

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.326 OF 2016**

**DISTRICT : THANE**

Dr. Yogesh Mohanrao Kokadwar. )  
Medical Officer Group-B, Arthur Road Jail)  
Mumbai and Residing at K 3/701, )  
Gokulnagari-NX, Khadakpada, )  
Kalyan (W) – 421 301. )...**Applicant**

**Versus**

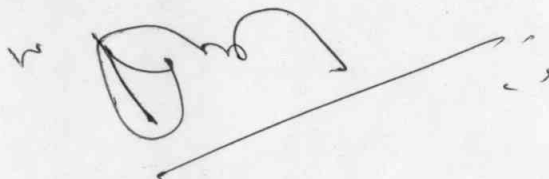
1. The State of Maharashtra. )  
Through the Principal Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai - 400 032. )
2. The Inspector General of Prisons, )  
South Region, Mumbai having Office)  
at Byculla Prison, Mumbai 400 008. )
3. The Superintendent of Prison, )  
Central Prison Mumbai, Arthur Road,) )  
Mumbai 400 011. )...**Respondents**

**Ms. S.P. Manchekar, Advocate for Applicant.**

**Shri K.B. Bhise, Presenting Officer for Respondents.**

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

**DATE : 11.01.2017**



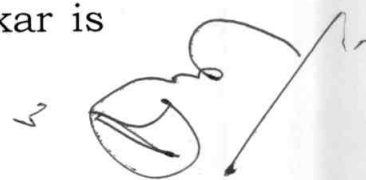
## **JUDGMENT**

1. This Original Application (OA) is brought by a Medical Officer Group-B functioning at Arthur Road Jail, Mumbai calling into question the order issued by the 3<sup>rd</sup> Respondent – Superintendent of Prison, dated 9.4.2016 whereby he was relieved forthwith from his deputation post in the Jail *inter-alia* on the ground that he had earlier also served on the same post, and therefore, his continuation was contrary to Non-statutory Rules, Chapter VII Rule 10(1)(d) which reads as follows :

“No Maharashtra Medical and Health Service Officer should ordinarily be liable to serve a second term in the Jail Department.”

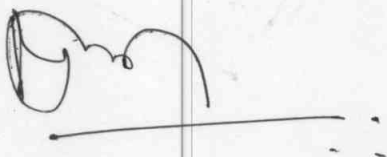
2. I have perused the record and proceedings and heard Ms. S.P. Manchekar, the learned Advocate for the Applicant and Mr. K.B. Bhise, the learned Presenting Officer (PO) for the Respondents.

3. Be it noted right at the outset that the impugned order was stayed on 12<sup>th</sup> April, 2016 by this Tribunal presided over by the Hon'ble Vice-Chairman and apparently on that strength, the Applicant has continued to hold the said post till date although Ms. Manchekar is

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aggrieved by the fact that the Applicant was not being allowed to function from the place meant for Medical Officer and he was functioning from a small room meant for changing for Jail Staff outside the Jail.

4. I shall proceed on the basis as stated by the learned PO that the Applicant had initially been deputed from 13.6.2009 to May, 2013 to function as Medical Officer in Arthur Road Jail. It is a common ground that on 18.4.2013, he was transferred to Ghatghar Hydroelectric Project, Chounde, District Thane which was a tribal area. He again made a request for transfer back on family ground. It appears from the submissions at the Bar that he requested for transfer in view of the education problem of his twin children and the health reason of his aged mother. Ultimately, his request was granted and by an order dated 19<sup>th</sup> October, 2015 (Exh. 'A-4', Page 25 of the Paper Book (PB)), he was posted back to Arthur Road Jail, Mumbai on deputation. In that order, there is a clear reference to the provisions of "the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005" with particular reference to Section 4(4)(2) and 4(5). It appears that he resumed duties in Arthur Jail on 3.11.2015 and continued at least as on 9.4.2016 when the



3<sup>rd</sup> Respondent – Superintendent of Jail issued the impugned order. A reference was made to the provision of the Rule quoted at the outset. It was further mentioned that once he had already served there, the said Rule provided that he should not be reposted there and on the ground of security also, he could not be continued and so saying, he was relieved with immediate effect. Pertinently, this particular Rule fell for consideration of this Tribunal at the interim stage and the Hon'ble Vice-Chairman did not quite agree with the interpretation sought to be given by the learned PO. It was found that the Medical Officer could not be given a second tenure, if he was unwilling to do so but the Rule could not be applied in a reverse way and if the Medical Officer was ready to work for a second term, the said Rule would not be applicable, and therefore, the impugned action was at that stage, prima-facie, found unsustainable and it was stayed.

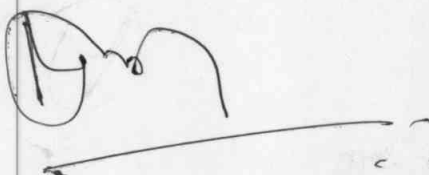
5. I must make it quite clear that having heard the rival submissions, finally, I can see no reason to adopt any view other than the one that commended to the Hon'ble Vice-Chairman at the interim stage. I need not be detained by theories but in actual practice in the present set of facts, I find nothing to take any other view of the matter, as

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I mentioned just now. That is almost clinching but I shall conclude the discussion.

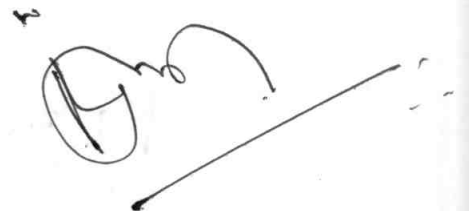
6. The Applicant was on deputation. It is clearly an indisputable factual position that the order relieving a depute could only be made provided there was an order of the principal to the borrowing authority indicating therein that the deputation was being in the manner of speaking cancelled and in that sense, the relieving order would be consequential. But here, as rightly pointed out by Ms. Manchekar this was an unilateral order and that too, having been passed by the Superintendent of Jail and not consequent on any order made by the Government in Public Health Department. I need not enter the arena of academics but I think, even the 2<sup>nd</sup> Respondent – Inspector General of Prisons, all by himself could not have been in a position to arrogate to himself the powers of the Government while here the position is much worse because those powers were arrogated for all practical purposes by the Superintendent of Prison – 3<sup>rd</sup> Respondent.

7. Mr. Bhise, the learned PO who I must commend tried his very best to salvage the case of his client told me relying upon documents that the record of the Applicant was in the manner of speaking too tainted to be allowed to



continue on a sensitive post in Jail. Now, in my view, the present facts are such where it is not even necessary for me to make even a prima-facie observation much less a conclusive one, save and except that granting all latitude to the Respondents as canvassed by Mr. Bhise, if that was so, the ways and means were open for action to be taken but a mere relieving order quite clearly is not the answer to any question.

8. It is a matter of some significance that the State Government issued an order of transfer dated 4<sup>th</sup> June, 2016 transferring the Applicant from Arthur Road Jail to Primary Health Centre, Nandgaon, Tal. : Jawhar, District Thane. I need not say anything much about it, but assuming it was some kind of a redeeming exercise, it would not ultimately end in success. This order was challenged by the Applicant by way of OA 611/2016 to which the State of Maharashtra in Public Health Department, Additional Director General of Police and I.G. of Prison, I.G. of Prison and Superintendent of Prison, Arthur Road Jail were impleaded as parties. The matter was heard by the Hon'ble Chairman of this Tribunal. I have perused the order dated 23<sup>rd</sup> November, 2016 and more importantly, the order dated 2<sup>nd</sup> December, 2016, which reads as follows :





"1. Heard Ms. S.P. Manchekar, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.


2. Learned P.O. has tendered the order of transfer dated 04.06.2015, thereby transferring the applicant from Arthur Road Prison to Public Health Centre, Nandgaon, Taluka Jawhar, District Thane, is cancelled.

3. Learned Advocate for the Applicant states that in view of the cancellation of transfer, O.A. has become infructuous and is accordingly disposed of."

9. It is, therefore, quite clear that on whatever allegations, the order of transfer may have been issued on 4.6.2016, that order was withdrawn by the Government themselves with the result at least as of now and going by the scope of this OA, in this OA I do not think it is open to me to tread on a path not meant for me, to repeat, going by the ambit of this OA.

10. The upshot, therefore, is that whatever other powers were available to the Respondents or not is not my concern. The fact remains that for afore-stated reasons, the impugned order is unsustainable and for all practical purposes, the interim order will have to be confirmed.

11. Before parting, I must make it clear that I am not supposed to, nor am I doing the regulation of the work of



the Jail, but in view of the submissions of Ms. Manchekar recorded at the outset, I must make it clear that the authorities must show awareness to the fact that this is a judicial order and as a consequence, the Applicant must be treated as any other Medical Officer functioning in Jail as the Applicant does. I add noting more, but I think, I have said sufficiently whatever was required.

12. The order herein is hereby quashed and set aside. The interim order above referred to stands hereby confirmed and the Respondents are directed to let the Applicant continue to function in the post he is functioning as of now till such time as he becomes liable for being transferred in accordance with law and rules. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R. B. Malik)**  
**Member-J**  
**11.01.2017**

11.01.17

Mumbai

Date : 11.01.2017

Dictation taken by :

S.K. Wamanse.

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