

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.414 OF 2024
WITH
ORIGINAL APPLICATION NO.522 OF 2024
AND
ORIGINAL APPLICATION NO.527 OF 2024**

DISTRICT : NASHIK
Sub.:- Transfer

ORIGINAL APPLICATION NO.414 OF 2024

1. Ashok Vithal Malwad.)
Age : 45 Yrs, Occu. Service,)
R/o Officers Quarters, Central Jail,)
Bungalow No.4, Goreadi Road,)
District : Nashik.)

 2. Prakash Dnyanoba Paikrao.)
Age : 41 Years, Occu. : Service,)
R/at Nashik Road, Central Jail,)
Government Quarter, Room No.17,)
Nashik Road, Nashik.)

 3. Asad Juber Momin.)
Age : 46 Yrs, Occu. Service,)
R/o Kailasji Society, Near Water Tank,)
Room No.204, Nashik Road,)
District : Nashik.)
-)...Applicants**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Home Department (prison),)
Mantralaya, Mumbai – 400 032.)

2. Additional Director General of Prison)
Central Building, Old Agarkar Nagar,)
Pune – 411 001.)

3. Special Inspector General of Prison)

Central Building, Pune – 411 001.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.522 OF 2024

Ashok Vithal Malwad.)
 Age : 45 Yrs, Occu. Service,)
 R/o Officers Quarters, Central Jail,)
 Bungalow No.4, Goreadi Road,)
 District : Nashik.)...**Applicant**

Versus

1. The State of Maharashtra.)
 Through Additional Chief Secretary,)
 Home Department,)
 Mantralaya, Mumbai – 400 032.)
2. Additional Director General of Prison)
 Central Building, Old Agarkar Nagar,)
 Pune – 411 001.)
3. The Superintendent.)
 Nashik Central Prison, Nashik Road,)
 Nashik – 422 101.)...**Respondents**

AND

ORIGINAL APPLICATION NO.527 OF 2024

Asad Juber Momin.)
 Age : 46 Yrs, Occu. Service,)
 R/o Kailasji Society, Near Water Tank,)
 Room No.204, Nashik Road,)
 District : Nashik.

Versus

1. The State of Maharashtra.)
 Through Additional Chief Secretary,)
 Home Department,)
 Mantralaya, Mumbai – 400 032.)
2. Additional Director General of Prison)

Central Building, Old Agarkar Nagar,
Pune – 411 001.)

3. The Superintendent.)
Nashik Central Prison, Nashik Road,))...**Respondents**
Nashik – 422 101.)

Shri S.S. Dere, Advocate for Applicants.

Smt. Archana B.K, Presenting Officer for Respondents.

CORAM : Shri Debashish Chakrabarty, Member-A

DATE : 29.10.2024

JUDGMENT

1. The Applicants who are serving in cadres of 'Jailor Group 1' and 'Jailor Group 2' have invoked provisions of 'Section 19' of 'The Administrative Tribunals Act 1985' to challenge temporary attachment of their services from 'Central Prison' at Nashik to 'Central Prisons' at Kolhapur, Amravati and Nagpur by 'Order' dated 29.01.2024 of 'Additional D.G; Prisons & Correctional Services, Maharashtra State, Pune'.

2. The learned Advocate for Applicant referred to contents of Order' dated 29.01.2024 of 'Additional D.G.P; Prisons & Correctional Services, Maharashtra State, Pune' to mention that temporary attachment of services of Applicantd was done due to complaint dated 10.10.2023 made by Shri Maroti Kamble to 'Additional D.G.P; Prisons & Correctional Services, Maharashtra State, Pune'.

3. The learned Advocate for Applicants then stated that 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' by letter dated 29.01.2024 to 'Principal Secretary (A & S), Home Department' had proposed 'Mid Term' & 'Mid Tenure' transfer of Applicants on grounds of their misconduct within premises of 'Central

Prison' at Nashik by giving reference to complaint dated 10.10.2023 made by Shri Maroti Kamble and based on findings in 'Enquiry Report' of 'Dy. SP & Vigilance Officer' dated 24.01.2024. However, 'Additional D.G.P. of Prisons & Correctional Services, Maharashtra State', Pune' had also acknowledged that adequate evidence was not available to institute 'Departmental Enquiry' against Applicants.

4. The learned Advocate for Applicant thereupon referred to 'Under Secretary, Home Department' letter dated 21.02.2024 addressed to 'Additional D.G.P. of Prisons & Correctional Services, Maharashtra State, Pune' by which the proposal submitted on 29.01.2024 for 'Mid Term' & 'Mid Tenure' transfer of Applicants was returned back as supportive documents had not been enclosed with it but it was clarified therein that detailed proposal may be re-submitted alongwith supporting documents; if so required by 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune'.

5. The learned Advocate for Applicant then emphasized that temporary attachment of services of Applicants from 'Central Prison' at Nashik to "Central Prisons' at Kolhapur, Amravati and Nagpur was concurrently effected by 'Additional D.G., Prisons & Correctional Services, Maharashtra State, Pune' Order dated 29.01.2024. However, the action of 'Additional D.G., Prisons & Correctional Services, Maharashtra State, Pune' was outrightly bad in law as no such 'Statutory Powers' were provided under 'Prisons Act 1984' or even permitted by 'Instructions/Guidelines' in 'Maharashtra Police Manual 1969'.

6. The learned PO, per contra relied on 'Affidavit-in-Reply' dated 16.04.2024 to submit that 'Additional D.G.P. Prisons & Correctional Services; Maharashtra State, Pune' had received complaint dated 10.10.2023 from Shri Maroti Kamble regarding unruly behavior of Applicants within premises of 'Central Prison' at Nashik and specific

findings against Applicants have been recorded in 'Enquiry Report' submitted on 24.01.2024 by 'Dy SP & Vigilance Officer' to 'Additional D.G.P. of Prisons & Correctional Services, Maharashtra State, Pune'.

7. The learned PO relied further on 'Affidavit-in-Reply' dated 16.04.2024 to mention that another complaint dated 17.01.2024 was made against Applicants by 'President, Sakal Maratha Samaj, Nashik East Division' to 'Chairman' of 'Maharashtra State Commission for Women'. The complaint of 'President; Sakal Maratha Samaj, Nashik, East Division' dated 17.01.2024 had been forwarded to 'DIG, Prison & Correctional Services, Nashik Division, Nashik' on 28.02.2024 for investigation and submission of 'Enquiry Report' to 'Additional DG, Prisons & Correctional Services, Maharashtra State, Pune'.

8. The learned PO then proceeded to explain about the findings in 'Enquiry Report' submitted by 'Dy SP & Vigilance Officer' on 24.01.2024 to 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' which indicated that there was groupism amongst 'Officers' & 'Staff' posted at 'Central Prison' at 'Nasik'. Therefore, based on the specific findings against Applicant in 'Enquiry Report' submitted by 'Dy SP & Vigilance Officer' on 24.01.2024 to 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune'; their services came to be temporarily attached to 'Central Prisons' at Kolhapur, Amravati and Nagpur by 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' Order dated 29.01.2024. However, as there was insufficient evidence available to institute 'Departmental Enquiry'; against Applicants; therefore 'Mid Term' & 'Mid Tenure' transfer of Applicants had been proposed by 'Additional D.G; Prisons & Correctional Services, Maharashtra State, Pune' by letter dated 29.01.2024 addressed to 'Principal Secretary (A & S) Home Department'.

9. The learned PO further clarified that by 'Under Secretary, Home Department' letter dated 21.2.2024 to 'Additional D.G.P. Prisons &

Correctional Services, Maharashtra State, Pune', it was informed that detailed proposal if so required be submitted along with supporting documents for 'Mid Term' & 'Mid Tenure' transfer of Applicants. Accordingly, relevant documents came to be submitted to 'Principal Secretary (A & S) Home Department' on 10.4.2024 by 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune'. However no decision has been taken so far by 'Principal Secretary (A & S) Home Department' about re-submitted proposal dated 10.04.2024 for 'Mid Term' & 'Mid Tenure' transfer of Applicants.

10. The learned PO mentioned that in complaint against Applicants dated 17.01.2024 made to 'Chairperson' of 'Maharashtra State Commission for Women' by 'President, Sakal Maratha Samaj, Nashik East Division', it was mentioned that anarchic situation was prevailing in 'Central Prison' at 'Nashik'. The earlier complaint dated 10.10.2023 made by Shri Maroti Kamble against Applicants was also about ruckus created by Applicants within premises of 'Central Prison' at 'Nashik'. Hence, it was necessary that services of Applicants be temporarily attached to 'Central Prisons' at Kolhapur, Amravati and Nagpur'.

11. The learned PO thereupon drew attention to serious misconduct on the part of Applicants of disobeying directions in 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' Order dated 29.01.2024 to forthwith join at 'Central Prison' at Kolhapur, Amravati and Nagpur. The Applicants were therefore placed under 'Suspension' under provision of 'Rule 4(1)(a)' of 'MCS (Discipline & Appeal) Rules 1979' by 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' Order dated 27.03.2024.

12. The learned PO further relied on subsequent 'Affidavit-in-Reply' dated 21.06.2024 filed on behalf of 'DIG Prison and Correctional Services; South Region, Mumbai' to again justify 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' Order dated

29.01.2024; while also admitting that 'Instruction/Guidelines' in 'Maharashtra Prisons Manual, 1979' do not provide for temporary attachment of services of 'Officers' & 'Staff' on grounds of disorderly behavior or indiscipline within premises of 'Central Prisons' or 'District Prisons'. However; considering grave issues relating to preservation of 'Prison Discipline' and ensuring 'Security Administration' within 'Central Prison' at Nashik; the 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' had to act immediately and thus took right decision regarding temporary attachment of services of Applicants to 'Central Prisons' at Kolhapur, Amravati and Nagpur.

13. The learned PO re-emphasized that Applicants intentionally refused to comply with directions in 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' Order dated 29.01.2024 and did not join at 'Central Prisons' at Kolhapur, Amravati and Nagpur. The Applicant had thus blatantly violated the discipline standards set for those serving in cadres of 'Jailor Group-1' and 'Jailor Group-2' which are part of 'Uniformed Services' under 'Home Department'. Therefore, Applicants were placed under 'Suspension' by 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' Order dated 27.03.2024 under 'Rule 4(1)(a)' of 'MCS (D & A) 1979'. Subsequently, by 'Memorandum' dated 05.06.2024 issued by 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune', Applicants have been served 'Charge Sheets' to initiate 'Departmental Enquiry' under 'Rule 8' of 'M.C.S. (D & A) Rules, 1979'.

14. The cases of Applicants were required to be examined in depth not only from perspective of facts & circumstances but specifically from standpoint of whether decision taken 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' was within the outlines fixed by provisions of law under 'Prison Act 1894' or based on 'Instructions/Guidelines' in 'Maharashtra Police Manual 1979 or enabled

by 'Government Resolutions' or 'Government Circulars' issued by 'Home Department'.

15. The 'Additional D.G.P. of Prisons & Correctional Services, Maharashtra State, Pune' letter dated 29.01.2024 to 'Principal Secretary (A & S), Home Department' does refer to misconduct of Applicants while serving as 'Jailor - Group 1' and 'Jailor - Group 2' in 'Central Prison' at 'Nashik'. However, important it is to observe the fact that incidents of misconduct of Applicant were not brought to knowledge of 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' by 'Jail Superintendent' of 'Central Prison' at Nashik; but though 'Private Complaint' made by Shri Maruti Kamble on 10.10.2023. Further, it is equally pertinent to observe that proposal for 'Mid-Term' and 'Mid-Tenure' transfer of Applicants was submitted by 'Additional D.G.P. of Prisons & Correctional Services, Maharashtra State, Pune' letter dated 29.01.2024 to 'Principal Secretary (A & S), Home Department' almost '3 Months' after complaint had been received from Shri Maruti Kamble on 10.10.2023. The complaint of Shri Maruti Kamble made on 10.10.2023 to 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' had been enquired into by 'Dy SP & Vigilance Officer' who had made surprise visit to 'Central Prison' at Nashik on 22.11.2023 but for reasons not known belatedly submitted 'Enquiry Report' on 24.01.2024 to 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune'.

16. The proposal submitted by 'Additional D.G.P. of Prisons & Correctional Services, Maharashtra State, Pune' letter dated 29.01.2024 to 'Principal Secretary (A & S) Home Department' for 'Mid Term' & 'Mid Tenure' transfer of Applicants does not mention whether principal findings in 'Enquiry Report' dated 24.01.2024 submitted by 'Dy SP & Vigilance Officer' about complaint made by Shri Maruti Kamble on 10.10.2023 had been accepted or not and what action was proposed to be taken as overall incharge of 'Prison Administration' having direct

control and superintendence over all, Central Prisons' and 'District Prisons' as per provisions of 'Section 5' of 'Prisons Act 1894'.

17. The 'Additional D.G.P. of Prisons & Correctional Services, Maharashtra State, Pune' had received, 'Enquiry Report' submitted on 24.01.2024 by 'Dy SP & Vigilance Officer', but yet did not choose to submit it to 'Principal Secretary (A & S) Home Department'; but for reasons not appreciable continued to lean on complaint made by Shri Maroti Kamble on 10.10.2023 to justify the proposal submitted on 29.01.2024 for 'Mid Term' & 'Mid Tenure' transfer of Applicants. Also; simultaneously 'Additional D.G; Prisons & Correctional Services, Maharashtra State, Pune' took an improptu decision about temporary attachment of services of Applicants to 'Central Prisons' at 'Kolhapur, Amravati and Nagpur'. Imperative it is to observe is the fact that 'Additional D.G.P. of Prisons & Correctional Services, Maharashtra State, Pune' Order dated 29.01.2024 did not make any reference to any 'Statutory Powers' under 'Prison Act, 1894' or relevant 'Instructions & Guidelines' in 'Maharashtra Prison Manual, 1979' or any enabling 'Government Resolution' or 'Government Circular' of 'Home Department' which in such eventualities could have justified 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' Order dated 29.01.2024 about temporary attachment of services of 'Jailer Group-1 & Jailer Group-II' to other 'Central Prisons' at 'Kolhapur, Amravati and Nagpur'.

18. The 'Additional Director General Prison & Correctional Services, Maharashtra State, Pune' Order dated 28.01.2024 thus appears to be an instance of taken decision not only in great haste but without relying on any law or rules or administrative guidelines to anyhow effect temporary attachment of services of Applicants to 'Central Prisons' at Kolhapur; Amravati & Nagpur. Not even one day's time was given for response to the proposal submitted concurrently on 29.01.2024 to 'Principal

Secretary (A & S), Home Department' for 'Mid Term' and 'Mid Tenure' transfer of Applicant.

19. The 'Affidavit-in-Reply' dated 16.04.2024 and 'Affidavit-in-Reply' dated 21.06.2024 filed on behalf of 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' have no averments as to whether such course of action was at all contemplated under provisions of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

20. The 'Additional Director General Prison & Correctional Services, Maharashtra State, Pune' has therefore acted in peremptory manner to put the entire burden of untoward incidents which occurred in 'Central Jail' at 'Nashik' only upon Applicants by cursorily ordering temporary attachment of their services to 'Central Prisons' at 'Kolhapur, Amravati and Nagpur'.

21. The 'Additional Director General Prison & Correctional Services, Maharashtra State, Pune' thereafter also issued 'Suspension Orders' against Applicants on 27.03.2024 purported based on specific findings in 'Enquiry Report' of 'Dy SP & Vigilance Officer' dated 24.01.2024 in contemplation of 'Departmental Enquiry' which came to be instituted on 05.06.2024. However, rather striking is the fact that no action came to be initiated during this period against (a) Jail Superintendent, (b) Deputy Jail Superintendent & (c) Senior Prison Officer serving in 'Central Prison' at 'Nashik' who were even more bound by law & rules to ensure 'Prison Discipline'. Hence course of action taken by 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' to issue 'Suspension Orders' on 27.03.2024 only of Applicants appears to be cagey move to make scapegoats out of Applicants for untoward incidents which had occurred in 'Central Prison' at 'Nashik'.

22. The 'Additional Director General Prison & Correctional Services, Maharashtra State, Pune' it must be emphatically observed has chosen to maintain stoic silence in 'Affidavit-in-Reply' dated 16.04.2024 and 'Affidavit-in-Reply' dated 21.06.2024 about what action had been initiated against (a) Jail Superintendent (b) Deputy Jail Superintendent (c) Senior Prison Officer who were holding supervisory posts in 'Central Prison' at 'Nashik' and have been individually named in 'Enquiry Report' submitted by 'Dy SP & Vigilance Officer' on 24.02.2024. The lament is that cases of Applicants as elaborated above does stand out as glaring instance of accommodative tolerance for indiscipline and draws attention to the lack of effective supervision by those in higher echelons of 'Prison Administration' including at level of 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune'.

23. The 'Additional Director General Prison & Correctional Services, Maharashtra State, Pune' as leader of 'Uniformed Services' under 'Home Department' was not only expected to act objectively & equitably with stern hand while initiating time bound comprehensive action based on specific findings in 'Enquiry Report' submitted by 'Dy SP & Vigilance Officer' on 24.01.2024. The rather selective course of action taken by 'Additional Director General Prison & Correctional Services, Maharashtra State, Pune' to issue 'Suspension Order' dated 27.03.2024 only against Applicant who were in junior cadres of 'Jailor-Group 1 and Jailor-Group 2' with complete exclusion of any definitive action against (a) 'Superintendent', (b) 'Deputy Superintendent' & (c) 'Senior Prison Officer' who were holding supervisory posts in 'Central Prison' at 'Nashik' is very evident about the 'Disciplinary Authority' failing to invoke provisions of law & rules strictly based on principles of 'Neutrality', 'Equitability' and 'Proportionality'.

24. The 'Additional Director General Prison & Correctional Services, Maharashtra State, Pune' was infact expected to deeply introspect about the 'State of Affairs' prevailing in 'Central Prison' at 'Nashik' after many

glaring facts about extent of indiscipline had been appreciably brought out in 'Enquiry Report' submitted by 'Dy. SP & Vigilance Officer' on 24.01.2024. The 'Additional Director General Prison & Correctional Services, Maharashtra State, Pune' in role of 'Inspector General' under 'Section 5' of 'Prisons Act 1894' was obligated to initiate definitive time bound comprehensive action against (i) 'Jail Superintendent', (ii) 'Deputy Jail Superintendent' & (iii) 'Senior Prison Officer' as they had been individually named in candid 'Enquiry Report' submitted by 'Dy SP & Vigilance Officer' on 24.01.2024.

25. The 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' has 'suo-moto' reinstated Applicants on 12.07.2024 on their posts of 'Jailer-Group 1' and 'Jailor-Group 2' by invoking provision of 'Rule 4(5)(c)' of 'M.C.S. (D & A) Rules, 1979' upon initiation 'Departmental Enquiry' by 'Memorandum' dated 05.06.2024.

26. The 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' after having cancelled 'Suspension Order' dated 27.03.2024 of Applicants was also expected to naturally review 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' 'Order dated 29.01.2024' by which temporary attachment of services of Applicants was done to 'Central Prisons' at Kolhapur, Amravati, Nagpur. However, the 'Additional Director General Prison & Correctional Services, Maharashtra State, Pune' camouflaged the decision of reinstatement of Applicants on 12.07.2024 by further modifying temporarily attachment of services of Applicants by shifting them to other 'Central Prisons' & 'District Prisons' at Nagpur, Sindhudurg & Chandrapur.

27. The 'Additional D.G. Prison & Correctional Services, Maharashtra State' during course of hearing was given adequate opportunity to substantiate how temporary attachment of services of Applicants could be held to lie valid in the eyes of law, if it was not an outcome of exercise

of 'Statutory Powers' under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' or 'The Prison Act, 1894' or not based on 'Instructions & Guidelines' in 'Maharashtra Prison Manual, 1979' or enabled by 'Government Resolution' or 'Government Circular' of 'Home Department'. However, not only supportive evidence in this regard never came to be produced by 'Additional Director General Prison & Correctional Services, Maharashtra State, Pune' but significantly there was no response even from 'Principal Secretary (A & S), Home Department', who chose not to file any 'Affidavit-in-Reply' to justify 'Additional Director General Prison & Correctional Services, Maharashtra State, Pune' Order dated 29.01.2024.

28. The 'Additional DG of Prisons & Correctional Services, Pune' in 'Affidavit-in-Reply' filed on 21.06.2024 has infact admitted that temporary attachment of services of Applicants to other 'Central Prisons' & 'District Prisons' was not based on any 'Instructions & Guidelines' in 'Maharashtra Prison Manual 1979'. The contents of 'Para 4' of Affidavit-in-Reply dated 21.06.2024 of 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' is reproduced below for contextual clarity about the cases of Applicants:-

"4. Accordingly, a decision has been taken regarding deputation of the said officer. The Prison Department operates under the provisions of the 'Maharashtra Prison Manual, 1979'. The conduct and discipline of the employees is subject to the 'Civil Services Rules' and action is taken as per Government decisions issued from time to time. The 'Maharashtra Prisons Manual, 1979' do not provide for deputation against officers/employees in connection with disorderly conduct in prisons. But considering the discipline and security arrangements of the prison administration, a decision has been taken to depute them to other prisons. Prison Service is a uniformed and disciplined service. The 'Additional Director General of Police and Inspector General, Prisons and Correctional Services, Maharashtra State, Pune' are the Appointing Authorities for the post of 'Jailor Group-I and Jailor Group-II'. Being the Appointing Authority, he has authority in general transfers, also mid-term transfers with approval of adjacent Competent Authority."

The 'Additional DG of Prisons & Correctional Services, Pune' by corollary has conveyed through affirmation in 'Para 4' of 'Affidavit-in-Reply' dated 21.06.2024 that probably the better course of action may have been to insist on 'Mid-Term' & 'Mid Tenure' transfer of Applicants under provisions of 'Section 4(4)(ii)' and 'Section 4(5)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' as concurrently such proposal had been submitted to 'Principal Secretary (A & S), Home Department' on 29.01.2024.

29. The 'Additional Director General Prison & Correctional Services, Maharashtra State, Pune' should have atleast awaited an appropriate response from 'Principal Secretary (A & S), Home Department' to the proposal for 'Mid Term' and 'Mid Tenure' transfer of Applicants which subsequently came to be returned by 'Under Secretary Home Department' letter dated 21.02.2024. The 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' as per directions therein did submit supportive documents by letter dated 10.04.2024 to 'Principal Secretary (A&S), Home Department'; but as evident from Affidavit-in-Reply filed on 21.06.2024, Home Department yet did not act upon it; but in the meanwhile, 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' proceeded to initiate 'Departmental Enquiry' against Applicants for which 'Charge Sheets' were issued by 'Memorandum' dated on 05.06.2024.

30. The 'Additional DG of Prisons & Correctional Services, Pune' it must be observed has not incisively acted on findings of candid 'Enquiry Report' submitted by 'Dy. SP Vigilance Officer' dated 24.01.2024 as there is no whisper in 'Affidavits-in-Reply' dated 16.04.2024 and 21.06.2024 about what action has been initiated against (i) 'Jail Superintendent', (ii) 'Deputy Jail Superintendent' & (iii) 'Senior Prison Officer' who were holding supervisory posts in 'Central Jail' at Nashik. The only action which has been taken by 'Additional DG of Prisons & Correctional

Services, Pune' was in respect of Applicants as there is complete exclusion of those serving in supervisory posts such as (i) 'Jail Superintendent', (ii) 'Deputy Jail Superintendent' & (iii) 'Senior Prison Officer' who have been found directly accountable for fostering groupism and are individually named in uncontrived 'Enquiry Report' dated 24.01.2024 submitted by 'Dy SP & Vigilance Officer'. The nearsighted action taken only against Applicants by 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' makes it topical to recall the idiomatic expression about "Throwing The Baby Out With The Bathwater".

31. The 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' while discharging the onerous statutory role & responsibility of an 'Inspector General' under 'Section 5' of 'Prisons Act 1894' could not have overlooked the culpability of 'Jail Superintendent' at 'Central Jail' at 'Nashik'. The statutory roles & responsibilities of 'Superintendent' under 'Section 8' & 'Section 11' under 'Chapter III' of the 'Prison Act 1894' are reproduced below.

“Section 8 :- Control and duties of officers of prisons.—All officers of a prison shall obey the directions of the Superintendent; all officers subordinate to the Jailor shall perform such duties as may be imposed on them by the Jailor with the sanction of the Superintendent or be prescribed by rules under 'Section 59'.

Section 11 :- Superintendent. — (1) Subject to the orders of the Inspector- General, the Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control.

(2) Subject to such general or special directions as may be given by the State Government, the Superintendent of a prison other than a central prison or a prison situated in a Presidency Town shall obey all orders not inconsistent with this Act or any rule there under which may be given respecting the prison by the District Magistrate, and shall report to the Inspector-General all such orders and the action taken thereon.

32. The 'Additional Director General Prison and Correctional Services, Maharashtra State, Pune' did not diligently examine relevant 'Statutory Rules' in 'Chapter XIII' of 'Maharashtra Police Manual 1979' which are formulated under 'Section 59' of 'The Prison Act 1894' viz. (a) 'Rule 13', - "Functions and Duties of Superintendent' (b) 'Rule 14' - Duties of Senior Jailor' (c) '16 - Duties of Jailor' and (d) 'Rule 25 - Duties & Responsibilities' of 'Prison Guard' before making fair assessment of misconduct on the part of Applicants who were on junior posts of 'Jailor Group-1' and 'Jailor Group-2' serving directly under 'Supervision' & 'Control' of 'Jail Superintendent' of 'Central Prison' at 'Nashik' and could have done much better to restrain himself from putting full onus of incidents of indiscipline only upon Applicants.

33. The 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' was equally expected to refer to 'Non Statutory Rules' under 'Chapter XIII' of 'Maharashtra Prison Manual 1979' especially (a) Rule 4 - Superintendent to be In-charge of Executive Management of Prison; (b) Rule 8- Responsibilities of Jail Officials; (c) Rule 22 - Investigations & Complains Against Jail Employers (d) Rule 23- Jail Employees to be subject to Conduct & Discipline & Service Rules before unilaterally acting only against Applicant.

34. The 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' Order dated 29.01.2024 about temporary attachment of services of Applicants to 'Central Prisons at Kolhapur, Amravati and Nagpur' and subsequent Order dated 12.07.2024 to move them laterally again to 'Central Prison and District Prison' at Nagpur, Chandrapur & Sindhudurg' cannot be sustained as they have tints of subjective perception of facts and displays hues of arbitrary exercise of powers. Hence, these are hereby quashed & set aside in absence of any affirmation of their validity by relying on provisions of law under 'Prisons Act 1894' or 'Instructions & Guidelines' in 'Maharashtra Prisons Manual,

1979' or directions in Government Resolutions or Government Circulars of Home Department.

35. The 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' on being nudged against the backdrop enumerated above subsequently did take 'suo moto' action to review under 'Rule 4(5)(c)' of 'MCS (D & A) Rules 1979', the 'Suspension Order' of Applicants issued on 27.03.2024 for disobedience of 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' Order dated 29.01.2024. Thus, some corrective action came to be taken hesitatingly by 'Additional DG of Prisons & Correctional Services, Pune'. However while doing so, 'Additional DG of Prisons & Correctional Services, Pune' should have retraced few more steps to revoke the temporary attachment of services of Applicants and reinstated them on their posts of 'Jailor-1' an 'Jailor -2' in 'Central Prison' at Nashik; but instead shifted Applicants once again from 'Central Prisons at Nagpur, Amravati, Kolhapur' to 'Central Prisons' and 'District Prison' at Nagpur, Sindhudurg & Chandrapur'.

36. The 'Additional DG of Prisons & Correctional Services, Maharashtra State, Pune', it must be observed with dismay has failed to appreciate the profound significance of newly inserted 'Rule 3-A' and 'Rule 10-A' to 'Maharashtra Prisons & Staff Functions Rules 1965' by 'Notification' dated 01.12.2025 of 'Home Department' which are reproduced below :-

“Rule 3-A :- General functions of the Additional Director General of Police (Prison) or Inspector General of Prisons.- The general functions of the Additional Director General of Police (Prison) or Inspector General of Prisons shall be :-

- (i) To implement prison policies as laid down in the Act and by the State Government;
- (ii) To plan, organize, direct coordinate and control the various prisons and correctional services under his command;

- (iii) To define the functions and fix lines of authority and channels of command of the prison personnel;
- (iv) To inspect prisons and institutions under his command paying particular reference to the custody, care, welfare, training and treatment of inmates;
- (v) To oversee the implementation of the rules regarding staff discipline and staff welfare.”

“Rule 10-A :- Duties and functions of institutional personnel.- (i) The statutory duties, and responsibilities of institutional personnel shall be as per the provisions of the laws and rules governing prisons.

(ii) Custody, security, discipline, and preventive and control action especially during an emergency, are the fundamental duties and responsibilities of every, staff member.

(iii) The duties, responsibilities and functions shall be assigned in writing to every staff member; on their initial appointment and care is to be taken to ensure that the rules, regulations, and instructions to be followed by institutional personnel are correctly interpreted from time to time.

(iv) The general duties, functions and responsibilities of institution personnel are as detailed below:-

(a) The Superintendent will, subject to any orders of the State Government, the Additional Director General of Police (Prison) or Inspector General of Prisons and the Regional Deputy Inspector General (Prisons), be in overall charge of the executive management of the prison in all matters relating to economy, discipline, labour, expenditure and punishment.”

37. The extracts of ‘Judgment’ dated 08.09.2021 passed in OA No.141/2021 is also reproduced below as there is high degree of similarity between facts and circumstances of cases of Applicants, which is as under :-

“7. Now, next question comes whether the impugned order dated 23.09.2020 amounts to transfer in the eye of law or it is innocuous order of deputation. True, as per text of impugned order it is worded as ‘Temporary deputation on the establishment of Yerwada Open Prison till further order’. As such, it is shown as temporary deputation till further order. Pertinent to note that the order was passed on 23.09.2020 and till date the period of near about one year is over. In this period of one year no further steps were taken to recall the order dated 23.09.2020 or to regularize the same one way or other. There could be no such temporary

shifting for more than one year. It has trapping of order of transfer in the eyes of law.

8. One can understand, if there is a temporary deputation for a short period warranted due to administrative exigency in accordance to rules. However, it is not so and the Applicant is kept away from his regular post for more than one year under the disguise of temporary deputation. If such orders are upheld, it would amount to circumvent the provisions of 'Act 2005'. Suffice to say, the order dated 23.09.2020 has trapping of transfer from one post to another post in the eyes of law."

38. The 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' must notwithstanding the observations recorded above proceed expeditiously to ensure completion of ongoing 'Departmental Enquiry' against Applicants, as these are not to be understood as providing any 'Shield of Protection' to Applicants. Further, it is necessary to clarify that Applicants hereinafter shall also be eligible for transfers if so effected by judicious exercise of 'Statutory Powers' under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'. Hence, the following Order.

ORDER

- (A) The OA Nos.414/2024, OA No.522/2024 & OA No.527/2024 are Allowed.
- (B) The 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' Order dated 29.01.2024 for temporary attachment of services of Applicant to 'Central Prisons' at Kolhapur, Amravati and Nagpur and subsequent Order dated 12.07.2024 to shift them laterally again to 'Central Prison' and 'District Prison' at Nagpur Chandrapur, Sindudurg are quashed and set aside.
- (C) The 'Additional D.G.P. Prisons & Correctional Services, Maharashtra State, Pune' to issue fresh 'Order' within 'One Week' to permit Applicants to join back on their earlier posts

of 'Jailor Group-I' and 'Jailor Group-II' in 'Central Prison' at Nashik.

(D) No Order as to Costs.

Sd/-

(DEBASHISH CHAKRABARTY)
Member-A

Mumbai

Date : 29.10.2024

Dictation taken by :

S.K. Wamanse.

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