

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1203 OF 2016

DISTRICT : N'MUMBAI

Dattatray Rekhu Rathod.)
R/at Taloja Madhyavarti Karagruh,)
Kharghar, Navi Mumbai 210 410.)...**Applicant**

Versus

The Additional Director General of Police)
And Inspector General of Police (Prison),)
Maharashtra State, Pune – 1.)...**Respondent**

Mr. S.S. Dere, Advocate for Applicant.

Ms. S. Suryawanshi, Presenting Officer for Respondent.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 28.04.2017

JUDGMENT

1. The Applicant sought No Objection Certificate (NOC) to let him make an appropriate application to the appropriate authority to change his cadre from Prison Department to State Excise Department and one of the chief grounds was that being a Class IV employee in the



Jail Administration, he has to be compulsorily accommodated in a premises inside the Jail and his two year old son suffering from congenital heart disease suffers on account of the same. This request for NOC came to be rejected by the communication from the Office of the Respondent – Additional Director General of Police (Prison) at Exh. 'A' (Page 11 of the Paper Book (PB)). The aggrieved Applicant is up before me challenging the same by way of this OA.

2. I have perused the record and proceedings and heard Mr. S.S. Dere, the learned Advocate for the Applicant and Ms. S. Suryawanshi, the learned Presenting Officer (PO) for the Respondent. Ms. Suryawanshi, the learned PO is being instructed by Mr. H.G. Ghadge, Senior Clerk in the office of Additional DG, Pune.

3. The facts are a few and simple. There is sufficient documentary material to suggest that the son of the Applicant was examined by the Medical Board and it was found that his two year old son was suffering from repeated respiratory infection and that was attributable to the surrounding that the boy was living in. In the same document of 16.12.2016, there is a reference to the boy suffering from congenital heart disease. These documents



are perused and returned to the learned Advocate Mr. Dere.

4. The Applicant submitted an application on 10.11.2015 to the Respondent mentioning therein *inter-alia* the fact that, he had been serving the Prison Department. He got married on 10.10.2014 and was blessed with a son. The little boy was not keeping well and he was taken to Fortis Hospital, Mulund for treatment and it was diagnosed that he was suffering from heart congenital. Further details are given out and the request for NOC was made for the reason that the atmosphere where the family of the Applicant was staying was deleterious for the family of the Applicant and more particularly, his little child. The Respondent rejected the said request vide Exh. 'A' (Page 11 of the PB) as already mentioned above.

5. The Respondent in their Affidavit-in-reply filed by the Additional Director General of Police and I.G.P. (Prison) *inter-alia* pleaded that, there is a shortage of Jail Staff, and therefore, such NOCs cannot be given to the Jail employees. There is another communication from the then incumbent holding the post of the Respondent to the Government, dated 7.5.2014 whereby it was requested that the Jail Staff being an uniformed cadre, should not be allowed to opt for any other Department. To more or less

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the same effect, though in a slightly different language, there was another communication of 18.1.2017 by the Respondent to the Government in effect asking the Government not to consider the cadre change of the Prison employees.

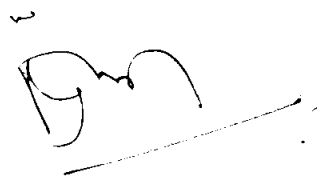
6. Now, it is very pertinent to note here that, it is not as if, the change of cadre has never been considered at all by the Jail administration. Mr. Dere, the learned Advocate for the Applicant in this connection invited reference to an Officer of the Jail who made a similar request to the Respondent vide his communication of 17.11.2011 at Page 17 of the PB pursuant where to, NOC was granted to the said Officer Mr. Kanhekar which NOC is at Page 18 of the PB and is dated 7.1.2012. A Jail Guard Mr. Sambhaji Y. Chavan vide his request of 17.4.2013 (Page 22 of the PB) sought NOC to let him apply to the Police Department.

7. I think, it has to be conceded by all that other factors remaining constant, the scope of the authority issuing NOC is limited. The employee has a right to, while still in service, try his luck or try to get employment in any other cadre. That move *per-se* and *ipso-facto* cannot be blocked unless there is an authority of unimpeachable character. Pertinently, Ms. Suryawanshi, the learned PO



in stoutly opposing this OA told me that the Respondent might consider transferring the Applicant from one Prison to another. Now, that precisely is in the first place not the request of the Applicant and in fact, according to him, the problem relating to his child arises out of the surrounding provided by the Prison, and therefore, the course of action and via-media suggested by the learned PO will be of little help to the Applicant.

8. In any case, I must repeat, it is only a question as to whether NOC should be granted. In what way, the move of the Applicant should be considered is for the authorities competent to decide and take an appropriate decision in the matter. In this OA, I have only to examine as to whether there is merit in the case of the Respondent in refusing to grant NOC to the Applicant. In the impugned order itself, no reason has been provided and if the other relevant evidence is examined, then as I have already discussed above, the shortage of Staff is not something for which the legitimate request of an employee should be turned down. There is absolutely nothing on record to show that the circumstance arising out of the difficult heart condition of the Applicant's son was taken into consideration at all by the Respondent. Further, as just now mentioned, there have been instances in the past, when similar request came to be granted to at least two

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employees and their circumstances were by the grace of god, far easier and for all one knows, it was to give expression to their aspirations which was good by itself.

9. The above discussion leads me to conclude that the Respondent was unjustified in rejecting the application of the Applicant for the grant of NOC. The facts were such that the NOC ought to have been granted so as to facilitate a further move on his part before the appropriate authority for a cadre change.

10. For the foregoing, the order herein impugned is hereby quashed and set aside. The Respondent is directed to re-consider the case of the Applicant favourably and make an appropriate order within a period of four weeks from today in the matter of NOC. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
28.04.2017

Mumbai

Date : 28.04.2017

Dictation taken by :

S.K. Wamanse.

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