

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

**ORIGINAL APPLICATION NO. 488 OF 2017**

DIST. : AURANGABAD

Ramchandra Sitaram Jaybhaye,  
Age. 52 years, Occu. : Service,  
Tribal Development Project,  
Aurangabad.

-- APPLICANT

**V E R S U S**

1. The State of Maharashtra,  
Through : Secretary,  
Tribal Development Department,  
Mantralaya, Mumbai - 32.
2. The Director,  
Economics & Statistics,  
Directorate Office,  
Suburban District Building,  
8<sup>th</sup> Floor, Bandra (East),  
Mumbai 51.
3. The Project Officer,  
Integrated Tribal Development  
Project Office, Aurangabad.
4. The Additional Commissioner,  
Tribal Development,  
Amravati.

-- RESPONDENTS

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APPEARANCE :- Shri S.D. Dhongde, learned Advocate for  
the applicant.  
: Smt. Priya R. Bharaswadkar, learned  
Presenting Officer for the respondents.  
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**CORAM : Hon'ble Shri B.P. Patil, Member (J)**  
**DATE : 22<sup>nd</sup> January, 2018**  
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**ORDER**

1. By filing the present O.A. the applicant has prayed to restrain the respondents from repatriating or relieving him from the existing position in view of the order dtd. 7.7.2017 issued by the res. no. 4, and the order dtd. 17.7.2017 issued by the res. no. 3 and also prayed to direct the respondents to retain him on the existing post till completion of normal tenure at least till the general transfers of 2018 are effected and also prayed to consider to transfer him in some another department at Aurangabad.

2. The applicant has joined the service of respondents as a Statistical Assistant on 28.2.1996. The services of the employees of the Economics & Statistics Department are availed by the other departments of the Government of Maharashtra and therefore Statistical Assistants & Research Assistants used to be transferred to other departments. The applicant was transferred on deputation to Zilha Parishad, Primary Education Department, Buldhana. Thereafter he was transferred to Statistics Office at Jalna on 16.12.2002, where he worked till 15.6.2005. On 16.6.2005 he has been transferred to Dist. Planning Committee, Buldhana and he worked there till 10.6.2008. On 10.6.2008, he was transferred to the office of Dist. Deputy Registrar, Cooperative Societies, Buldhana where he worked till 30.8.2009. On 1.9.2009

the applicant was promoted as a Research Officer (Non-Gazetted) and was posted in the office of Dist. Vocational Training & Education Officer, Buldhana, where he worked till 30.9.2013. Thereafter on request, the applicant was transferred to the office of Project Officer, Integrated Tribal Development Project, Aurangabad and since then he is working at Aurangabad. He was assigned the duty of submitting the budget required for various projects concerning development of tribal committees and to get them sanctioned from the Government through the Collector. He has no power or authority to sanction any project or grant to any project and the only task that he can do is to prepare the financial budget and submit it to the Collector who would forward it to the Government and to get it sanctioned. His performance was excellent and this was reflected in the confidential reports of the years 2011 to 2014.

3. It is contention of the applicant that, generally the period of transfer on deputation is 4 years as per Maharashtra Civil Services (Joining Time, Foreign Service & Payments during Suspension, Dismissal & Removal) Rules, 1981 (for short the M.C.S. Rules) and that too in consultation with the concerned department, which has sent that employee on deputation. In spite of this on 7.7.2017 the res. no. 3 issued a letter and relieved the

applicant with immediate effect and repatriated him to his parent department. It is his contention that the said order is in violation of the provisions of M.C.S.R. Rules and the principles of natural justice. Therefore, the applicant challenged the said orders dated 7.7.2017 as well as 17.7.2017 by filing the present O.A.

4. The respondent no.2 has filed affidavit in reply and resisted the contentions of the applicant. He has not disputed about the appointment of the applicant as a Statistical Assistant, his promotion as a Research Officer (Non Gazetted) and his transfers at various places. It is his contention that the applicant worked at Buldhana in different departments since the date of appointment i.e. from 28.2.1996 till 15.11.2002. Thereafter he was transferred to Dist. Statistic Office, Jalna and he worked there till 15.6.2005. Thereafter again he was transferred to Dist. Deputy Registrar, Cooperative Societies, Buldhana and he worked there from 16.6.2005 till 31.8.2009 as a Statistical Assistant and on promotion he worked there as a Research Assistant from 1.9.2009 till 30.9.2013. Thereafter he was transferred in the Office of Project Officer, Integrated Tribal Development Project Office, Aurangabad on his request and he joined at Aurangabad on 1.10.2013 and since then he was working at Aurangabad till the impugned order.

5. It is his contention that the post of Research Assistant in the Integrated Tribal Development Project Office, Aurangabad is created by that department and filled in from the employees of Directorate of Economics & Statistics on regular basis. It is not a deputation post and therefore rules regarding deputation are not applicable in this case. It is his contention that the Project Officer, Integrated Tribal Development Project Office, Aurangabad has repatriated the applicant to Directorate of Economics & Statistics on 17.7.2017 and the same was communicated to the Directorate vide letter dtd. 19.7.2017, but the applicant has not reported to Directorate till today and therefore no posting was given to him. It is his contention that there is no illegality in the impugned order and therefore he prayed to dismiss the O.A.

6. The respondent nos. 3 & 4 filed affidavit in reply and resisted the contentions of the applicant. They raised similar contentions as has been raised by the res. no. 2. It is their contention that appointing authority of the applicant is res. No. 2 the Director, Economics & Statistics, Directorate Office, Mumbai. The applicant was transferred to Tribal Development Department as the said department was in need of employees from Economics & Statistics. Accordingly, the applicant joined as a Research Assistant in the office of res. no. 3 on 10.10.2013. It is their

contention that the applicant has completed his tenure of 3 years in the department. That department has no authority to transfer the applicant. It is their contention that the Upper Secretary, Tribal Development Department, Mumbai by letter dtd. 6.7.2017 directed them to relieve the applicant on the basis of complaints received against him and also directed to repatriate him to his parent department. It is their contention that the applicant is a Research Assistant, which is a Group – C post. It is their contention that since the complaints of serious nature were received to the higher authority of the respondents, the res. no. 3 issued the order dated 17.7.2017 on the basis of communication dated 7.7.2017 issued by the Additional Commissioner, Tribal Development, Amravati. Accordingly, the applicant was relieved and repatriated to the office of Director of Economics & Statistics, Mumbai. It is their contention that since they have no power to transfer the applicant, they have simply relieved him as per the directions of the higher authority. There is no illegality on their part, and therefore they prayed to reject the O.A.

7. I have heard Shri S.D. Dhongde, learned Advocate for the applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the respondents. I have also gone through various documents placed on record.

8. Admittedly, the applicant was appointed as a Statistical Assistant in the Economics & Statistics Department on 28.2.1996. Admittedly, Economics & Statistics Directorate used to appoint Research Assistants & Statistical Assistants in several departments of Govt. of Maharashtra as per their requirement. Admittedly, powers to transfer those employees are vested with the res. No. 2 Director of Economics & Statistics, Mumbai. Admittedly, the applicant served at Buldhana from 28.2.1996 till 16.12.2002 and from 16.6.2005 till 30.9.2013. He served at Jalna for the period from 17.12.2002 to 15.6.2005 and at Aurangabad from 1.10.2013 till the issuance of impugned order. Admittedly, the res. no. 4 issued the communication dated 7.7.2017 to the res. no. 3 directing him to relieve the applicant immediately on the basis of directions given by the Additional Commissioner, Tribal Development by letter dtd. 6.7.2017 on the basis of complaints of serious nature received against the applicant. The res. no. 3 accordingly issued the communication dtd. 17.7.2017 and relieved the applicant w.e.f. 17.7.2017 and repatriated him to his parent department i.e. Directorate of Economics & Statistics, Mumbai. Admittedly the applicant has been relieved w.e.f. 17.7.2017.

9. Learned Advocate for the applicant has submitted that the applicant was initially appointed as a Statistical Assistant in the

year 1996 in the Economics & Statistics Department. He has submitted that the appointing authority of the applicant is res. no. 2 i.e. the Director of Economics & Statistics. The res. No. 2 used to provide services of its employees like Statistical Assistants / Research Assistants to other departments on deputation and they used to transfer the employees to other departments. He has submitted that the applicant has been accordingly transferred and posted as a Research Assistant on the establishment of res. no. 3 by the order dtd. 31.5.2013. He has submitted that the res. no. 2 is the competent authority to transfer the applicant and the res. nos. 3 & 4 have no authority to transfer the applicant or relieving him from the present posting held by him that too in midterm. He has submitted that the res. nos. 4 & 3 issued the orders dtd. 7.7.2017 & 17.7.2017 respectively, relieving him from the post of Statistical Assistant and repatriated to him to his parent department. He has submitted that the said impugned orders are not legal one. He has submitted that the post on the establishment of res. nos. 3 & 4 has to be filled by the res. no. 2, but the posts are cadre post of Statistical Department and therefore the res. no. 2 is the competent authority to make the transfer or relieve the applicant from his present posting. He has submitted that the applicant has completed his normal tenure of posting at Aurangabad in the year 2016 and therefore he made



request to res. no. 2 to transfer him from Aurangabad to Buldhana by application dtd. 21.11.2016 but he was not considered as due for transfer and he has been retained at Aurangabad. He has submitted that the impugned order came to be issued by the res. nos. 3 & 4 on the basis of directions given by the Hon'ble Minister of Tribal Development, Government of Maharashtra on 3.7.2017 on the basis of complaints received to him against the applicant. He has submitted that no opportunity of being heard was given to the applicant before passing the impugned orders and therefore the impugned orders are illegal and against the principles of natural justice and therefore he prayed to restrain the respondents from relieving the applicant from present post in view of the orders dtd. 7.7.2017 & 17.7.2017.

10. Learned Advocate for the applicant has submitted that even if it is assumed that the applicant was on deputation with the res. nos. 3 & 4, in that case also it is mandatory on the part of the concerned to issue 3 months' notice to the parent department before sending him back and repatriating him to his parent department in view of G.R. dtd. 14.8.2017 and as per rule 40 of M.C.S. Rules. He has submitted that the said rules are not considered by the res. no. 4 and therefore the impugned orders are illegal.

11. He has placed reliance on the case of **State of Maharashtra and others Vs. Ajeet Baburao Pawar** reported in **2001 (1) Mh. L.J. 563**. He has also placed reliance on the judgment of this tribunal in case of **Shivshankar Ramrao Mundhe Vs. The State of Maharashtra & Ors. [O.A. no. 466/2015]** dated 1.10.2015. He has submitted that the impugned orders are illegal and therefore he prayed to allow the O.A. and restrain the respondents from executing the orders dtd. 7.7.2017 & 17.7.2017 relieving the applicant from the post of Statistical Assistant, Tribal Development Project at Aurangabad.

12. Learned P.O. submits that, the applicant has been brought on the establishment of res. nos. 3 & 4 by the res. no. 2 as per their requirement and since from the year 2013 the applicant was working at Aurangabad. There were several complaints against the applicant and therefore the higher authority of the res. nos. 3 & 4 considered the said complaints and decided to relieve the applicant and to repatriate him to his parent department. She has submitted that the impugned orders have been issued on the basis of orders issued by the Hon'ble Minister of Tribal Development on 3.7.2017. She has submitted that since the res. nos. 3 & 4 have no authority to transfer the applicant, they simply relieved the applicant and repatriated him to his parent

department i.e. the res. no. 2. She has submitted that the applicant has not approached the res. no. 2 for getting new posting and he has remained absent though he has been relieved by the res. nos. 3 & 4 from Aurangabad. She has submitted that the impugned orders are already executed and therefore question of restraining the respondents from executing the said orders and relieving the applicant from the present post does not arise. She has submitted that the applicant has not challenged the impugned orders dtd. 7.7.2017 & 17.7.2017 in the present O.A. and therefore relief claimed by the applicant cannot be granted as the same became infructuous since the applicant has been relieved on the basis of the said orders, by the res. no. 3.

13. I have gone through the documents on record. On going through the O.A., it is crystal clear that the applicant has filed the present O.A. and claimed following reliefs :-

“(A) This original application may kindly be allowed with costs.

(B) The respondents be restrained from repatriating him from the existing position pursuant to the letter dated 7.7.2017 by the Additional Commissioner, Tribal Development, Amravati.

- (B-1) The respondents be restrained from repatriating /relieving from existing position pursuant to the order dated 17.7.2017 (Page No. 59) issued by Integrated Tribal Development project office Aurangabad.
- (C) The respondents may consider him transferring to some other department in Aurangabad rather than displacing him from Aurangabad.
- (D) The respondents be directed to retain him on the existing post till his normal tenure is completed and at least till the general transfers of 2008 are effected.
- (E) Any other equitable and appropriate relief to which the applicants are found due and entitled in the facts & circumstances of the case may kindly be granted in favour of the applicant.”

14. On plain reading of the prayers of the applicant as reproduced above, it reveals that the applicant has not challenged the impugned orders dtd. 7.7.2017 & 17.7.2017 issued by the res. nos. 4 & 3 respectively. He has not prayed to quash and set aside the said orders. He is only seeking reliefs to restrain the respondents from repatriating him from the existing position and relieving him from the present post pursuant to the orders issued

on 7.7.2017 & 17.7.2017. But the record shows that in pursuance of the said orders the res. no. 3 has relieved the applicant from his present post and repatriated him to his parent department i.e. the office of res. no. 2. This fact has not been disputed by the applicant. It shows that the impugned orders dtd. 7.7.2017 & 17.7.2017 issued by the res. nos. 4 & 3 respectively have already been executed. Therefore, no question of granting the reliefs as claimed by the applicant arises. Relief claimed by the applicant has thus become infructuous and therefore no relief can be granted in favour of the applicant. The applicant has not challenged the legality of the impugned orders dtd. 7.7.2017 & 17.7.2017 issued by the res. nos. 4 & 3 respectively by claiming a specific relief in that regard in the present O.A. and therefore there is no need to enter into the arena of the merits of the said orders.

15. Even we consider the impugned orders dtd. 7.7.2017 & 17.7.2017, it reveals that the said orders have been issued by the res. nos. 4 & 3 respectively on the basis of the orders given by the Hon'ble Minister of the Tribal Development Department dtd. 3.7.2017. The said decision has been taken by the Government on the basis of several complaints of serious nature received against the applicant. The res. nos. 3 & 4 have no power to

transfer the applicant as the parent Department of the applicant is Directorate of Economics & Statistics and the power to transfer the applicant are vested with respondent no. 2. Therefore, in view of the administrative exigency they have relieved the applicant and repatriated him to his parent department i.e. the res. no. 2 for further posting. Therefore, in my opinion there is no illegality in the impugned orders dtd. 7.7.2017 & 17.7.2017 issued by the res. nos. 4 & 3 respectively as the same are issued in the public interest. Therefore, on that ground also there is no merit in the O.A.

16. In view of above discussion the O.A. deserves to be dismissed. Hence, I pass the following order :-

**ORDER**

The Original Application no. 488/2017 is dismissed with no order as to costs.

**MEMBER (J)**