

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
MISC APPLICATION NO 362 OF 2016
IN
ORIGINAL APPLICATION 683 OF 2016**

DISTRICT : MUMBAI

Miss Ashwini Shamrao Bhosale,)
Worked as Deputy Superintendent of)
Police, A.C.B, Osmanabad,)
Now transferred to Nagpur.)
R/o: 7/5, Yashwant Colony,)
Hariyali village, Ganesh Marg,)
Vikhroli [E], Mumbai 400 083.)...**Applicant**

Versus

1. The Director General)
A.C.B, [M.S], Mumbai, through)
Additional Superintendent of Police)
Headquarters, having office at)
A.C.B, Sir Pochkhanwala Road,)
Worli, Mumbai 400 030.)
2. Shri B.V Gawade,)
Deputy Superintendent of Police,)
A.C.B, Osmanabad.)

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3. The State of Maharashtra,)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents no 1 & 3.

Shri M.D Lonkar, learned advocate for the Respondent no. 2.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 21.11.2016

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant, Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents no 1 & 3 and Shri M.D Lonkar, learned advocate for the Respondent no. 2.

2. This Misc Application has been filed by the Applicant seeking amendment to the Original Application. However, the Respondent no. 2 has opposed the Misc Application mainly on the ground that this

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Original Application should have been filed before the Aurangabad Bench of this Tribunal. In short, issue of territorial jurisdiction of this Tribunal has been raised.


3. Learned Advocate Shri M.D Lonkar for the Respondent no. 2 argued that cause title of the Original Application as well as Misc Application makes it clear that the Applicant was posted as Deputy Superintendent of Police, A.C.B, Osmanabad, which comes under territorial jurisdiction of Aurangabad Bench of this Tribunal. To bring the O.A no. 683 of 2016 within the jurisdiction of Mumbai Bench, the Applicant has stated that she resides at Mumbai. Learned Counsel Shri Lonkar argued that this ploy of the Applicant should be rejected. Any Government official, if transferred, may claim that he is residing at some other place, and file Original Application on that basis. Learned Advocate Shri Lonkar stated that Applicant has not been forthcoming while furnishing information in para 4 of the Original Application regarding jurisdiction of Mumbai Tribunal. This issue has been examined by a Division Bench of this Tribunal in O.A no 194/2006. By judgment dated 15.9.2006, this Tribunal had unambiguously held that if an Applicant was posted within territorial jurisdiction of Aurangabad Bench, and no cause of action arose within the territorial jurisdiction of this Bench, the matter will not be heard by this Bench. Learned Advocate Shri Lonkar stated that inherent defect

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in the Original Application cannot be cured by subsequent developments. Hon'ble Chairman of the Tribunal has powers to transfer matter from one Bench to another. Learned Advocate Shri Lonkar stated that Applicant is relying on judgment of Single Bench of this Tribunal dated 22.4.2016 in M.A no 192 of 2016 in O.A no 219 of 2016. However, the judgment of Division Bench of this Tribunal in O.A no 194/2006 was not brought to the notice of the Single Bench of this Tribunal and the judgment dated 22.4.2016 has to be considered as 'per-incuriam'. He cited judgment of Hon'ble Bombay High Court in support of his contention. In the affidavit in rejoinder, filed by the Applicant on 8.8.2016, that the Applicant has stated that she has a ration card issued in Mumbai. When admittedly the Applicant was posted to Osmanabad by order dated 3.7.2014, she could not keep her ration card in Mumbai. Learned Advocate Shri Lonkar argued that the issue of jurisdiction cannot be decided by consent of the parties. One of the key factors regarding territorial jurisdiction of this Tribunal is the convenience of the litigants. By filing this Original Application, the Applicant has ensured her convenience, but great inconvenience is caused to the Respondent no. 2, who is posted at Osmanabad. He is required to come to Mumbai for hearing of the Original Application, leaving his official work.

4. Learned Presenting Officer, argued that the issue of territorial jurisdiction was raised by her (the P.O) during the first hearing of this Original Application. She stated that this Tribunal had already decided this issue by judgment dated 15.9.2006 in O.A no 683 of 2016. The Applicant is challenging her transfer from Osmanabad. In para 6.7 of the Original Application, she had categorically admitted that she was staying at Osmanabad and one of the main grounds for challenging her transfer was that the Applicant's brother who is dependent on her, and is recuperating from brain tumor surgery, was taking treatment in a Ayuervdic Hospital of Dr Ganga Sagare in Osmanabad, she cannot claim residence at both Mumbai & Osmanabad. Learned Presenting Officer argued that the Applicant has to be treated as resident of Osmanabad, as she was posted there in 2014. She has been working in Osmanabad till her transfer, and she is seeking posting back to Osmanabad. As such, this Tribunal does not territorial jurisdiction in this matter.

5. Learned Advocate Shri Bandiwadekar, argued that the Applicant is an ordinary resident of Mumbai. She was transferred from Osmanabad to Nagpur. She has proceeded on medical leave and is staying at her residence in Mumbai. She has a ration card in her name issued in Mumbai. The cause of action has also arisen in Mumbai, as the Respondent no. 1 has his office in




Mumbai and impugned orders have been issued in Mumbai. As the Applicant was not on active duty in Osmanabad, Aurangabad Bench of this Tribunal has no jurisdiction. The Respondent no. 1 has issued corrigendum dated 1.8.2016 to the effect that transfer of the Applicant was on "administrative reasons" and not a request transfer. This was served on the Applicant at her Mumbai address. The Respondents have not filed affidavit in reply to the Misc Application for amendment, but raised the issue of jurisdiction. In the Original Application, the Respondent nos 1 & 3 has not filed sur-rejoinder and it is filed only by Respondent no. 2. Learned Advocate Shri Bandiwadekar stated that question of territorial jurisdiction is not a pure question of law, but it is a mixed question of law and facts. On the facts, the Applicant is entitled to maintain Original Application at Mumbai Bench. Learned Advocate Shri Bandiwadekar argued that Rule 6 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, does not bar jurisdiction of Main Bench, if Applicant is residing within territorial jurisdiction of another Bench. The word used is 'ordinarily'. The present case, can therefore, be filed before Mumbai Bench, considering the facts and circumstances. Rule 6(iii) of the aforesaid rules provides that the Bench under whose territorial jurisdiction the Respondent or any of the Respondents ordinarily resides, is the relevant factor in deciding territorial jurisdiction. In the present case, the



Respondent no. 1 is having office at Mumbai. Residence of Respondent no. 2 is not material, who is beneficiary of the transfer order and has no independent existence.

6. Learned Advocate Shri Bandiwadekar argued that judgment of this Tribunal dated 15.9.2006 in O.A no 194 of 2016 is not applicable in this case. In M.A no 192 of 2016 in O.A 219/2016, decided on 22.4.2016, the Hon'ble Chairman of this Tribunal was of the view that cause of action to challenge would ensure at all places of seating of this Tribunal. This order has been confirmed by Hon'ble High Court in W.P no 5236 of 2016 on 29.4.2016. The Applicant in O.A no 219/2016 was a Class-I officer and it can be inferred that a Class-I Officer can raise his grievance at any bench of this Tribunal. This was not the position in O.A no 194/2016, where the Applicant was a Class-III employee. Learned Advocate Shri Bandiwadekar stated that in O.A nos 509 & 510 of 2016, another Bench of this Tribunal has entertained Original Applications at Mumbai. Learned Advocate Shri Bandiwadekar argued that this objection to the jurisdiction may be overruled.

7. Learned Advocate Shri Lonkar contended that the order dated 7.6.2016 in O.A nos 509 & 510 of 2016 was an interim order. In the final judgment dated 27.10.2016, this aspect of territorial jurisdiction has not been considered at all.



8. I find that the whole issue of territorial jurisdiction of this Tribunal revolves around interpretation of Rule 6 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988. This rule reads:-

“6. Place of filing applications:

The application shall ordinarily be filed by the applicant with the Registrar of the Bench within those jurisdiction;

- (i) the applicant is posted for the time being, or
- (ii) the cause of action has arisen, or
- (iii) the respondent or any of the respondents against whom relief is sought, ordinarily resides:

Provided that the application may be filed with Registrar or the Principal Bench and, subject to Section 25 of the Act, such application may be transmitted to be heard and disposed of by the Bench which has jurisdiction over the matter.”


The word ‘ordinarily’ used in this rules, makes it clear that there cannot be any absolute bar in hearing an application by a Bench, who does not have territorial jurisdiction as per sub rule (i), (ii) & (iii) of Rule 6. In this context, this Tribunal (Single Bench) by interim order dated 7.6.2016 in O.A nos 509/2016 & 510/2016 had observed:-

“18. Now in Harendra’s case, there was a sole Applicant who had his own peculiar service conditions for which he sought some reliefs. He was based at Dhule, which was to be brought within the jurisdiction of the Aurangabad Bench of this Tribunal. In this light, when one peruses Para 8 of the said judgment, one finds a clear mention of the fact that the existence of the Benches was not for any purpose other than to cater to the needs and convenience of litigants.” (emphasis added).

It was further observed that the Applicant in O.A no 509/2016 was within territorial jurisdiction of the Mumbai Bench, while the Applicant in O.A no 510/2016 had joined him, as the facts and circumstances were more or less identical. This Tribunal observed that:-

“It is nobody’s case that the Applicant in O.A no 510/2016 has been inconvenienced. As far as the State is concerned, it will be equally inconvenienced at either Mumbai or Aurangabad.”

Though Learned Advocate Shri Lonkar has stated that this was an interim order and that in the final judgment in O.A no 509 & 510/2016, dated 27.10.2016, this issue was not adjudicated, I do not think that interpretation is valid. The interim order dated 7.6.2016 has clearly given verdict as regards territorial jurisdiction of this Tribunal



is concerned. The decision is based on interpretation of earlier judgment of this Tribunal dated 15.9.2006 in O.A no 194/2006. (referred to as Harendra's case). As regards, judgment of this Tribunal dated 22.4.2016 in M.A no 192/2016 in O.A no 219/2016, the judgment reads:-

"21. Mr Lonkar, the learned Advocate for the Applicant in support of his contention referred me to an order made by the Hon'ble Chairman of this Tribunal in M.A 192/2016 in O.A 219/2016 which reads as follows:-

"1. Heard Shri A.S Golegaonkar, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer for the Respondents.

2. By this application, applicant has sought leave to file O.A at principal seat of this Tribunal at Mumbai, though place of ordinary posting of Applicant is Amravati, in the background that impugned order is passed in Mumbai, and cause of action to challenge would ensue at all places of seating of this Tribunal.

3. Therefore, M.A is allowed. Leave to file O.A is granted."



It is quite clear that this Tribunal's Bench was presided over by Hon'ble Chairman. The prayer of the Applicant had clearly mentioned that the Applicant was posted at Amravati, but wanted the Original Application to be heard in Mumbai. This Tribunal has accepted his M.A for hearing the Original Application by the Principal Bench. In my view, under Section 25 of the Administrative Tribunals Act, 1985, Hon'ble Chairman of the Tribunal has powers to transfer any case pending before one Bench, for disposal to any other Bench. This power will obviously be available for transferring cases from Aurangabad/Nagpur Bench to Mumbai Bench. This power will also be available to order that a case which is ordinarily in the territorial jurisdiction of another Bench can be heard by Mumbai Bench. The claim of the Applicant that this judgment has held that any O.A can be maintained in any Bench, regardless of the territorial jurisdiction is incorrect and cannot be upheld. Other claim of the Applicant as reflected in his written arguments dated 7.11.2016 are examined below:-

"16. That in the case before the Hon'ble Chairman, the Petitioner was Class-I Officer belonging to the State cadre and therefore, the Petitioner has reason to believe that the Hon'ble Chairman held that the cause of action for such Class-I Officer to challenge any decision would ensue at all places of the sitting of the Hon'ble Tribunal. That this was not the

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position in O.A no 194 of 2016, where the Petitioner was the Class-III employee (being Excise Constable), seeking promotion to the post of Excise Sub-Inspector, which is also Class-III post. That as against this, the Petitioner is Class-I officer being a Deputy Superintendent of Police in A.C.B, which is the State cadre. ”

9. In my view, the Applicant is drawing uncalled inference from the aforesaid order. Hon'ble Chairman has simply exercised powers conferred upon him by Section 25 of the Administrative Tribunals Act. Rule 6 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988 cannot, in any way restrict that powers. Nothing more can be read in the aforesaid order of the Hon. Chairman. Claim of Learned Advocate Shri Lonkar that this order is per-incurium is also rejected. This order is in no way in any conflict with the judgment of Division Bench of this Tribunal in Harendra's case.

10. After examining all the three judgments of this Tribunal regarding territorial jurisdiction, the following position emerges:-

- (i) Hon'ble Chairman of the Tribunal under Section 25 has powers to permit any O.A to be heard by any Bench of this Tribunal.

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- (ii) This Tribunal in Harendra's case has held that the most important fact which has led to formation of different benches, having territorial jurisdiction is convenience of the litigants. In O.A no 410/2016, it was held that this O.A could be heard by Mumbai Bench, along with O.A no 409/2016, as the Applicant in O.A no 409/2016 was posted in territorial jurisdiction of Mumbai Bench, and facts and circumstances in O.A nos 409/2016 and 410/2016 were more or less identical. No inconvenience was caused either to the Applicant or the Respondents in O.A no 410/2016 by hearing O.A in Mumbai.

11. In the present case, learned Advocate Shri Bandiwadekar has the following to say regarding convenience of the litigants in his written arguments, viz:

“That in the present case, such order passed by the Respondent no. 1 is having office in Mumbai. Thus ordinary residence of the Respondent no. 2 is not material who is working at Osmanabad, though prior to transfer order dated 3.6.2016, he was not at Osmanabad. That in any case the Respondent no. 2 is beneficiary of the order of transfer and as such he has not independence existence.”

This contention of the Applicant appears to be quite strange, to say the least. Clear interpretation of Rule 6(i) will provide that the Applicant was posted to Osmanabad

and the Original Application should have been filed at Aurangabad. The claim that after she was transferred to Nagpur, she has proceeded on medical leave and has chosen to reside at Mumbai will have no bearing as far as this rule is concerned. If Rule 6(i) is interpreted in that light, any Government servant, on transfer, will proceed to the place of his choice and claim jurisdiction of a Bench of this choice. This will go against the letter and spirit of the Rule. I am not further examining further facts, viz. whether the Applicant has been granted medical leave by the competent authority or whether a Government servant who is transferred out of Mumbai can continue to keep his ration card in Mumbai. These facts may be relevant as far as Rule 6(i) is concerned. Coming to Rule 6(iii), the Applicant claims that only official respondents are covered by that rule. This claim is without any basis and has to be rejected categorically. The Respondent no. 2 has as much interest in this Original Application as the Applicant has. He is definitely covered under Rule 6(iii) and as he is posted to Osmanabad, the territorial jurisdiction of Aurangabad Bench will prevail. On the touchstone of convenience also, convenience of the Respondent no. 2 will be an important factor.

12. It is quite clear that plain interpretation of Rule 6 of Maharashtra Administrative Tribunal (Procedure) Rules, 1988, the Original Application should

have been filed before Aurangabad Bench of this Tribunal. On the touchstone of judgment of this Tribunal dated 15.9.2006 in O.A no 194/2006 (Harendra's case) this Original Application has to be filed in Aurangabad Bench. The Applicant's reliance on other judgments of this Tribunal will not help her case, as discussed above.

13. Instead of returning the Misc Application and Original Application to the Applicant for filing/lodging before the Aurangabad Bench of this Tribunal, and to avoid any further delay, the Registrar of this Bench is directed to transfer this M.A and Original Application to Aurangabad Bench, where it will be registered afresh. The Applicant and the Respondent no. 2 are directed to appear before the Aurangabad Bench on 4th December, 2016.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 21.11.2016
Dictation taken by : A.K. Nair.