARY, 2019**

ORDER

1. The applicant has challenged the impugned order dated 17.05.2018 issued by the respondent No. 3; thereby transferring him from District Prison, Parbhani to Central Prison, Nasik Road, Nasik, by filing the present Original Application and prayed to quash and set aside the same.

2. The applicant was initially appointed on the post of Jail Guard on 1.9.1997 and posted at Bhandara Prison. Thereafter, in the month of May, 2006 he has been transferred to District Prison, Nanded and he served there till the year 2012. On 28.6.2012 he has been transferred in the office of respondent No. 4, the Superintendent, District Prison Class-2, Parbhani, and since then he was serving there till issuance of the impugned order. It is his contention that his entire service career is unblemished. It is his contention that by the order dated 28.5.2012 he was transferred from Nanded District Prison to Central Prison, Nasik, and thereafter he made representation with the respondent No. 3 and, therefore, the said transfer order has been cancelled by order dated 26.6.2012. Accordingly, he has been transferred and posted in the office of respondent No. 4, the Superintendent, District Prison Class-2, Parbhani. It is his contention that

the respondents called options from the applicant at the time of general transfers of the year 2018. The applicant submitted option for his transfer and requested to post him at District Prison, Nanded, by submitting representation dated 24.1.2018. But the respondent No. 3 issued the transfer order dated 17.5.2018 without considering his options and request and transferred him from District Prison, Parbhani to Central Prison, Nasik and thereafter he has been relieved by the order dated 29.5.2018. It is his contention that thereafter he submitted representation dated 1.6.2018 to the respondent Nos. 2 & 3 and requested to transfer him at Nanded on account of his illness, but the respondent Nos. 2 & 3 have not considered his request. It is his contention that Nasik is 500 k.m. away from his native place and, therefore, it is inconvenient posting for him. It is his contention that Doctors advised him to undergo surgery of the brain and he is under treatment, but that ground has not been considered by the respondents while transferring him. It is his further contention that he is having two daughters and two sons and they are serving in the forest department in Nanded District. It is his further contention that three children are serving in Kinwat Taluka and one is serving at Mahor taluka in Nanded

district. It is his further contention that one daughter and one son are of the age of marriage and, therefore, he is searching matches for them. His brother's wife died on 29.12.2010 and his brother is suffering from illness of HIV and his children are residing with him. It is his contention that he has to take care of them and, therefore, he prayed to the respondents to transfer him at Nanded. It is his contention that without considering his request and family problems, the respondents have passed the impugned order in contravention of the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short 'the Transfer Act of 2005). It is his contention that guide lines given in the Government Resolution have not been followed by the respondent No. 3 while issuing the impugned transfer order dated 17.5.2018. Therefore, he prayed to quash and set aside the same by allowing the present Original Application.

3. Respondent Nos. 1 & 2 have filed their affidavit in reply and resisted the contentions of the applicant. They have denied that the impugned order has been issued in contravention of the provisions of the Transfer Act of 2005. It

is their contention that the Deputy Inspector General of Prisons, Central Region, Aurangabad, had called the options from the employees regarding their transfers. The applicant submitted his option and prayed to transfer him at Nanded District Prison only. It is their contention that the applicant had already served at Nanded during 02.05.2006 to 28.06.2012. It is their contention that the applicant was due for transfer and, therefore, he has been transferred to Central Prison, Nasik by the impugned order on administrative ground. Accordingly, he has been relieved from Parbhani District Prison Class II Parbhani on 29.05.2018. It is their contention that the applicant never requested the respondents regarding his family problems before effecting transfer and, therefore, the applicant cannot take benefit of the G.R. dated 9.4.2018. It is their contention that the department has put proposal of the transfer of the applicant before the Civil Services Board and Civil Service Board recommended the transfer of the applicant. It is their contention that there is no illegality in the impugned order and, therefore, they justified the same. On these grounds they prayed to dismiss the present Original Application.

4. I have heard Shri Kakasaheb B. Jadhav, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in reply filed by the respondents. I have also perused the documents placed on record by both the sides.

5. Admittedly, the applicant entered service as a Jail Guard on 1.9.1997 and posted at Bhandara Prison. Thereafter, he was transferred to District Prison, Nanded in the month of May, 2006 and he served there till the year 2012. On 28.5.2012 he has been transferred from Nanded District Prison to Central Prison, Nasik but on his request application the said order of transfer has been cancelled and he has been transferred to District Prison Class-2, Parbhani by the order dated 26.6.2012. Accordingly, he joined new posting on 28.6.2012 and since then he is serving there till issuance of the impugned order. Admittedly, the applicant has been transferred from District Prison Class II Parbhani to Central Prison, Nasik by the impugned order.

6. Learned Advocate for the applicant has submitted that the applicant has been transferred by the impugned order

before completion of his normal tenure of 6 years at Pabhani. He has submitted that the applicant had served at Parbhani since 28.6.2012. He has not completed his tenure at Parbhani and before completion of tenure, the respondent No. 3 issued impugned order and transferred the applicant. Therefore, it is in contravention of the provisions of Sections 3 & 4 of the Transfer Act of 2005. On these grounds he has prayed to quash and set aside the impugned order.

7. He has further submitted that the applicant is suffering from illness and doctors advised him to undergo brain surgery. On this ground, as well as, on the ground of his family problems he requested the respondents to transfer and post him at District Prison, Nanded, but the respondents have not considered his request and issued the impugned transfer order transferring him from District Prison, Parbhani to Central Prison, Nasik. On this ground also he prayed to quash and set aside the impugned order.

8. Learned Presenting Officer has submitted that the applicant has completed his tenure at Parbhani and, therefore, he was due for transfer. Options regarding the places of his choice has been called for by the respondents

before general transfers of the year 2018. The applicant has submitted option form and given his place of choice at Nanded only. He has not submitted 10 places of choice as per the Government Resolution dated 9.4.2018. The applicant has already served at Nanded during 02.05.2006 to 28.06.2012 and, therefore, he has been transferred to Central Prison, Nasik Road, Nasik by the impugned order on account of administrative exigency. He has submitted that the applicant has not submitted request application on the ground of illness and family problems and, therefore, no question of consideration of it by the respondents at the time of general transfers of the year 2018 arises. He has submitted that after issuance of the impugned order the applicant made representation, but he has not produced documents in support of his representation and, therefore, his representation is not considered. He has submitted that there is no illegality in the impugned order. Therefore, he prayed to dismiss the present Original Application.

9. On perusal of the record, it reveals that in the year 2012 the applicant has been transferred from Nanded District Prison to Central Prison, Nasik, by an order dated 28.5.2012, but the said order came to be cancelled on the request of the

applicant by an order dated 26.6.2012 and the applicant has been transferred and posted at District Prison Class-II, Parbhani. Accordingly, he joined the said post on 28.6.2012. The applicant has completed his normal tenure of 6 years at Parbhani and he was due for transfer in the general transfers of the year 2018. Options have been called for from the employees who are due for transfer. Accordingly, the applicant submitted the option form and requested to post him at Nanded. He had not given 10 places of choice as provided under the provisions of G.R. dated 9.4.2018. The respondents considered the case of the applicant. The applicant had already served at Nanded. Therefore, they decided to transfer the applicant at Nasik on account of administrative exigency and, therefore, they passed the impugned order. The record shows that the applicant never requested the respondents either for retaining him at Parbhani or for transfer at Nanded on account of his illness and family problems and, therefore, no question of following the guidelines given in the G.R. dated 9.4.2018 by the respondents in that regard, arises. Therefore, I do not find any force in the submissions advanced by the learned Advocate for the applicant in that regard.

10. After receiving the representation from the applicant after his transfer, the respondents considered the representation and rejected the same as the applicant had not produced documents in support of his representation. The impugned order has been issued by the respondents by following the provisions of the Transfer Act of 2005. There is no violation of any of the provisions of the Transfer Act of 2005. Therefore, no interference in the impugned order is called for. There is no merit in the present Original Application. Consequently, it deserves to be dismissed.

11. In view of the discussions in the foregoing paragraphs, the present Original Application is dismissed with no order as to costs.

MEMBER (J)

PLACE : AURANGABAD.

DATE : 25TH JANUARY, 2019

O.A.NO.390-2018(DB-Promotion)-HDD-2019