

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 758 OF 2015

DISTRICT : MUMBAI

Shri Rajendra Laxman Shinde,)
Occ : Service,)
R/o: Heramb Housing Society,)
Sector 8E, B-Wing, 704,)
Kalamboli, New Bombay.)...**Applicant**

Versus

1. Jail Superintendent,)
Taloja Central Prison, Taloja,)
Navi Mumbai.)
2. Special Inspector General of)
Police (Prison), South Division,)
Mumbai 400 008.)
3. Inspector General [Prison],)
Old Central Bldg, Pune-1.)
4. Dy. Inspector General [Prison],)
Central Division, Aurangabad.)

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5. The State of Maharashtra,)
Through Ministry of Home)
Affairs, Mantralaya, Mumbai.)...**Respondents**

Shri S.S Dere, learned advocate for the Applicant.

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

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 29.02.2016

ORDER

1. Heard Shri S.S Dere, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant who has been transferred by order dated 31.8.2015 to Paithan Open Jail in Aurangabad District from Taloja Central Prison, ^{Navi Mumbai} ~~Dist-Thane~~. The Applicant has challenged the aforesaid order on the ground that it has been issued in violation of the Maharashtra Government Servants (Regulation of Transfers and Prevention of Delays in Discharge of Official Duties), Act, 2005 (hereinafter referred to as the Transfer Act)

3. Learned Counsel for the Applicant argued that the Applicant is working as Havildar, Group 'C' post in the Prison department. He was working at Taloja Prison ~~on~~ since 1.11.2010. As a Group 'C' employee he was entitled to two terms of 3 years each, before he could be transferred. The Applicant has some immovable property in Aurangabad and therefore sought transfer to Aurangabad Central Prison by representation dated 7.2.2013. However, by impugned order dated 31.8.2015, he has been transferred to Paithan Open Prison, ostensibly on his request. Learned Counsel for the Applicant argued that the Applicant had never sought transfer to Paithan, but to Aurangabad Central Prison. As such, the order transferring him to Paithan Open Prison as per his request, is obviously not based on correct facts. Learned Counsel for the Applicant prayed that the transfer order dated 27.5.2015, communicated to the Applicant on 27.8.2015 may be quashed and set aside.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant was promoted as Havildar on 1.11.2010 and posted to Taloja Central Prison, Navi Mumbai. He had sought transfer to Latur District Prison on 20.12.2010. The Applicant had preferred an application on 7.2.2013 for transfer to Aurangabad Central Prison. The Applicant was transferred to Paithan Open Jail by order dated

27.5.2015. The same was communicated to the Applicant by order dated 30.6.2015. His relieving order was issued by the Respondent no. 1 on 31.8.2015. However, the Applicant proceeded on unauthorized medical leave on 27.8.2015 and reported for duty on 19.9.2015. Learned Presenting Officer stated that the transfer order could not be served on the Applicant in time as he was absent unauthorizedly. However, there is no merit in this Original Application, which may be dismissed.

5. Admittedly, the Applicant is a Group 'C' employee. As per section 3(1) of the Transfer Act, he is eligible to get two full tenures of 3 years, before he could be transferred. He joined at Talaja Central Prison, Navi Mumbai on 1.11.2010. He had not completed his tenure of 6 years before he was transferred.

6. The Applicant has alleged that he was not made aware of transfer order dated 27.5.2015 till he was informed on 27.8.2015. This is stated in grounds (c) in the Original Application. The Respondents have also not placed on record a copy of the transfer order dated 27.5.2015. With the affidavit in reply dated 30.11.2015, a copy of order dated 30.6.2015 issued by the Respondent no. 4 is placed on record as Exhibit R-2. From the endorsement below this order, it is seen that the same was received in Talaja Central Prison on 27.8.2015. The claim of the Applicant that his transfer order dated

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27.5.2015 was communicated to him on 27.8.2015 appears to be correct. Section 4(2) of the Transfer Act provides that a Government servant will be transferred only in the month of April or May. If the transfer of the Applicant was as per his request, that requirement may not apply. Here, though the Applicant is said to have been transferred on his own request, that is factually incorrect. The Respondents have admitted in para 8 of the affidavit in reply dated 30.11.2015 that the Applicant had made an application for transfer dated 7.2.2013. The same is at Exhibit-A (page 14 of the Paper Book). It reads that:-

“ तरी माझ्या अर्जाचा सहानुभूतिक विचार घेऊन माझी बदली खालील नमूद कारागृहाचे ठिकाणी व्हावह हि नम्र विनंती.”

9. औरंगाबाद मध्यवर्ती कारागृह ”.

Clearly, the Applicant has not sought transfer to Aurangabad District. If it was not possible to transfer the Applicant to Aurangabad Central Prison, his transfer elsewhere cannot be said to be as per his own request. Such a transfer is at the instance of the Respondents and has to be in conformity with the provisions of the Transfer Act. The Applicant was transferred before completion of his tenure and he was effectively transferred in August. Such transfer can be done with the approval of next higher transferring authority as per Table in section 6 of the Transfer Act, which is the Minister for Group 'C' employees. The transfer order of

the Applicant could be passed as a special case [section 4(5)] or ~~by~~ citing exceptional circumstances or special reasons [section 4(4)(ii)]. None of this has been done and the Applicant has been transferred ostensibly on his own request, though his request was for transfer to an entirely different Prison. The impugned transfer order dated 27.5.2015, communicated to the Applicant on 27.8.2015, is unsustainable.

7. Having regard to the aforesaid facts and circumstances of the case, the transfer order dated 27.5.2015 and relieving order dated 31.8.2015 are quashed and set aside. The Respondents may implement this order within two weeks from today. The Applicant was not transferred to Faithan Open Prison on his request, so he will be entitled to T.A/D.A as per rules. This Original Application is allowed accordingly with no order as to costs.

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 29.02.2016
Dictation taken by : A.K. Nair.