

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.141 of 2021

District : Pune

Shri Dnyaneshwar Haribhau Kharat)
Aged 40 years, Occ : Service,)
R/at Quarter No.3, Jail Officers Quarter,)
Opposite Shani Temple, Yerwada, Pune411006.)...**Applicant**

Versus

1. The State of Maharashtra, through the Addl.)
Chief Secretary, Home Department,)
Mantralaya, Mumbai 32.)
2. The Additional Director General & Police)
(Prison), & Correctional Services, State of)
Maharashtra, Pune – 411001.)
3. The Deputy Inspector General, Prison West)
Division, Yerwada, Pune 411006.)
4. The Superintendent, Yerwada Central Jail,)
Pune 411006.)...**Respondent**

Shri D. H. Pawar, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 08.09.2021.

J U D G M E N T

The Applicant has challenged the transfer order dated 23.09.2020 whereby the Respondent No.3- Deputy Inspector General, Prison, Yerwada, Pune deputed him from the post of Jailor -1, Yerwada Central Jail, Pune to Yerwada Open Prison, Pune invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to Original Application are as under :-

The Applicant was working as Jailor, Class-I at Yerwada Central Jail, Pune. His appointing authority is Inspector General, Prison. In terms of letter dated 13.03.2020 issued by Additional Inspector General, Prison, the post of Jailor-1 is treated as Group-C post and his tenure would be six years in a post. The Applicant was posted at Yerwada Central Prison on 05.12.2015 and was entitled to six years tenure. However, on account of some incident happened in Jail on 09.09.2020, the Respondent No.3 by order dated 23.09.2020 shifted the Applicant under the name of temporary deputation on the establishment of Yerwada Open Prison, Pune. Being aggrieved by this order, the Applicant has filed this O.A. *inter-alia* contending that under the disguise of temporary deputation, he is transferred and it is in defiance of provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005).

3. Shri Pawar, learned Counsel for the Applicant sought to assail the impugned order dated 23.09.2020 *inter-alia* contending that under the grab of temporary deputation, the Applicant is transferred in blatant violation of provisions of 'Act 2005'. He has pointed out that for such mid-term transfer, the competent authority is Inspector General, Prison, Pune and, therefore, the impugned order dated 23.09.2020 passed by the Deputy Inspector General, Prison is bad in law. He has further pointed out that there is no compliance of placing the matter before Civil Services Board as mandated by the Hon'ble Supreme Court in **T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732**. On this line of submission, he submits that impugned order is *ex-facie* bad in law and liable to be quashed.

4. Per contra, Shri A. J. Chougule, learned Presenting Officer sought to justify the impugned order *inter-alia* contending that it is temporary deputation which was necessitated on account of certain incident happened in the Jail on 09.09.2020 wherein, the Applicant was found responsible for misbehaving with seniors. He further submits that the impugned order dated 23.09.2020 is not transfer order so as to attract the provisions of 'Act 2005' but it is temporary deputation warranted because of administrative exigency and it need not be interfered with by the Tribunal.

5. In view of the submission advanced, the question posed for consideration is whether the impugned order dated 23.09.2020 is legally sustainable and the answer is in emphatic negative.

6. Indisputably, the Applicant joined at Yerwada Central Jail as Jailor, Class-1 on 05.12.2015 and in terms of letter dated 13.03.2020 (page nos.13 to 16 of PB) issued by the office of Inspector General, Prison, the post of Jailor-1 has been treated as Group-C entitling for six years tenure. This position is not disputed by learned P.O. Therefore, Section 3 of 'Act 2005' is attracted which *inter-alia* states that Group-C employee from non secretariat service would be entitled for six years tenure. Suffice to say, there is no denying that the Applicant's normal tenure as Jailor-Class1 was six years.

7. Now, next question comes whether the impugned order dated 23.09.2020 amounts to transfer in the eye of law or it is innocuous order of deputation. True, as per text of impugned order it is worded as 'temporary deputation on the establishment of Yerwada Open Prison till further order.' As such, it is shown as temporary deputation till further order. Pertinent to note that the order was passed on 23.09.2020 and till date the period of near about one year is over. In this period of one year no further steps were taken to recall the order dated 23.09.2020 or to regularize the same one way or other. There could be no such

temporary shifting for more than one year. It has trapping of order of transfer in the eye of law.

8. One can understand, if there is a temporary deputation for a short period warranted due to administrative exigency in accordance to rules. However, it is not so and the Applicant is kept away from his regular post for more than one year under the disguise of temporary deputation. If such orders are upheld, it would amount to circumvent the provisions of 'Act 2005'. Suffice to say, the order dated 23.09.2020 has trapping of transfer from one post to another post in the eye of law.

9. As rightly pointed out by learned Counsel for the Applicant, the impugned order has been passed by the Deputy Inspector General, Prison who is not competent for such mid-tenure transfer. The Inspector General is the only competent authority for such mid-term transfer in the light of provisions of Section 4(5) of Act 2005 which *inter-alia* provides for mid-tenure transfer in a special case with approval of immediately superior authority.

10. Learned P.O. fairly submits that the Deputy Inspector of General, Prison is Head of the Department only. As such, for such mid-term transfer, it ought to have been with prior approval of Inspector General, Prison as mandated under Section 4(5) of 'Act 2005' which is admittedly missing.

11. Apart, as mandated by the Hon'ble Supreme Court in **T.S.R. Subramanian's** case (cited supra), the transfer is required to be vetted by Civil Services Board which is also not complied with in the present matter.

12. For the aforesaid reasons, I have no hesitation to sum up that the impugned order dated 23.09.2020 is totally bad in law and liable to be quashed. Hence, the following order :-

ORDER

- (A) Original Application is allowed.
- (B) Impugned order dated 23.09.2020 is quashed and set aside.
- (C) Consequently, the Applicant be posted from where he was displaced within two weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

Date : 08.09.2021
Place : Mumbai
Dictation taken by :
Vaishali Santosh Mane
Uploaded on :

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