

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1082 OF 2019**

**DISTRICT : THANE**

Shri Balasaheb R. Kawathekar. )  
Age : 55 Yrs., Working as Police Head )  
Constable, Police Head Quarter, Kalwa, )  
District : Thane. )...**Applicant**

**Versus**

1. The Additional Inspector General )  
of Police, Training & Special Unit, )  
M.S, Mumbai and having office at )  
Old Council Hall, Shahid )  
Bhagatsinh Marg, Mumbai – 39. )

2. The Principal. )  
Police Training Centre, Jalna. )...**Respondents**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 25.02.2020**

**JUDGMENT**

1. The Applicant has challenged the impugned orders dated 05.08.2019 and 06.08.2019 whereby his deputation has been cancelled and repatriated to original post invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under:-

The Applicant joined as Police Constable in 1992 and was posted on the establishment of Superintendent of Police, Thane Rural. In 2004, he was deputed at Police Training Centre, Jalna. His deputation period was extended from time to time. Lastly, on the request of Applicant, his deputation was extended upto 21.05.2020 by the order of Respondent No.1 – Additional Inspector General of Police, Training and Special Unit, Mumbai. However, abruptly, in pursuance of report submitted by Respondent No.2 – Principal, Police Training Centre, Jalna dated 18.06.2019, the deputation of the Applicant was cancelled and by order dated 05.08.2019, the Respondent No.1 cancelled his deputation and consequence to it, the Respondent No.2 by order dated 06.08.2019 relieved the Applicant directing him to join his original post with Superintendent of Police, Thane Rural. These orders of cancellation of deputation are challenged by the Applicant in the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned orders and made two-fold submissions. He submits that the impugned order of cancellation of deputation is in law amounts to order of transfer and there being no observance of the provisions laid down in Maharashtra Police Act, 2015 (hereinafter referred to as 'Act of 2015' for brevity) which *inter-alia* mandates for approval of Police Establishment Board (PEB) for the transfer of Police Personnel, the impugned order is bad in law. In second limb of submission, he submits that even assuming that the impugned order pertains to cancellation of deputation, in that event also, it is bad in law for non-observance of instructions contained in Appendix II read with Rule 40 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as 'Joining Time Rules 1981' for brevity). He further submits that deputation is cancelled in view of default report but in fact, the matter pertaining to default report has been already closed without further action, and therefore, the impugned action of

cancellation of deputation being made on non-existent ground is unsustainable in law.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer in reference to Affidavit-in-reply filed by Respondent Nos.1 & 2 submits that as per Circular dated 19.03.2016 issued by Respondent No.1, the deputation period shall not exceed five years. However, in the present case, the Applicant was on deputation with Respondent No.2 for nearly 15 years, and therefore, the order of cancellation of deputation cannot be faulted with. He further submits that in view of report of misconduct submitted by Respondent No.2, the cancellation of deputation was necessitated to maintain discipline in Police Training Centre. As regard non-observance of instructions contained in Appendix II, he submits that in view of default report, there was no necessity to give three months' notice by the Department, as contemplated under the said instructions. With this submission, he prayed to dismiss the O.A.

5. In view of submission advanced, short point posed for consideration is whether the impugned order of reverting the Applicant to the parent department is an order of transfer inviting provisions of 'Act of 2015' or it is an order of reversion to the parent department.

6. In so far as the submission advanced by the learned Advocate for the Applicant that the impugned order amounts to transfer and invites the provisions of 'Act of 2015' is concerned, to say the least it is totally misconceived and fallacious. Transfers and repatriation are distinct and governed by independent Act/Rules. There is no denying that, initially, the Applicant was deputed at Police Training Centre, Jalna in 2004 and thereafter, on request of Applicant, deputation period was extended. The Applicant thus accepted the order of deputation and in fact continued there over permissible period. Admittedly, at no point of time, he had challenged the order of deputation. Therefore, now it is not permissible to contend that his initial deputation to Police Training Centre at Jalna

was transfer on the said establishment. Admittedly, he was sent there on deputation and it was not transfer order. This being the position, if the Competent Authority who is Respondent No.1 in the present matter cancelled the deputation and revert the employee to the parent department for justiciable reasons, then such order of cancellation of deputation and reverting back to the parent department is necessarily order of cancellation of deputation and it cannot be termed order of transfer within the meaning of 'Act of 2015'. Therefore, the question of approval of PEB does not survive.

7. Now turning to the second limb of submission, the contention raised by the learned Advocate for the Applicant that the order of cancellation of deputation is bad in law for want of non-compliance of instructions contained in Appendix II is also not acceptable. Here, it would be apposite to refer Rule 40 of 'Joining Time Rules 1981' read with Appendix II which is as follows :-

**"40. Terms and conditions of transfer to foreign service.-** (1) The authority which sanctions the Government servant's transfer to foreign service or on extension in the period of foreign service must always send a copy of such sanction to the concerned Government servant and the Audit Officer.

(2) The Government servant himself should without delay communicate a copy to the officer, who audits his pay, and take his instructions as to the officer to whom he is to account for the contributions; he should also report to the latter officer the time and date of all transfers of charge to which he is party when proceeding on, while in, and on return from foreign service and furnish from time to time particulars regarding his pay in foreign service, the leave taken by him, his postal address, and any other information, which that officer may require.

(3) Every Government servant transferred to foreign service is expected to be conversant with the rules relating to foreign service. He should see that the rules and orders regulating his pay and other contributions, if any, are paid regularly.

(4) Transfer of a Government servant to foreign service should be made on the standard terms and conditions as in Appendix II. No departure from the prescribed terms and conditions shall be permissible.

The following are the standard terms and conditions of transfer of Government servants to foreign service, including statutory Corporations, autonomous bodies. No departure from the prescribed terms and conditions shall be permissible.

**(1) Period of Deputation.**- The foreign service shall commence from the date the Government servant hands over charge of the post and will expire on the date he resumes charge of his post under Government. The Government servant shall be on deputation for a period of (Stated the period) years in the first instance provided that –

- (i) 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;
- (ii) If his services are not required by the foreign employer, it shall be open to the foreign employer to revert him to the parent department, provided 3 months' notice is given to Government/competent authority by the foreign employer before effecting such reversion; and
- (iii) It is open to him to revert to the parent department after he gives a notice, of not less than three months, in writing to Government/competent authority of his intention to do so."

8. Thus, the perusal of Rule 40 read with Appendix II makes it quite clear that the Competent Authority have absolutely authority to curtail the period of deputation and employee has no vested right to continue on deputation forever. Indeed, as per Circular dated 19.03.2016 issued by Respondent No.1 (Page Nos.34 & 35), the maximum period of deputation is five years. Whereas, in the present case, the Applicant was on deputation for about 15 years. It is on the request of Applicant, extension as lastly granted upto 21.05.2020. However, in view of alleged misconduct and report dated 18.06.2019 (Page No.19 of P.B.) forwarded by Respondent No.2 to Respondent No.1, the deputation of the Applicant was curtailed and he was reverted to his parent department. The perusal of report dated 18.06.2019 reveals that on 11.06.2019 and on 12.06.2019, the Applicant indulged in certain misconduct by indulging in verbal altercation with P.I. Shri B.S. Thakur. Thereon, Show Cause Notice was issued to the Applicant on 18.06.2019 as to why disciplinary action should not be taken against him. The Applicant submitted his reply on 20.06.2019 (Page No.55 of P.B.) and sought to justify his

conduct. Ultimately, he was called in orderly room on 28.06.2019 and was warned not to repeat such behavior. Consequently, the matter was closed as seen from communication dated 24.10.2019 (Page No.46 of P.B.).

9. Thus, it transpires that the Applicant has overstayed in deputation and because of his alleged misconduct, his deputation was cancelled and he was reverted back to the parent department. In such situation, hardly any exception can be taken to such order of cancellation on deputation.

10. In so far as instructions contained in Appendix II are concerned, the conditions mentioned in Clauses (i) to (iii) are mutually exclusive. The present case falls within condition No.1, which inter-alia provides that the Competent Authority has absolute right to cancel the period of deputation, if his services are required by Government in the interest of public service. In the present case, the Respondent No.1 – Additional Inspector General of Police is the Competent Authority and in the interest of administration in view of alleged misconduct, he cancelled deputation and reverted the Applicant to his parent department. As stated above, the Applicant has no legal vested right to continue on deputation forever. His deputation was extended on his own request. However, in the meantime, he seems to have indulged in certain misconduct for which warning was given to him. This being the position, the submission advanced by the learned Advocate for the Applicant that deputation period cannot be cancelled unless three months' notice is given, as contemplated in condition No.2 is totally misplaced. The case of the Applicant squarely falls in condition No.1 where the deputation can be cancelled in the interest of public service. In the present case, recalling of order of deputation in view of alleged misconduct certainly be termed in interest of administration.

11. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned order holds no water and O.A. deserves to be dismissed. Hence, the following order.

**ORDER**

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

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 25.02.2020  
Dictation taken by :  
S.K. Wamanse.

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