

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.442 OF 2016

DISTRICT : THANE

Mr. Bhausahab D. Agawane.)
Age : 45 Yrs, Working as Jailor Gr.II,)
R/at Room No.7, Officers Building,)
Kalyan jail, Kalyan 421 301.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Chief Secretary,)
Mantralaya, Mumbai - 400 032.)
2. Additional Chief Secretary.)
Home Department, Mantralaya,)
Mumbai 400 032.)
3. The Additional Director General of)
Police and Inspector General of)
Jail, Old Central Building, 2nd Floor,)
Pune 411 001.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

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



DATE : 14.03.2017

JUDGMENT

1. The Applicant working as Jailor Group II and currently posted at Kalyan Jail disputes the impugned order of transfer whereby he had been ordered to be posted at Chandrapur in Vidharbha Region of the State of Maharashtra.

2. The 1st Respondent is the State of Maharashtra through the Chief Secretary, the 2nd Respondent is the Additional Chief Secretary, Home Department and the 3rd Respondent is the Additional Director General of Police and I.G. of Jail, Pune. The Applicant came to be posted at Kalyan Prison on 10.9.2012. Be it noted here itself that at the time the present OA was brought and the interim relief was granted on 27.5.2016 by me, there was dispute also with regard to whether the Applicant was in Group 'C' or Group 'D'. There was material to suggest that the post held by the Applicant was in Group 'C'. However, as the OA remained pending and the Affidavits were filed, it became clearer that by virtue of the GAD G.R. dated 27th May, 2016, on the basis of the pay scale, the said post would fall within Group 'B'. Therefore, now, there is not much dispute about the fact that the Applicant would fall



within Group 'B'. Had he been falling in Group 'C', he would perhaps have been entitled statutorily under the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act hereinafter) to two tenures of three years each. That aspect of the matter is no more at large and as I mentioned above, the Applicant falls within Group 'B'.

3. I have perused the record and proceedings and heard Mrs. Punam Mahajan, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer (PO) who is instructed by Mr. M.S. Bilore, Senior Clerk in the office of ADG Prisons, Pune.

4. It is made clear on behalf of the Applicant that he is not averse to the transfer *per-se* because in fact, he had become due for transfer last year itself. His grievance is with regard to the place to which he is to be transferred. The learned PO told me that the Applicant joined his services in 1992 at which time, he held the post of Constable and he had never had a stint in Vidharbha Region of the State of Maharashtra, and therefore, he was transferred to Chandrapur. She has placed on record



today a copy of the meeting of the Police Establishment Board.

5. It is, however, a matter of some significance that it is not just a claim of the Applicant as would possibly be expected, but even the Respondents accept the position that the Applicant has had a blotless meritorious career. The Applicant in his representations submitted from time to time has mentioned several instances to show as to how he has been a part of crucial and critical events happening inside the Jail in which connection, the names of some notorious criminals appeared, none of them need to be named herein but that is a part of the record.

6. On 25.5.2016, I did not grant interim relief. However, on 27.5.2016, the learned PO sought a short adjournment for filing an Affidavit and in order to ensure that while granting time to the Respondents, the Applicant was not left unprotected, I directed that the Applicant be not relieved from his present posting as Jailor Group II, Kalyan, District Prison. It is this order that has governed all concerned till date.

7. Mrs. Mahajan placed a copy of the representation made as recently as Yesterday by the Applicant along with

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the Annexures. That representation refers to the fact that his daughter was taking education at Pune and his son at Dapoli in District Ratnagiri in 2nd year of Horticulture. His wife is a heart patient and for these facts, he has submitted the record including the recognition of the merit of the Applicant himself viz. the letters of appreciation. The learned PO assailed the conduct of the Applicant saying that he has deliberately submitted this representation on a holiday yesterday. Although she spoke something about the procedural aspect of the matter, but I do not think, there is any serious breach in that behalf. The Jail administration never is factually on a holiday for obvious reasons and Mrs. Mahajan mentions the fact that there were other representations including the one made in the last month also in the same line. Therefore, I do not think, that the Applicant could possibly be assailed of any artificial attempt to make in so far as fortifying his case is concerned.

8. Having mentioned all these facts, the point remains that the Applicant has become due for transfer from Kalyan and in fact, he became due last year itself. As per the elementary principles of the administrative law, in the absence of mala fides or any oblique motive, the judicial forum will not just for the asking even intervene



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much less interfere in the matters of transfer aspect of the service conditions and a little elbow room has got to be conceded to the employer in that behalf. However, at the same time, it needs to be mentioned that when the PEB met, there was no occasion for the Applicant to give out the details of his domestic problems to which a reference has been made above. May be, at that time, all that the PEB had was the option given by the Applicant and at that time, they must have taken into consideration the fact stated across the bar today by the learned PO namely that the Applicant has had no stint in the Vidharbha Region of this State. However, it will be appropriate now at least and I said now because just next month and in the month of May, it will be the period of time when the annual general transfers take place. In my opinion, the authorities In-charge of the matters like the present one may even now consider the case of the posting of the Applicant and in that behalf, they may consider the representations made by the Applicant yesterday as well as last month and before, if any, I must make it quite clear that I express no opinion about any particular place to be given to the Applicant but his request may at least be considered and I mention this by and large because of the admitted fact that the career of the Applicant has been meritorious. Beyond that, no directions can be given inter-alia because of the



jurisdictional limitations on a judicial forum exercising the powers of judicial review of administrative actions.

9. This Original Application is disposed of with a direction to the authorities concerned to consider the representations of the Applicant in the matter of the place of posting on transfer from Kalyan during the impending months in which the annual general transfers will be effected. The outcome thereof be communicated to the Applicant within one week thereafter. No order as to costs.

Sd/-
(R.B. Malik)
Member-J
14.03.2017

Mumbai

Date : 14.03.2017

Dictation taken by :

S.K. Wamanse.

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