

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 431 OF 2016**

DIST. : AURANGABAD

Miss. Archana Devidasrao Lathkhar,  
Age. 44 years, Occu. : Govt. Service,  
as Assistant Public Prosecutor, Aurangabad,  
R/o 5-15-98/9, 'Kusumkunj',  
Behind Kotla Colony, Near Shani Mandir,  
Aurangabad - 431 001,  
Maharashtra State.

-- APPLICANT

**V E R S U S**

1. The State of Maharashtra,  
Through Additional Chief Secretary,  
Home Department,  
Mantralaya, M.S., Mumbai - 32.
2. The Directorate of Prosecution,  
Maharashtra State, Mumbai,  
Barex No. 6, Free Press Journal Marg,  
Near Manora M.L.A. House,  
Nariman Point, Mumbai - 400 021.
3. The Assistant Director and  
Public Prosecutor, Old District and  
Sessions Court Building,  
1<sup>st</sup> Floor, Adalat Road,  
Aurangabad.

(Copy of the respondents to be served  
on C.P.O., M.A.T., Aurangabad) --

RESPONDENTS

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APPEARANCE :- Shri A.M. Nagarkar, learned Advocate for  
the applicant.

: Shri M.S. Mahajan, learned Chief  
Presenting Officer for the respondents.

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**CORAM : Hon'ble Shri B.P. Patil, Member (J)**

**DATE : 24.10.2018**  
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**ORDER**

1. Applicant has challenged the order dtd. 31.5.2016 issued by the respondent no. 1 transferring her from Aurangabad to Jalna, by filing the present O.A.

2. It is the contention of the applicant that, by the order dtd. 22.3.2002, the applicant has been appointed as a Assistant Public Prosecutor and was posted at Jalna Training School for imparting training of Law to the newly recruited constables. She accordingly joined on the said post at Jalna. Thereafter she came to be transferred to Aurangabad City by the order dtd. 8.5.2003. In the month of May, 2008 the applicant came to be transferred to Railway Court, Aurangabad. In the month of 2012, she came to be transferred to Jalna. She made representation to the res. no. 1 and requested to accommodate her at Aurangabad on medical grounds of her parents. Her representation was accepted and her transfer order of the year 2012 was modified and she was retained at Aurangabad. Since then the applicant is working at Aurangabad.

3. It is contention of the applicant that on 20.4.2016 she moved representation to the res. no. 1 at the general transfers of 2016 and requested to accommodate her at Aurangabad on the ground of ill-health of her parents. It is her contention that her

father is suffering from Neurological problem viz. paralysis and he is bedridden since long. He is 82 years of age and requires constant care and attention throughout the day. The mother of the applicant is also old and she is suffering from hypertension. It is her contention that her 2 sisters are in abroad and one sister got married. Therefore, she requested to res. no. 1 to retain her at Aurangabad, but the res. no. 1 had not considered her representation dtd. 20.4.2016 and transferred her to Jalna by the impugned order dtd. 31.5.2016. It is contention of the applicant that the impugned order is in contravention of sec. 5 (2) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005). It is her contention that by the impugned order, 4 out of 10 Assistant Public Prosecutors working at Aurangabad came to be transferred in the annual general transfer and the same is against the provisions of sec. 5 (2) of the Transfer Act, 2005 and, therefore, the impugned order is illegal. The applicant has challenged impugned order by filing the present Original Application.

4. Respondent nos. 2 & 3 resisted the contentions of the applicant by filing their affidavit in reply. They have admitted the fact that the applicant was initially appointed as a Assistant

Public Prosecutor at Jalna and thereafter she had been transferred to Aurangabad in the month of May 2003. It is their contention that the applicant is serving at Aurangabad since May, 2003 continuously. They have admitted the fact that in the year 2012 she was transferred to Jalna, but she made a request to res. no. 1 and sought retention at Aurangabad on the ground of ill-health of her parents. It is their contention that the request of the applicant was accepted & the said transfer order was modified and she was retained at Aurangabad. In the month of January, 2016 by the letter dtd. 12.1.2016 the respondents called places of choices of the Assistant Public Prosecutors, who were due for transfer as well as the Assistant Public Prosecutors, who were not due for transfer, but desire transfer on request. The said letter was brought to the notice of the applicant but, she had not filed option regarding places of her choice. Applicant had put 13 years continuous service at Aurangabad and she was in the zone of transfer for the annual general transfers of 2016. Therefore, the res. no. 1 transferred the applicant from Aurangabad to Jalna by the impugned order. It is their contention that Jalna is 55 Kms. away from Aurangabad and it will not cause inconvenience to the applicant and she can take care of her parents by serving at Jalna. It is their contention that there is no illegality in the

impugned order and therefore they supported the impugned order and prayed to dismiss the O.A.

5. I have heard Shri A.M. Nagarkar, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents. I have gone through the various documents filed on record by both the sides.

6. Learned Advocate for the applicant has submitted that the applicant has hardly served for 3 years and some months at Aurangabad when the impugned order has been issued. The parents of the applicant are old aged. Her father is suffering from Neurological problem viz. paralysis and he is bedridden since long. He is 82 years of age and requires constant care and attention throughout the day. Mother of the applicant is also old aged and she is suffering from hypertension. The applicant is the only fit person to take care of her old aged parents and therefore she requested the res. no. 1 to retain her at Aurangabad by filing the representation, but her representation has not been considered and she has been transferred by the impugned order to Jalna. The impugned order is contrary to sec. 5 (2) of the Transfer Act. Therefore, she prayed to allow the O.A.

7. Learned Advocate for the applicant has submitted that this Tribunal has not granted interim relief to the applicant and, therefore, the applicant challenged the said order before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing a writ petition No. 6049/2016. The Hon'ble High Court has granted interim relief to the applicant on 10.6.2016 and directed the respondents to maintain Status quo as to the services of the applicant, if she was not relieved. He has submitted that accordingly the applicant is serving at Aurangabad. He has submitted that the said writ petition is still pending. He has submitted that in spite of pendency of the said writ petition and in spite of passing of 'status quo' order in the said matter, the respondents issued another order in this year and transferred the applicant from Aurangabad to Jalna. He has submitted that the applicant has challenged the subsequent transfer order issued in the year 2016 by filing O.A. in this Tribunal, but this Tribunal has not granted interim relief to the applicant in that matter. Therefore, applicant approached to Hon'ble High Court by filing writ petition no. 5983/2018, but the said writ petition was disposed of by the Hon'ble High Court on 19.6.2018. He has submitted that in view of 'Status quo' order passed by the Hon'ble High Court in writ petition no. 6049/2016 dtd. 10.6.2016, it is just to allow the present O.A.

8. Learned C.P.O. has submitted that since the year 2003 the applicant is serving at Aurangabad. In the year 2016, the applicant was overdue for transfer and therefore her transfer order was issued. Applicant wants that she should be retained at Aurangabad on one and another ground. He has submitted that earlier in the year 2012 also the applicant has been transferred to Jalna, but on the ground of ill health of her parents she requested to retain her at Aurangabad. The respondents considered her request / representation for retention at Aurangabad and she has been retained at Aurangabad. He has submitted that the impugned order has been issued by the res. no. 1 in view of the provisions of the Transfer Act, 2005 and there is no illegality in it. Therefore he prayed to reject the O.A.

9. Admittedly the applicant is serving at Aurangabad since May, 2003. In the year 2012 she has been transferred to Jalna, but the said transfer order has been modified by the res. no. 1 on the request / representation of the applicant and the applicant has been retained at Aurangabad. The res. no. 1 considered the ground of ill health of her parents and retained her at Aurangabad. The applicant had served at Aurangabad for more than 13 years and she was due for transfer in the year 2016. Therefore her option for choice posting has been called by the res.

no. 1 but the applicant has not submitted the places of her choices. As she was overdue for transfer, she came to be transferred to Jalna by the impugned order. There is no violation of provisions of Transfer Act. There is no illegality in the impugned order. Therefore, in my view, there is no merit in the O.A. Therefore, the O.A. deserves to be rejected.

10. It is material to note here that in view of Status quo order dtd. 10.6.2016 passed by the Hon'ble High Court in writ petition No. 6049/2016, the applicant continued to serve at Aurangabad since the date of order i.e. 10.6.2016. During pendency of this O.A., in the year 2018 the applicant came to be transferred from Aurangabad to Jalna. Applicant has challenged the said order by filing another O.A. In that O.A. interim relief was not granted by this Tribunal and therefore the applicant has challenged the said order before the Hon'ble High Court by filing writ petition No. 5983/2018. The said writ petition came to be disposed of by the Hon'ble High Court by the order dtd.19.6.2018. All these facts have been brought to the notice of Hon'ble High Court. Since the applicant has been transferred from Aurangabad in the general transfers of 2018, the O.A. challenging her transfer made in the year 2016 has become infructuous and on that ground also it



deserves to be dismissed. There is no merit in the present O.A. Consequently it deserves to be dismissed.

11. In view of discussion made above, the present O.A. stands dismissed. There shall be no order as to costs.

**PLACE : AURANGABAD**  
**DATE : 24.10.2018**

**(B.P. PATIL)**  
**MEMBER (J)**

ARJ-O.A.NO. 431-2016 BPP (TRANSFER)