

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.243 OF 2011

DISTRICT : THANE

Shri Moreshwar R. Deshmukh.)
Aged : Adult, Occu. : Govt. Service as)
Ex-Estate Officer (Grade-II) (On deputation)
With JNPT, having office at JNPT,)
Administrative Building, Sheva, Tal.: Uran)
Navi Mumbai - 400 707.)
Address of Service of Notice :)
R/o. 1/101, Gurusharanam Complex,)
Vishrali Nark, Panvel, Dist : Raigad.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Addl. Chief Secretary,)
Revenue & Forest Department)
(Revenue), Mantralaya,)
Mumbai - 400 032.)
2. The Settlement Commissioner and)
Director of Land Records, M.S,)
Pune.)
3. The Deputy Director of Land Records)
Konkan Region, Mumbai having)
Office at D.D. Building, 1st Floor,)



Old Custom House, Fort, Mumbai 23.)

4. The Chairman.)
 Jawaharlal Nehru Port Trust,)
 Having Office at Administrative)
 Building, Sheva, Tal. : Uran,)
 Navi Mumbai - 400 707.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents 1 to 3.

Shri R. Ramamurthy, Advocate for Respondent No.4.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)

R.B. MALIK (MEMBER-JUDICIAL)

DATE : 28.07.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Original Application (OA) presents for determination facts at issue based on the facts which are not the usual run of the mill ones. The issue is the effect of initial deputation for one year having stretched for about 25 years and the course of action to be adopted for or against the parent department and the department that had loaned the depute.



2. We have perused the record and proceedings and heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant, Ms. N.G. Gohad, the learned Presenting Officer for the Respondents 1 to 3 and Shri R. Ramamurthy, the learned Advocate for the Respondent No.4.

3. The Respondent No.1 is the State of Maharashtra in Revenue and Forest Department. The 2nd Respondent is the Settlement Commissioner and Director of Land Records. The 3rd Respondent is Deputy Director of Land Record, Konkan Region, Mumbai and the 4th and the last one is the Chairman of Jawaharlal Nehru Port Trust (Port Trust).

4. The Applicant took up the appointment initially as a Copying Clerk in the establishment of the 3rd Respondent - Deputy Director of Land Records. He was sent on deputation for one year on 1.8.1984 to the 4th Respondent. In the Affidavits-in-reply on behalf of Respondents 1 to 3, there are recitals to the effect that the Applicant continued there almost forever although he should have been relieved by the 4th Respondent at the most after 4 years of his deputation. An important document in that behalf is at Exh. 'B' (Page 28 of the P.B.).

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That is an order by the 2nd Respondent – Settlement Commissioner. It was therein mentioned that in exercise of the powers under Rule 36(2) of the Maharashtra Civil Services (Joining Time, Foreign Service, Payment during Suspension, Dismissal and Removal) Rules, 1981 (the asid Rules), the Applicant was transferred and posted on deputation to the Port Trust which it appears then was called as Nhava Sheva Port Trust. As already mentioned above, that was a deputation for one year.

5. At Exh. 'A' (Page 25 of the P.B.), there is an order dated 11.6.2009 issued by the 3rd Respondent i.e. Deputy Director of Land Record whereby in effect, the Applicant was repatriated and posted as Copying Clerk in the Office of Taluka Inspector of Land Records, Poladpur on a vacant post. We shall, however, return to this document after discussing the matter more or less on a chronological order so as to have a proper focus and grasp. Similarly, the part of the same Exhibit at Page 27 of the paper book is an order of 5th February, 2011 issued by the 4th Respondent Port Trust, whereby the Applicant was relieved from the serviced of the Port Trust with immediate effect with directions to report to the Principal Secretary, Revenue and Forest Department, Government of Maharashtra being the Respondent No.1. This order in fact is the one which has

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aggrieved the Applicant. However, just like the earlier one above referred to, this order may have to be discussed again a little while from now.

6. It must have become very clear by now that having been deputed initially for one year in 1984 by the Revenue and Forest Department to the 4th Respondent, the Applicant continued to be on the deputation right upto the year 2011 and for all practical purposes, the word, "deputation" remained only for the purpose of description and "decoration". The Applicant on his so called deputation in effect was also promoted and there were moves on behalf of the 4th Respondent to absorb him. The matter is of some moment, and therefore, we will have refer to the documents in some detail.

7. Having been deputed in the year 1984, the Applicant on 7.8.1992 was informed by the 4th Respondent that it was not possible to absorb him in officers' cadre as requested by him vide his letter dated 23rd July, 1989. However, he could be absorbed as Surveyor in the given pay scale. He was requested to give his consent for the same. From another letter of 17th August, 1993 at Page 31 of the paper book, in relation to the absorption of the Applicant as Surveyor, it would appear that the Applicant

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had given his willingness on 6.11.1992 for absorption in the Port Trust. His pay scale was worked out and he was directed to convey his willingness within 7 days therefor. By his letter of 28th September, 1993 (at Page 32 of the paper book), the Applicant conveyed his consent to the last mentioned proposition.

8. At Exh. 'D' (Page 33 of the paper book), there is a communication from the 4th Respondent Port Trust to the 2nd Respondent - Director of Land Records. The said 2nd Respondent was informed that the Applicant had given his consent for absorption in the Port Trust w.e.f. 1.8.1985 and the Port Trust proposed to accept his request subject to the concurrence of the parent department. A request was made that the concurrence be intimated at an early date. At Page 34 of the paper book, there is a communication of 23rd December, 1993 from the Respondent No.1 - Government to the Respondent No.2 - Settlement Commissioner and Director of Land Records informing the latter that in as much as the Applicant was a Class III employee, the said 2nd Respondent was competent enough to take a decision about his absorption in the Port Trust. At Page 35, the 4th Respondent wrote a reminder to the 2nd Respondent on 11th January, 1994. At Page 36 of the paper book, there is a communication of 17th August,

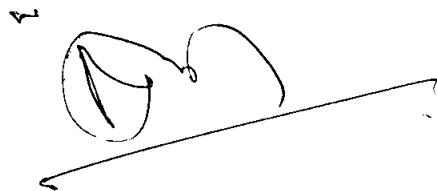
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1994 from the 3rd Respondent – Deputy Director of Land Records to the Port Trust. The Government thereby wanted to know as to whether there was any necessity / any public interest to absorb the Applicant in the Port Trust. A copy thereof was endorsed to the 2nd Respondent. At Page 37 of the paper book, there is a copy of the communication from the 4th Respondent's earlier communication discussed above. It was therein mentioned inter-alia that the services of the Applicant were required by the Port Trust, "under public interest and therefore the absorption of Shri M.R. Deshmukh in JNPT will be in public interest. A copy of the communication of 28th August, 1998 is at Exh. 'E' (Page 38 of the paper book). It was addressed by the 2nd Respondent – Settlement Commissioner to the Government – Respondent No.1. The facts with regard to the Applicant having been sent on deputation to the 4th Respondent came to be mentioned at the outset. It was further informed that according to the 4th Respondent, the deputation of the Applicant was in public interest. The impression apparently was that no further steps need to be taken in that behalf. In fact, it is not possible for us to comprehend as to what this contents in Marathi wanted to convey, but ultimately, the whole thing would not depend just on these 4 or 5 lines. The letter concluded by mentioning that there was a precedent

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of retrospective grant of permission for the depute to be absorbed in the department he was sent to and that was the case of one Mr. R.V. Athwane, a copy of which letter is annexed to the communication under discussion.

9. At Exh. 'F', there is a copy of the communication from the Respondent No.3 - Deputy Director to the Respondent No.4 which ex-facie was on an authority from the Respondent No.2 - Director of Land Records. It is dated 25th June, 2002 and be it noted that our own opinion about this particular communication is that it makes the first sign of nervousness to come to the fore. It was mentioned inter-alia that the Applicant was on deputation from 1.8.1984 as Surveyor. The 4 year period of his deputation came to an end on 31.7.1988. Quite pertinently, nowhere in any contemporaneous document was this period of 4 years mentioned expressly or even by implication and this fact was for the first time mentioned that the 4th Respondent was repeatedly told to relieve the Applicant, but they did not do so and on the contrary, a request was made by the 4th Respondent to absorb the Applicant, and therefore, if the Applicant wanted to go in the establishment of the 4th Respondent permanently and if it was acceptable to the Port Trust, then resignation effective from 1.8.1984 should be obtained from him and



forwarded to the said Respondent No.3. This, in our opinion, is the exact English translation of that Marathi letter and it is very clear about the nervousness which we mentioned a short while ago. The was basically because an almost unknown phenomenon of a depute being there almost forever was quite out of ordinary Now, much as the Respondents 1 to 3 might want to show their helplessness, we do not think, it will be quite easily acceptable. After-all, they were the parent department and if they were so minded as to repatriate the Applicant which was their undisputed power at that point in time, they could have done it quite easily. In fact, a copy of their communication in that behalf could have been endorsed to the Applicant also, asking him to report back and in the event of his failure to do so, even punitive measures could have been adopted and the 4th Respondent could not have done a thing about it. This aspect, in our opinion, is quite significant and will have to be borne in mind as we proceed further.

10. A communication from Respondent No.2 to the Respondent No.4 – Port Trust dated 8th April, 2003 at Page 43 of the paper book would show that the said Respondent No.4 again wanted the resignation of the Applicant to be

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forwarded to the Government. A couple of reminders were also sent.

11. There is an order dated 29.10.2003 passed by the Respondent No.4 which is at Exh. 'G'. Thereby the said Respondent No.4 – Port Trust noted *inter-alia* that the Director of Land Records – Respondent No.2 had requested to forward, 'technical resignation' of the Applicant w.e.f.1st August, 1984 so that the Applicant could be permanently absorbed in the Port Trust. That proposal was approved by the Chairman, and therefore, the Applicant was requested to submit the resignation. The Applicant vide his communication of 20th November, 2003 addressed to the 2nd Respondent submitted the, 'technical resignation'. On the face of it, there is nothing to show how this resignation was processed and treated at the level of the Government. However, very pertinently, the Respondent No.4 and the Applicant did neither seek nor get approval of the Government for the said resignation, technical or otherwise. When we discuss the Rules relevant hereto, we think, it will be clear that this aspect of the matter is significant.

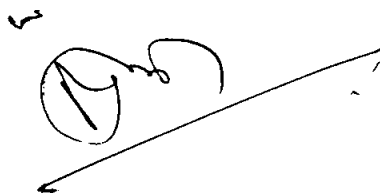
12. Proceeding further in discussing the documents, there is another communication of 27th November, 2003 /

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1st December, 2003 from the 4th Respondent – Port Trust to the 2nd Respondent informing them that the Applicant had given his resignation effective from 1.8.1984 and the JNPT (4th Respondent) accepted his resignation and forwarded it to the Government. Now, “resignation” was from the Government post and the JNPT obviously were not supposed to accept it. The whole thing is so simple as that.

13. At Exh. ‘H’ (Page 49 of the paper book), there is another order of the 4th Respondent – Port Trust whereby a pay scale was fixed for the Applicant.

14. The next intra-Government communication dated 30th June, 2005 is from the 2nd Respondent to the Government – Respondent No.1. It is a lengthy correspondence detailing out the entire history of the matter. We are very clearly of the view that by then at the Government level, a realization had begun to sink that they had locked themselves in a corner in this matter and the various exculpatory recitals therein would indicate the attempt to shift the burden as it were. The letter concluded by an opinion that there was some provision whereby an employee who could be absorbed in the borrowing department or company, etc. could do so,

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subject to the settlement of his claim, etc. and therefor the permission of the Hon'ble Chief Minister would be necessary. It would fortify the opinion expressed by us just now that there was realization that the Applicant was allowed to continue on the deputation for about 16/17 years without the chief ministerial approval. That was not a common place course of action going by the common knowledge of the governmental business.

15. The next document is straightway of 23rd June, 2009 (Exh. 'J', Page 55 of the paper book) whereby the Applicant wrote to the 4th Respondent in the background of what can be described as reaction to the things getting heated up under the collar. Nothing more needs to be said thereabout.

16. Another important document is annexed by the Respondent No.4 to their Affidavit-in-reply at Exh. 'R-2' (Page 78 of the P.B.). That was a communication from the Government - Respondent No.1 to the 2nd Respondent - Directorate of Land Records. It was thereby informed that the Hon'ble Chief Minister had granted ex-post-facto permission to the deputation of the Applicant with the Respondent No.4, but he was pleased to decline such an approval for future. It, therefore, becomes clear that the

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first semblance of regularization of the affairs saw the light of the day in June, 2009. The deputation from 1st August, 1984 to June, 2009 was in the manner of speaking regularized, but his further continuation therein was not, and therefore, the decks were cleared for effective repatriation of the Applicant.

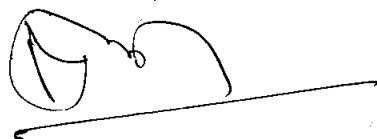
17. It is, thereafter, that the document at Exh. 'A', a copy of which is also at Exh. 'R-4' emanated. Thereby the Applicant was given posting of Copying Clerk in the Office of Taluka Inspector of Land Records on a vacant post. A letter from the 3rd Respondent was dispatched to the Respondent No.4 asking the relief of the Applicant from his present post, so as to let him join in his post that he was transferred to. It was not till 5th February, 2011 that anything further happened and that was close to 2 years. It was on 5th February, 2011 that the order was made by the 4th Respondent to repatriate the Applicant to the post just referred to. Now, as far as the order at Exh. 'A' is concerned (dated 11.6.2009), it stated *inter-alia* that by the order dated 7.5.1984, the Applicant was sent on deputation to the 4th Respondent. It came to an end by efflux of time on 31.5.1985. No proposal was sent for extension of his deputation nor was he relieved by the Respondent No.4. The Respondent No. 4 requested for

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Applicant's absorption to the Government. That request was rejected. The Applicants' services were placed at the disposal of Taluka Inspector of Land Records. Now, as to this aspect of the matter, we find that the above discussion must have made it quite clear that the express rejection did not come into being any time before 2009 and in fact, the intra-Government correspondence and documents would show that the Government was not unfavourably disposed to let the Applicant be absorbed in Respondent No.4.

18. However, we are not concerned with what was the intention much as we are with what really happened and the position under the Rules. If that is the state of affairs, then in our opinion, unless it is possible for us to hold on the basis of the Rules that a case for absorption was made out, we will not be able to enter a finding for the Applicant vis-à-vis the judicial approval of his absorption.

19. We may now turn to the said Rules and the Appendix etc. to the extent they are relevant herefor. Rule 44 of the said MCS Rules provides *inter-alia* that in the event of deputation like in the present case, the contributions for pension and leave salary, etc. would be made on that account. If the borrowing authority did not

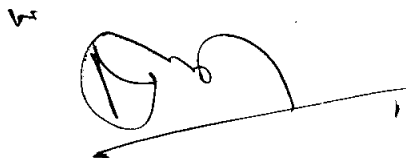
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consent then these contributions would have to be made by the employee himself. There are provisions with regard to the leave salary. The notes appended thereto clarify that the word, "pension" included Government contribution, if any, payable to the credit of the Government servant. The Rule 45 provides for the manner in which the calculations should be made. Rule 54 of the said Rules lays down *inter-alia* that if the provision with regard to reversion/recall from foreign service (in this case the deputation) in the first limb, the Rules provide the state of affairs with regard to the entitlement of the Government servant to seek reversion back. However, the Rule concludes by mentioning, "a Government servant in foreign service is liable to be recalled by a competent authority at any time". There is an Appendix II appended to Rule 40 of the said Rules. Clause 1(i) lays down that the foreign service (deputation in this case) would commence from the date, the Government servant hands over the charge on the post and would expire on the date, he resumes the charge of his post under the Government. The said Government servant would be on deputation for a period specified in his order, but a very important proviso lays down that, "Government/competent authority reserves the right to recall him any time before expiry of the period of deputation, if his services are required by Government in



the interest of public service.” A corresponding right is conferred on the borrowing department as well. The same Appendix II (16) enshrines the Rule with regard to the departmental enquiry. Although we are not concerned strictly therewith but the principle would be applicable here as well for, it lays down that if a departmental enquiry was to be instituted against the Government servant, he would be reverted to his parent department. The Subsistence Allowance would be paid by the Government though it could be recovered from the borrowing department. Clause 19 of the same Appendix provides that if the Government servant desired to get absorbed in the services of the borrowing authority, “he shall be deemed to have retired from Government service on the date of his absorption.”

20. Lest, in view of the last mentioned provision, the Applicant could claim entitlement in the background of the facts emanating from the documents above discussed, it is very clear that the Rules will have to be read harmoniously and as a whole. One single provision cannot be torn out of context and studied and either accepted or rejected. That is a sound principle of interpretation, that the approach has to be of harmonious reading and reading as a whole and if that be so, then that particular Clause will have to

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be studied along with the other Clauses which establish the undoubted primacy to the powers of the Government in the circumstances like this. Further, the perusal of Appendix III appended to Rule 40 of the said Rules itself with particular reference to 7th Clause would put the whole thing beyond the pale of any dispute.

“(7) It shall be incumbent upon the foreign employer to consult the parent department if it is proposed to absorb the Government Servant under the Public Sector Undertaking, Autonomous Body or a Local Authority. Neither the Government servant, nor the foreign employer shall have any right of property in the contributions paid towards pension, leave salary, etc. to Government and no claims for refund will be entertained.”

21. It is, therefore, very clear that the Government in such matter has got undisputed right and powers vis-a-vis the matters pertaining to deputation and neither the Applicant nor the 4th Respondent could override the Government in that behalf. If that be so, then whatever else may have happened, the hard reality is that it was in the year 2009 that the Government decided to repatriate

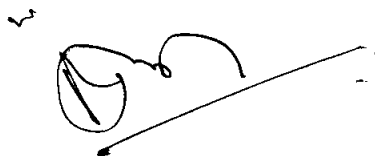
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and hence, recalled the Applicant back. As the Respondent No.4, in past, had shown deep inclination to absorb the Applicant, in the set of facts such as they are post application of Rules, their efforts could not be judicially held to have fructified and similarly, the Applicant also cannot claim any unilateral right in that behalf.

22. The above discussion would make it very clear that the Applicant would have to be repatriated. Before proceeding further, we may at this stage deal with the objection to this Tribunal's jurisdiction to entertain and try this OA against the Respondent No.4. The learned Advocate for the Respondent No.4 invited our attention to the fact that there has not been any authoritative pronouncement conferring powers on this Tribunal to adjudicate the issues pertaining to the employees of the Respondent No.4 in so far as their service conditions are concerned. A reference to Section 15 of the Administrative Tribunal Act, 1985 was made in that behalf. The provisions of the Major Port Trust Act were also referred to in so far as their employees are concerned in the context of the judicial forum which is empowered to assume jurisdiction over the matters pertaining to them.

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23. Now, as to this submission of the 4th Respondent, we find that it must have become very clear from the foregoing as to what is precise ambit of this OA, the scope thereof and the nature of the relief sought. It is no doubt true that the Applicant's claim in the Prayer Clause pre-amended was for quashment and setting aside the order of the 4th Respondent whereby he had referred to the directions of the State Government to repatriate the Applicant. By the post amendment Prayer Clause 9(aa), a relief of quashing and setting aside by an order of 11.6.2009 made by the 3rd Respondent – Deputy Director of Land Records, Konkan Region is sought which is at Exh. 'A' and whereby the Applicant has been repatriated and posted as a Copying Clerk in the office of the Taluka Inspector of Land Records, Poladpur. Now, this is an order passed by the 3rd Respondent in whose case, this Tribunal has undisputable and indisputable jurisdiction. If the Original Application which should normally be the basis for the determination of jurisdiction is perused in substance, without going by the form only, it would become quite clear that even for the grant of the relief of the absorption of the Applicant in the Respondent No.4, the same could not have been done unless the State Government approved it and in this case, the approval should have been by the Hon'ble Chief Minister. It is,

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therefore, clear that for every aspect of the matter, the relief is and it has to be against the State Government and the facts are so neatly intertwined that it is not only very difficult but actually impossible to extricate the facts that befall the exclusive domain of the Government on one hand and the 4th Respondent on the other. That being the state of affairs and if the main dispute without which the OA becomes a listless piece of paper, it is against the Government but inevitably the facts are such that the 4th Respondent will be, "dragged along" but it is not as if any relief sought against them is separable from the relief sought against the Government. If, therefore, this forum has the jurisdictional competence to entertain and try the OA against the Government, in our view, it goes without saying that this Tribunal will be competent to give directions even against the 4th Respondent. This conclusion can be tested by the legal position such as it obtains now for which useful reference could be made to the Judgment of a Division Bench of the Hon'ble the Chief Justice of Bombay High Court in the matter of **Writ Petitions No.8452/2004 (Vijay Ghogre and others Vs. The State of Maharashtra and ors.)**. Now, as per that Judgment, this Tribunal becomes the forum of the first instance in so far as the Maharashtra State Government employees are concerned. In that case, the OA such as it



is could not have been presented even before the Hon'ble High Court going by the mandate in the matter of **Vijay Ghogre** (supra). It obviously would not be an industrial dispute nor will it be a labour dispute or complaint. The issue, therefore, would be as to whether the Applicant could be driven to two separate proceedings before two different fora and in our opinion, if the main relief and the facts thereto pertaining befall, the jurisdictional competence of a particular forum which in this case is this Tribunal, then the whole matter would fall within the jurisdiction of such a forum. Had it been a claim only against the Respondent No.4, that would have been a different matter. But here, a short work of this case on the issue of jurisdiction is sought to be made by the learned Advocate for the 4th Respondent and that cannot be made. We, therefore, overrule the objection to our jurisdiction.

24. The upshot, therefore, is that in the present set of facts, the Applicant would have to be treated as having been repatriated pursuant to the order dated 11.6.2009 and he would be deemed to have taken charge of the post of Copying Clerk in the office of the Taluka Inspector of Land Records, Poladpur. He would naturally be entitled to all the benefits like any other Government employee even in respect of the pension and post retiral benefits, etc. The

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Respondents 1 to 3 will be free to get themselves reimbursement by the Respondent No.4 of any amount which they will have paid to the Applicant, but for which the real liability would be of the Respondent No.4.

25. The Applicant is hereby held entitled to have been posted as Copying Clerk w.e.f.11th June, 2009 as per Exh. 'A' hereto. If there is some issue regarding regularization of his absence from 11.6.2009 till his retirement, that may be resolved in accordance with law. The Respondents 1 to 3 are hereby directed to act in accordance herewith, generally with particular reference to the observation in the preceding Paragraph. The compliance be made within a period of three months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
28.07.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
28.07.2016

Mumbai

Date : 28.07.2016

Dictation taken by :

S.K. Wamanse.

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