

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.403 OF 2015

DISTRICT: PUNE

Dr. Unmesh Sopanrao Gutte, )  
 Medical Officer, Yerwada Central Prison, )  
 Pune 5 )  
 R/o. Medical Officer Quarter No.15, )  
 Yerwada Central Prison, )  
 Pune 411 006 ) .... Applicant

**Versus**

1. The State of Maharashtra, )  
 Through the Principal Secretary, )  
 Public Health Department, )  
 Mantralaya, )  
 Mumbai 400 032 )
2. The Director, )  
 Public Health Services, )  
 Aarogya Bhavan, )  
 St. George Hospital Campus, )  
 P.D'melo Road, Mumbai 400 001 )
3. Dr. P.B. Joshi, Medical Officer, )  
 District Prison, Visapur, )  
 Ahmednagar ) .....Respondents

None for the Applicant.

Shri K.B. Bhise, the learned Presenting Officer for the Respondents

CORAM : JUSTICE SHRI M.N. GILANI, MEMBER (J)

DATE : 18.01.2016.

### J U D G M E N T

1. The order dated 31.05.2015 issued by the Director of Health Services, Respondent No.2 whereby the applicant along with 49 other medical officers were transferred to various stations, is impugned in this O.A.

2. Although the applicant was posted as Medical Officer, Central Prison Yerwada, Pune vide order dated 01.08.2012, he could actually join the said posting on 23.07.2013. Therefore his tenure at this station is to be reckoned from the date of his joining. Before he completed three years at this station, he has been subjected to transfer and therefore this O.A.

3. Respondent No.2 submitted affidavit-in-reply. The contents in paragraphs 12 and 13 being relevant are extracted below :-

12..... It is true that the tenure of the applicant was not completed, but as he was not serving at the Central Prison in disciplinary way and on the request of Additional Director General of Police, Pune that applicant needs to transfer from Central Prison on compliant basis his transfer was made. Vide letter dated 1<sup>st</sup> June 2015, the proposal for Post facto sanction for the approval to the transfer is submitted to Hon. Principal Secretary, Public Health Department as per transfer Act. Copy of said letter dated 1.6.2015 is annexed hereto and marked as EXHIBIT "R-3".

13. With reference to para 6.6, I say and submit that the impugned transfer order mentioned here in this para is correct and proper. Though the applicant was not due for transfer on date of impugned transfer order dated 31.5.2015, his transfer is purely made on complaint basis and therefore due to administrative purpose applicant was transferred. On his various complaints the authority has issued him Show Cause Notice also. Copy of show cause notice is already annexed in EXHIBIT "R-2". This clearly shows that his working at Central Jail's Yerwada, Pune, was not as per jail's prescribed rules. Therefore all the demands and allegations made by the applicant here in this para are baseless.

4. It is therefore, obvious that there has been non compliance of the provisions of Section 4 (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred as Transfer Act). Expression "after recording the reasons in writing and with the prior approval of immediate<sup>ly</sup> superior authority" connotes that the prior approval should precede the order of transfer. Admittedly, transfer order was issued on 31.05.2015 and thereafter proposal for ex-post facto sanction was submitted on 01.06.2015.

5. Ex-facie, there being violation of provision of Section 4(5) of the Transfer Act, this Tribunal considering this legal position on 03.06.2015 granted interim relief by staying effect and operation of the order impugned. Therefore, the case for confirmation of interim relief has been made out.

6. In the affidavit-in-reply there are averments regarding acts of misconduct committed by the Petitioner. To deal with such situation the Transfer Act permits competent authority to transfer a Government servants in special case after recording reasons in writing and with the prior approval of the immediately superior authority. Thus, what is mandatory is the compliance of the provisions of Transfer Act. This being the case where the provision has not being complied with, there is no other alternative than to quash and set aside the order impugned. Accordingly, O.A. is allowed. Order impugned is quashed and set aside. There shall be no order as to costs.

Sd/-

(M.N. Gilani J.)  
Member (J)