

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.31 OF 2017

DISTRICT : ALIBAUG

Prakash B. Chavan.)
Age : 42 Yrs, Occu. Hawaldar in the)
Office of Taloja Central Prison, Sector 35,)
Navi Mumbai and residing at A-Wing,)
Room No.23, Ekta Nagar, Chendare,)
Alibaug.)...**Applicant**

Versus

1. Special Inspector General of Police)
(Prison), Southern Region, Byculla,)
Mumbai - 400 008.)
2. Superintendent of Police (Prison).)
In the Office of Alibaug District)
Prison, Raigad, Dist : Alibaug 201.)...**Respondents**

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

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

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

DATE : 18.04.2017



JUDGMENT

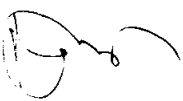
1. This Original Application (OA) is brought by a Hawaldar in a Central Prison, currently posted at Taloja calling into question the order dated 30.12.2016 whereby he was apparently, "posted" on deputation at Taloja from Alibaug Central Prison, Alibaug. Reposting back to Alibaug Central Prison is also sought.
2. I have perused the record and proceedings and heard Mr. S.S. Dere, the learned Advocate for the Applicant and Smt. A.B. Kololgi, the learned Presenting Officer (PO) for the Respondents.
3. The 1st Respondent is the Special Inspector General of Police (Prison), Southern Region, Byculla, Mumbai while the 2nd Respondent is the Superintendent of Police (Prison), Alibaug District Prison, Raigad.
4. It is common ground that a communication (Exh. 'A', Page 12 of the Paper Book (PB)) came to be addressed by the 2nd Respondent to the 1st Respondent on 30.12.2016 and the reference was to a communication detailed in the relevant column and a copy thereof was presented at the time of hearing of this particular OA. That communication



was issued under the signature of the In-charge PA to the 1st Respondent to the 2nd Respondent. It is in Marathi and the same needs to be fully reproduced hereinbelow.

“उपरोक्त विषय व संदर्भात अनुसरून करण्यात येते की, आपले कारागृहाच्या आस्थापनेवरील श्री. प्रकाश भाईदास चव्हाण, हवालदार यांची आपलेकडील गोपनीय अहवालानुसार प्रशासकिय कारणास्तव पुढील आदेश होईपर्यंत तळोजा मध्यवर्ती कारागृह येथे संलग्न नियुक्ती करण्यात येत आहे. तरी सदरचे आदेश प्राप्त होताच श्री. चव्हाण, हवालदार यांना तत्काळ कार्यमुक्त करण्यात यावे व केलेल्या कार्यवाहीचा पुर्तता अहवाल या कार्यालयास सादर करण्यात यावा.”

It is clear from the above communication that the 2nd Respondent had sent what has been described as ‘Confidential Report’ pertaining to the Applicant to the 1st Respondent and that was the reason why an order of deputation above indicated was issued. A copy of that Report is at Exh. ‘R-2’ to the Affidavit-in-reply. It was therein mentioned by the 2nd Respondent that for better part in his career, the Applicant had been in the same Jail. His behaviour was not at all good and had remained so despite several oral warnings. Therefore, looking to his service span of 20 years of which 14 years were spent in Alibaug, he had come in contact with the inmates which posed threat to the security of the Jail, and therefore, he could be sent on deputation to some other Prison. I must make it clear that, for the purpose of this OA, I am not required to enter any judicial finding with regard to whatever has been mentioned by the 2nd Respondent. All

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that I have to bear in mind is that, there were facts and circumstances that surrounded the impugned order of deputation and I have to take them as they are and decide this OA. The order (Exh. 'A') was more or less in the same terms directing the Applicant to be sent on deputation to Taloja Central Prison. The Marathi word used was "संलग्न नियुक्ती".

5. On 27.12.2016, an Office Memorandum was issued, a copy of which is at Exh. 'B' (Page 13 of the PB) whereby the 2nd Respondent observed that the Applicant had become regularly irregular in the matter of punctuality and he was not behaving in keeping with the Jail discipline, more particularly, when it was a sensitive place to work in. The administration was suffering because of the Applicant, and therefore, he was called upon to show cause within seven days as to why, proceedings under the Rule 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 2011 (Reproduced as is mentioned there) be not initiated against the Applicant. The Applicant showed cause but the order of deputation was issued and implemented even as the period of 7 days had not elapsed.

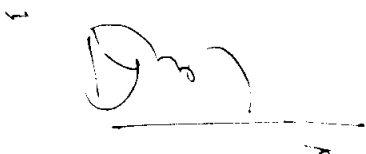
6. It is clear that the statutory provisions governed the service condition of transfer of the employee like the



Applicant. The above discussion must have made it very clear that, there being not even a particle of material to suggest that there were facts and circumstances at Taloja requiring additional hand there and the emergent orders of deputation were necessary to be made. The above discussion, in my opinion, must have made it quite clear that the reasons for the so called deputation were separate and distinct and the deputation was just about a ruse to bring about the state of affairs which really is nothing but transfer.

7. Mr. Dere, the learned Advocate for the Applicant in this behalf, relied upon a most apposite common order of this Tribunal in **OA Nos.550 and 606 of 2007 (Shri Bhausaheb B. Andhalkar Vs. State of Maharashtra and 2 Ors. and another OA, dated 4.1.2008)**. There, in the name of a so called arrangement of attachment of a Police Personnel, it was found in effect that it was a transfer as is understood in the context of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act).

8. It is, therefore, clear that in the garb of deputation, what has really been done is to effect the transfer of the Applicant and it is indisputable that no



statutory mandate was followed in this behalf and for that matter of any law, and therefore, the impugned order will have to be interfered with.

9. Mrs. A.B. Kololgi, the learned P.O. submitted the written notes of arguments. Para 3 thereof is fully reproduced hereinbelow.

“3. It is submitted that it is not open to this Hon’ble Tribunal to term it as an order of transfer, if the employer/respondent styled it as an order of deputation. It may not be lost sight of that the impugned order is “until further orders”. In the context of applicant’s argument/contention that the attending circumstances suggest it to be an order punitive in nature, this respondent submits that the employee has a right to send an erring employee on deputation instead of transferring him an such a prerogative of the employer is not open to judicial scrutiny. The employer’s right exists for proper administration of work and smooth working in the department. An order of deputation is not open to judicial scrutiny where the applicant himself styles it as an order of transfer and do not raise any grounds to challenge the deputation.”

In as much as I have fully reproduced the written arguments of the learned P.O, I do not have to paraphrase it in any manner, but I have got no hesitation in rejecting it because I do not think, it contains the legally accurate principle within itself. The word, “until further orders” carries the case of the Respondents nowhere because in



that guise, it could be endless as well. Be that as it may, but in my opinion, though the recitals in the administrative orders are relevant, but it is a primary function of a judicial forum to read them in the context of the facts and circumstances and the legal principles and to determine as to what it really produces. Here, in my opinion, it is a disguised case of transfer and it is not necessary for me to go on probing into the causes of such a course of action.

10. For the foregoing, the impugned order of deputation of the Applicant stands hereby quashed and set aside and the Respondents are directed to repost him to the Central Jail, Alibaug where he had been sent on deputation from, within a period of four weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
18.04.2017

Mumbai

Date : 18.04.2017

Dictation taken by :

S.K. Wamanse.

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