

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.389/2018

DISTRICT: AURANGABAD

Miss. Archana Devidasrao Lathkar,
Age : 47 years, Occu. : Service as
Assistant Public Prosecutor, Aurangabad,
R/o. 5-15-98/9, "Kusumkunj",
Behind Kotla Colony, Near Shani Mandir,
Aurangabad – 431001.
Maharashtra State.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through Additional Chief Secretary,
Home Department,
M.S., Mantralaya, Mumbai – 32.
- 2) The Directorate of Prosecution,
Maharashtra State, Mumbai,
5th Floor, Khaitan Bhavan,
Church Gate, Mumbai.
- 3) The Assistant Director and
Public Prosecutor,
Old District and Sessions Court Building,
1st Floor, Adalat Road,
Aurangabad.

...RESPONDENTS

APPEARANCE :Shri Avinash M. Nagarkar, Advocate for
the Applicant.

:Smt. Sanjivani Ghate, Presenting Officer
for the respondents.

CORAM : B. P. Patil, Vice Chairman

Reserved on : 03-07-2019

Pronounced on : 09-07-2019

J U D G M E N T

1. The applicant has challenged the order dated 08-06-2018 issued by the respondent no.2 by which she has been transferred from the post of Assistant Public Prosecutor, Aurangabad to Nagpur by filing the present O.A.

2. Applicant is serving as Assistant Public Prosecutor, Aurangabad. In the year 2016, she has been transferred from Aurangabad to Jalna by order dated 31-05-2016. Therefore, she approached this Tribunal challenging the said order by filing the O.A.No.431/2016. This Tribunal refused to grant interim relief in her favour and therefore, she had filed Writ Petition NO.6049/2016 before the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad. The Hon'ble High Court was pleased to grant status quo on 10-06-2016. By virtue of the said order, the applicant has been retained at Aurangabad. It is her

contention that she has filed earlier O.A. challenging the order of transfer dated 31-05-2016 on the ground that her father, Devidas Gangadharrao Lathkar was ill. However, during the pendency of the O.A.No.431/2016 and Writ Petition No.6049/2016, her father died on 19-05-2017. By virtue of the order of status quo granted by the Hon'ble High Court, she continued to work at Aurangabad.

3. It is her contention that due to death of her father, her mother sustained mental trauma. Not only this but her mother was also suffering from other medical problems. Not only this but her mother Vijaya Devidasrao Lathkar is also suffering from disease of spondylitis with vertigo. She is the only person to take care of her mother. Her two sisters are staying abroad and therefore there is no fit person to look after her mother except her. Not only this but she herself is also suffering from hypertension and taking treatment from physician at Aurangabad. She has been transferred from Aurangabad to Nagpur by the impugned order. It is her contention that Nagpur is at a distance of about 500 km from Aurangabad, and therefore, it will be difficult for her to take care of her ill mother. It is her further contention that she has made representations

with the respondents to cancel her transfer and to retain her at Aurangabad but the respondents have not decided the said representations. Therefore, she has approached this Tribunal and prayed to quash and set aside the order dated 08-06-2018 thereby transferring her from Aurangabad to Nagpur.

4. Respondent no.2 and 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the applicant has been transferred from Aurangabad to Jalna by order dated 31-05-2016 and the applicant has challenged the said order before this Tribunal. They have also not disputed the fact that this Tribunal refused to grant interim relief in that O.A., therefore, she had filed Writ Petition before the Hon'ble High Court. It is their contention that the Hon'ble High Court was pleased to grant status quo on 10-06-2016. It is their contention that the status quo order was in respect of transfer order dated 31-05-2016. It is their contention that status quo order dated 10-06-2016 was continued till next date and it was not extended. Therefore, it was not in existence after 23-07-2016. It is their contention that at the time of earlier transfer of the

applicant she had completed 13 years of service in Aurangabad district and therefore she has been transferred on administrative ground.

5. It is their further contention that the applicant is serving in Aurangabad district since the year 2003 and she has completed more than 15 years in Aurangabad. She is overdue for transfer, and therefore, she has been transferred to Nagpur in the general transfer in view of the provisions of Transfer Act. It is their contention that as the applicant was overdue, respondent no.1 called options from the applicant and other employees due for transfer at the time of general transfers of 2018 but the applicant has not submitted the information regarding places of her choice for transfer. Therefore, she has been transferred to Nagpur on account of administrative exigency. It is their contention that there is no illegality in the transfer order. Therefore, they have supported the impugned transfer order and prayed to dismiss the O.A.

6. I have heard Shri A.M.Nagarkar, Advocate for the Applicant and Smt. Sanjivani Ghate, Presenting Officer for the respondents. Perused the documents placed on record by the parties.

7. Admittedly, the applicant was appointed as Assistant Public Prosecutor on 22-02-2002 and posted at Jalna Training School for imparting training of law to the newly recruited constables. Admittedly, in the year 2003 she has been transferred to Aurangabad District and since then she has been working at Aurangabad. There is no dispute about the fact that on 31-05-2016, she has been transferred from Aurangabad to Jalna as she was due for transfer. The applicant challenged the said order before this Tribunal by filing O.A.No.431/2016 and claimed interim relief but the Tribunal refused to grant interim relief in her favour. The applicant approached the Hon'ble High Court by filing Writ Petition No.6049/2016 and the Hon'ble High Court granted status quo on 10-06-2016. By virtue of the said order, the applicant continued to work at Aurangabad since then. At the time of general transfers of 2018, the applicant has been transferred from Aurangabad to Nagpur by the impugned order.

8. Learned Advocate for the applicant has submitted that in the year 2016, father of the applicant was ill and needed treatment of medical practitioner at Aurangabad. Therefore, she sought retention at Aurangabad but her

request was not considered and she has been transferred to Jalna. Therefore she had approached this Tribunal by filing O.A.No.431/2016. He has submitted that by virtue of the status quo order granted by Hon'ble High Court in Writ Petition No.6049/2016, the applicant continued to work as Assistant Public Prosecutor at Aurangabad. He has argued that when the status quo order passed by the Hon'ble High Court was in force, respondent no.2 issued the impugned order and therefore it is illegal. He has submitted that mother of the applicant as well as the applicant are suffering from various diseases and they are taking treatment from the doctors at Aurangabad. Respondent no.2 issued transfer order without considering the said aspect and posted the applicant at Nagpur which is 500 km away from Aurangabad. He has submitted that the impugned order is illegal, and therefore, he prayed to quash the impugned order by allowing the O.A.

9. Learned Advocate for the applicant has further submitted that the applicant made representations with the respondent no.2 to cancel the impugned order but the respondent no.2 has not considered it.

10. Learned P.O. has submitted that the applicant is serving in Aurangabad District since 2003. She has completed tenure of more than 15 years at Aurangabad district. She was considered for transfer at the time of general transfer of 2016 as well as 2018 as she was due for transfer. As she was due for transfer she was initially transferred to Jalna by order dated 31-05-2016 but the applicant challenged the said order before this Tribunal and before the Hon'ble High Court of Bombay Bench at Aurangabad and by virtue of status quo order granted by Hon'ble High Court, she continued to work at Aurangabad thereafter also. She has argued that in the year 2018 necessary information regarding choice of the places was called from the applicant as she was due for transfer but the applicant has not exercised her right and did not give places of her choice for transfer. Therefore, respondents transferred the applicant at Nagpur on administrative ground. He has submitted that the impugned order of transfer has been issued by respondent no.2 as per recommendations of the Civil Services Board and by following provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and there is no illegality. Therefore, she supported the impugned transfer order and prayed to dismiss the O.A.

11. On going through the documents on record, it is crystal clear that the applicant was appointed in the year 2002 as Assistant Public Prosecutor and posted at Jalna. In the year 2003, she has been transferred to Aurangabad district and since then she is serving at Aurangabad. She has completed her normal tenure of posting at Aurangabad. She had served at Aurangabad for last 15 years. She was due for transfer at the time of general transfers of 2016 and 2018. In the year 2016, she has been transferred to Jalna but she approached this Tribunal as well as the Hon'ble High Court of Bombay Bench at Aurangabad and continued to work at Aurangabad by virtue of status quo order of Hon'ble High Court. In the year 2018, she was due for transfer, and therefore, necessary information regarding places of her choice has been called by respondent no.2 from her. But the applicant has neither given her choice nor made representation. Therefore, respondent no.2 who is the competent authority to transfer the applicant transferred her from Aurangabad to Nagpur by the impugned order as per the recommendations of the Civil Services Board.

12. Respondent no.2 has issued the transfer order in accordance with the provisions of Transfer Act, 2005 and there is no violation of any provision of the Act while effecting transfer of the applicant. Therefore, in my view, the impugned order is in accordance with the provisions of the Transfer Act and there is no illegality in the same. Hence, no interference in the impugned order is called for. There is no merit in the O.A. Consequently, O.A. deserves to be dismissed.

13. In view of the discussion in the foregoing paragraphs, O.A. stands dismissed without any order as to costs.

(B. P. PATIL)
VICE CHAIRMAN

Place : Aurangabad
Date : 09-07-2019.