

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO.621/2016.**

Raju Ramchandra Rathod,  
Aged about 46 years,  
R/o 27, Ruddraksha Colony,  
Wadgaon Road, Yavatmal.

**Applicant**

**-Versus-**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of Tribal Development,  
Mantralaya, Mumbai-440 032.
- 2) The Additional Commissioner,  
Tribal Development, Amravati Camp,  
Amravati.
- 3) The Project Officer,  
Integrated Tribal Development Project,  
Pandharkawada, Distt. Yavatmal.

**Respondents**

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Shri R.V. Shiralkar, Ld. Counsel for the applicant.  
Shri S.A. Sainis, learned P.O. for the respondents.

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**Coram:- Hon'ble Shri J.D. Kulkarni,**  
**Vice-Chairman (J).**

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**JUDGMENT**

**(Delivered on this 10<sup>th</sup> day of April 2017.)**

Heard Shri R.V. Shiralkar, the learned counsel for  
the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. The applicant is a Warden and vide impugned order dated 17.9.2016, he has been sent on deputation from Adivasi Boys Hostel, Yavatmal to Adivasi Boys Hostel, Nanded. It is mentioned in the said order that, the order was for a very short period and of temporary nature. At the bottom of the order, it was stated as under:-

“सदर ँयवऱथा अऱप कालावधीसाठऱ असऱयामुळे तसेच अंतगऱ ँयवऱथा असऱयाने ँयांना कोणऱयाह ँकारचा ँवासभऱ व इतर भऱे अनुऱेय राहणार नाहऱ

तसेच उऱत कऱमऱऱाऱ्यांना आपऱयाऱतरावऱन ँवऱत कायऱुऱत करऱयात यावे. ँयांचे वेतन व भऱे ँनयऱऱतपणे ँयांचे मुळ आऱथापानेवऱन काढऱयात यावे.”

3. According to the applicant, he is physically handicapped. He was appointed as Warden in 2003 at Aurangabad and was transferred to Pandharkawada on 18.5.2007 and thereafter from Pandharkawada to Yavatmal in 2011. His wife is serving at Ghatanji as Warden. The applicant is staying at Yavatmal alongwith his two children i.e. a son and a daughter and is somehow managing his family affairs and education of his children at Yavatmal. Vide impugned order, the applicant has been transferred to Nanded and the said order is against the provisions of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as, ँरtransfer Act) and also against the Government policy. The applicant has, therefore,

prayed that the impugned order dated 17.9.2016 be quashed and set aside and he be continued as Warden at Yavatmal.

4. Respondent Nos. 2 and 3 tried to resist the transfer order. The respondents submitted that the impugned order is not a transfer order, but it is a deputation order. It is stated that the applicant is habituated to avoid duty and making complaints to the different authorities. He has not received the order / letter issued by the department and his refusing to perform the duty allotted by the higher authorities. He has committed number of financial irregularities. He used to give threats to the staff members, parents and students. He was always non-cooperative with office colleagues and superior officers.

5. It is stated that vide the impugned order dated 17.9.2016, the applicant alongwith other employees were sent on deputation and not on transfer. It is an internal management for some period of time and respondent No.2 has every right to pass such orders. It is alleged that the applicant used to send the hostel boys even for minor reasons to the office of respondent No.3 i.e. Project Officer to agitate and protest. He has no control over the hostel and considering all these circumstances and unrest, it was decided to send the applicant on deputation.

6. The learned counsel for the applicant submits that the impugned order dated 17.9.2016 is nothing but transfer order and even for argument sake, it is accepted that it is a deputation order, applicant's consent was not taken for such deputation. The learned counsel for the applicant invited my attention to Rule 36 of the Maharashtra Civil Services (Joining Time, Foreign Service, and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as, 'Joining Time Rules'). The said rule says that no Government servant be transferred to foreign service against his wish. There is nothing on record to show that the applicant's consent was obtained for sending him on deputation.

7. Perusal of the impugned order dated 17.9.2016 shows that the order is very vague. It is mentioned in the opening para of the order that the services of following employees are being utilized for a very short and temporary period. The said para reads as under:-

अ.० .	कमच्यायाचे नाव	मुल पद०थापानेचे ठिकाण	अंतगत्त ०यव०था ०हणून कामकाज करावयाचे ठिकाण
४	०ी आर. आर. राठोड, (गृहपाल )	आद्ववासी मुलांचे वसतीगृह, यवतमाळ.	आद्ववासी मुलांचे शासक०य वसतीगृह, नांदेड ०.२.

This shows that it was not a transfer, but deputation.

This fact is further confirmed from last para of the order which reads as under:-

“सदर ँयवऱथा अऱप कालावधीसाठऱ असऱयामुळे तसेच अंतगऱ ँयवऱथा असऱयाने ँयांना कोणऱयाह ँकारचा ँवासभऱा व इतर भऱे अनुऱेय राहणार नाहऱ

तसेच उऱत कऱमऱाऱयांना आपऱयाऱतरावऱन ँवऱत कायऱुत करऱयात यावे. ँयांचे वेतन व भऱे ँनयऱतपणे ँयांचे मुळ आऱथापानेवऱन काढऱयात यावे.”

8. From the aforesaid part of the order, it will be clear that the pay and allowances of the applicant was to be drawn from his original establishment i.e. at Yavatmal. But the applicant was not held entitled to any travelling allowance and other allowances. It is not known as to why he was not allowed to enjoy such allowances as admissible. The deputation order has been passed on behalf of the respondents saying it to be alleged internal arrangement. There was no fault on the part of the applicant for not getting such allowances. In such circumstances, on this ground also, the impugned order seems to be illegal. As already stated, there is nothing on record to show that the consent of the applicant has been obtained for deputation or even the consent of higher authority was obtained for issuing impugned order.

9. The applicant is a physically handicapped person. The learned counsel for the applicant invited my attention to one G.R. dated 15.4.2004 issued by Government of Maharashtra which is at Annexure A-5 at page No.20. Through the said G.R., the Government issued directions to the competent authorities that, as far as possible the physically handicapped persons shall be transferred nearby the place of their residence. The respondents have not considered this fact and they have also not considered the fact that the applicant's wife is also serving at Dharni and he has small children who are taking education.

10. The respondents have tried to justify the transfer / deputation order on the ground that there were number of complaints against the applicant and that his behaviour was not proper. If this fact is accepted as a reason for transfer / deputation, then definitely it is a penal order. Such penal order cannot be passed. Had it been the fact that the applicant's work was not satisfactory or that he was unable to control the affairs of the hostel, the respondents should have initiated departmental enquiry against the applicant and transfer cannot be a ground to shift the applicant from Yavatmal to Nanded. It is also material to note that, the applicant has been transferred as Warden, Yavatmal to Nanded in the same place i.e. Warden. Had it been the

fact that the applicant was unable to manage the work of Warden at Yavatmal, it is surprising as to how he can manage the same work at Nanded.

11. On conspectus of discussion of foregoing paras, I am, therefore, satisfied that the impugned order of transfer / deputation dated 17.9.2016 issued by respondent No.2 is absolutely illegal and it is nothing but a penal order. The respondent No.2 has not considered various aspects as already stated including the guidelines issued by the respondent No.1 in case of transfer of physically handicapped persons. Hence, I proceed to pass the following order:-

**ORDER**

- (i) The O.A. is allowed in terms of prayer clause 7 (A).
- (ii) The respondents are directed to continue the applicant on the post of Warden at Tribal boys Government Hostel, Yavatmal.
- (iii) No order as to costs.

(J.D.Kulkarni)  
Vice-Chairman(J)

