

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 516/2015

Mr. Shankar Vitthalrao Pradhan,
Aged about 53 years,
Occupation: service,
R/o 452, Nehru Nagar,
Nagpur.

2. Mr. Uday Vijay Jadhav,
Aged about 42 years,
Occupation: service,
R/o Padmavati Nagar, Godhni,
Nagpur

3. Mr. Ashish Nagorao Bhuskande,
Aged about 34 years,
Occupation: service,
R/o Flat No. S-1, Ashray Apartment,
Manish Nagar,
Nagpur

-----**Applicants.**

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Home Deptt.,
Mantralaya, Mumbai.
2. The Additional Director General of Police and
Inspector General of Prison, Pune.
3. The Dy. Inspector General of Prison,
East Region, Nagpur.

4. The Superintendent Central Prison,
Nagpur.
5. The Superintendent District Prison,
Bhandara.
6. The Superintendent District Prison,
Chandrapur.
7. The Superintendent Morshi Open Prison,
Morshi, Distt. Amravati. ----- **Respondents.**

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1. Shri S.C. Deshmukh, Advocate for the applicants.
 2. Shri A.P. Sadavarte, Presenting Officer for the Respondents.
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CORAM : B. Majumdar : Vice Chairman

DATE : 20th April, 2016

ORDER

PER VICE-CHAIRMAN

The applicants are Jail Guards. Aggrieved with their transfer to different Jails from Nagpur they have filed this O.A.

2. The applicants were posted as Jail Guards at the Central Jail, Nagpur during May-June, 2011. On 31/3/2015 an incidence of escape of 5 hardened criminals from the

Central Jail, Nagpur where the applicants were posted took place. On 21/4/2015 and 22/4/2015 the Dy. Inspector General of Police(R/3) issued orders attaching/deputing the applicants to the Jails at Bhandara, Morshi and Chandrapur. The applicants have assailed these orders in the O.A.

3. On 11/3/2016 R/3 issued another order confirming the attachment to different Jails as above.

4. The applicants submit that R/3 has no power or authority to attach their services to other Prisons. There is no provision in the Transfer Act for such attachment. Thus they have actually been transferred. As per the notification dtd. 20/2/2009 the transferring authority for Group 'C' employees, like the applicants, is the IG of Prisons (R/2). The orders of attachment which they have impugned in the O.A. are stigmatic in nature as certain adverse observations have been made ^{therein} about the applicants' role in the escaping of prisoners. This amounts to defamation. The impugned orders state that the attachment has been done to enable an enquiry to be conducted. However, till today no enquiry

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is conducted nor any memo or show cause notice is served on the applicants. The applicants also submit that they have serious personal problems of shifting their families to the stations where they have been attached and they cannot afford to maintain double establishments.

5. The Dy. Inspector General of Prisons (R/3) in his affidavit-in-reply submits that there were serious charges of indiscipline like supply of illegal and contraband articles to the prisoners and their connivance in helping prisoners to escape which are the subject matters of enquiry. R/3 is the appointing authority of Jail Guards as also the authority to transfer/depute/take disciplinary action against the applicants.

The respondent no. 3 thereafter states thus :-

“ As the applicants are involved in the malpractices, in order to maintain the discipline of the prison and also for avoiding any further prison breaking, the respondent rightly transferred the applicants from Nagpur prison to the various prison in the region like Bhandara, Morshi and Chandrapur”.

He further submits as follows :-

“ the cases of the applicants regarding the transfer will be considered in the coming transfer session April/May 2016 and in the coming transfer session of 2016, Till that time the applicants will be temporarily attached to maintain law and order and discipline in the Nagpur Prison.”

6. Shri S.C. Deshmukh, Id. Counsel for the applicant submits that the applicants were initially attached to different prisons for 1 month, and thereafter such attachments were confirmed on 11/2/2016. This clearly shows that R/3 has actually transferred the applicants to different Jails. This has been done after relieving them from their posts at Nagpur. Thus the action of R/3 meets the condition of 'transfer' as it is defined under Section 2 (i) of the Transfer Act. The applicants are Group 'C' employees and as per Section 3 (1) their normal tenure is of 6 years. As the transfers have been effected prior to that, these are clearly mid-term transfer which attracts the provisions of Sections 4 (4) and 4 (5) of the Transfer Act. As

per these Sections, R/3 was required to take prior approval of the next higher transferring authority and record special reasons and circumstances for the transfer. As this has not been done, the impugned orders of transfer are violative of the Transfer act.

7. Shri A.P. Sadavarte, Id. P.O. for the respondents vehemently opposed the O.A. by submitting that there were serious cases of jail breaking and prima facie a number of Jail Guards including the applicants were found to be involved in supplying contraband and illegal articles to the criminals in the Jail. It would not have been possible for respondents to conduct a proper enquiry unless the concerned Guards including the applicants were shifted away. Thus, the circumstances clearly warrant that they are attached to other Jails. Besides, R/3 has stated that the formal transfer orders will be issued during the current session.

8. I find that in the O.A. the issue that is mainly raised is whether the impugned orders shifting the applicants to Bhandara/Morshi/Chandrapur/ Prisons amount to transfer.

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The impugned orders dtd. 21-4-2015/22-4-2015 states that on being attached to these Prisons, the applicants are required to be relieved from the Prison duty at Nagpur. The order clarifies that it is by way of attachment (संलग्न) and deputation (प्रतिनियुक्ती). The fact however remains that the applicants have been posted out of Nagpur and posted to the above three Jails for performing duties of Jail Guards which they were earlier doing at Nagpur. Subsequently on 11/2/2016 R/3 issued order by which the above attachments were made permanent. Thus undeniably, the applicants have been removed from their posts at Nagpur and shifted to the Jails at Bhandra/Morshi/Chandrapur as a permanent arrangement. In my clear view this is a case of transfer as defined in Section 2 (i) of the Transfer Act. The said Section states as follows :-

Section 2 (i): “ “ Transfer” means posting of a Government servant from one post, office or Department to another post, office or Department.”

9. As the applicants who belong to Group-'C' have been transferred before completion of their normal tenure of 6 years, in terms of Section 4 it was obligatory for R/3 to obtain prior approval of the next higher transferring authority/Head of the Department, i.e., Additional DGP and IG of Prison, Pune (R/2) by putting on record the special reasons and circumstances warranting such a transfer. Undisputedly he has not done so. Hence, the impugned orders are bad in law and require to be quashed. The O.A. therefore stands disposed of in terms of the following directions :-

- (a). The orders dtd. 21/4/2015 /22/4/2015 and 11/2/2016 issued by R/3 are quashed and set aside.
- (b). The respondents however are at liberty to transfer the applicants out of Nagpur after strictly following the provisions of the Transfer Act.
- (c). No order as to costs.

sd/-


(B.Majumdar)
Vice-Chairman.

Skt.