

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.603 OF 2015
[Subject : Repatriation]**

DISTRICT : SOLAPUR

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| 1 | Mr. Santosh Shankar Navle,
Aged 42 years, Occ. Service,
R/o. Plot No.14, Vedantnagar,
Akkalkot Road Solapur,
District – Solapur,
Pin Code 513 005 |)
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| 2. | Mr. Nazir Bashir Sayyad,
Aged 46 years, Occ. Service,
R/o. Police Head Colony,
Block No.26/6, Ashok Chowk,
District- Solapur,
Pin Code 413 004 |)
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| 3. | Mr. Ashok Namdeo Jadhav,
Aged 43 years, Occ-Service,
R/o. Madhuban Society, Limayewadi,
Ramwadi, Solapur,
District- Solapur,
Pin Code 413 002 |)
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| 4. | Mr. Aasif Faruque Shaikh,
Aged 45 years, Occ- Service,
R/o. 139, Bramhedeavnagar,
Hotgi Road, Solapur,
District – Solapur,
Pin Code 413 003 |)
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..Applicants

Versus

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|----|--|-------------|
| 1. | The State of Maharashtra,
Through Home Department,
Mantralaya, Mumbai. |)
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2. The Inspector General of Police,)
 Maharashtra State, Police Headquarters,)
 Colaba, Mumbai.)
3. The Commissioner of Police,)
 Solapur City, District – Solapur.)
4. Reserve Police Inspector,)
 Police Headquarter,)
 Solapur City,)
 District- Solapur.) **..Respondents**

Shri U.S. Sawji, the learned Advocate for the Applicant.

Ms. S.T. Suryawanshi, the learned Presenting Officer for the Respondents.

CORAM : Shri J.D. Kulkarni, Vice-Chairman

DATE : 29.01.2018

J U D G M E N T

1. Heard Shri U.S. Sawji, the learned Advocate for the Applicant and Ms. S.T. Suryawanshi, the learned Presenting Officer for the Respondents.
2. All the Applicants are Armourers, and after completion of training were posted in Armourer Department as Commissioner of Police, Solapur.
3. They have challenged for impugned communication dated 01.07.2015. They were transferred to work in other assignments. According to the Applicants, Rule 39(3) of Maharashtra Police Manual 1999 included in part III is revoked / cancelled.
4. They are calming direction to Respondents not to utilize the services of Armourers other than repairs and maintenance of the Arms as per Rule 39(3) of Maharashtra Police Manual 1999, part III. They are also claiming that letter dated 01.07.2015 issued by the Respondent No.4 to Respondent No.3 be quashed and set aside to take the Applicants back in Armourer Department with immediate effect.

5. Vide letter dated 01.07.2015, Applicants were transferred to Department other than Armourer Department.

6. In the reply affidavit it is stated that the circular of the Additional Director General of Police (Establishment) dated 20.08.2015 has been issued whereby Rule 39(3) of Maharashtra Police Manual 1999 has been deleted and the said matter was pending before the Hon'ble High Court Bench at Aurangabad. Since Rule 39(3) of Maharashtra Police Manual 1999 has been cancelled, no cause of action remains.

7. Learned Counsel for the Applicants has placed reliance on the judgment delivered in O.A.No.1199 of 2013 with M.A.No.377 of 2014 in O.A.No.1199 of 2013 delivered by this Tribunal at Mumbai Bench on 28.01.2015, wherein it was observed by this Tribunal at paragraph 5 of the said order reads as under :-

"5. This Original Application has been filed seeking strict implementation of Rule 39(3) of the Bombay Police Manual, 1959. The Rule has been reproduced in paragraph 2 above. The language of the rule is unambiguous that under no circumstances, (emphasis supplied) the armourers should be employed on any job except maintenance of arms. This is quite logical as the man power available for maintaining more than 34,000 firearms in Mumbai Police Commissionerate is less than 90. It is also a fact that persons having technical aptitude are selected for the post of Armourer and they have to undergo specialized training in maintenance and repairs of firearms. The Applicants are seeking implementation of the Rule which are framed by the Respondents themselves. The Rule appears to be logical and rational. We therefore, confirm the interim order dated 13.1.2014 passed by this Tribunal. The Original Application is allowed."

8. Learned P.O. for the Respondents submits / invites my attention to the copy of order passed in Public Interest Litigation No.3 of 2016. Copy of which is placed on record at Exhibit X for purpose of identification, judgment in case of Pandurang s/o. Rama Gaikwad Vs. State of Maharashtra and others delivered by the Hon'ble High Court at judicature at Bombay Bench at Aurangabad on 29.06.2017.

9. In the said Public Interest Litigation action of the Respondents as regards withdrawal of Notification No.3210-V dated 07.01.1958 issued by then Inspector General of Police by issuing another notification dated 20.08.2015 was challenged. In paragraphs No.4 and 5 of the said judgment Hon'ble High Court has observed as under :-

“4. It is needless to say that the Police Manual is nothing but an administration procedure contemplated, which cannot be equated with the Statutes, Rules or Regulations when specific Rules, Regulations and Statues are already in existence covering the issue. In case of a situation like natural calamity or fire accidents or any other emergency situation, apart from the regular police and reserved police, there may be a need to call every other personnels to come to combat the situation and come to the field and assist the administration. In such situation, experience of the Government seems to be that personnels of armoury department refuse to attend any other duty. One cannot ignore the fact that the persons, who are appointed as armourers, part from having gone through the process of selection of “Police Officer” as defined under sub-section (11) of Section 2 of the Maharashtra Police Act, are having special training, qualification in maintenance and upkeeping of the arms. Therefore, one cannot say that persons working in the armoury department have no capacity or qualification to discharge duties of police officers.”

5. In that view of the mater, in the light of Section 28 of the Act, the notification of 1958 would definitely come in the way to command services of the personnels working the Armoury Department in case of a need. Therefore, we decline to intervene with the impugned notification. However, as a matter of caution, we place on record that other than emergency situations, personnels from the department of armoury should not be diverted to any other department on the ground of shortage of man power etc., which may give rise to decrease in the quality of maintenance department, which is very important for the purpose of having proper armoury in the department.”

10. From the aforesaid judgment delivered by Hon’ble High Court it is clear that the action of withdrawing / deleting Rule 39(3) of Maharashtra Police Manual 1999 has been held illegal by the Hon’ble High Court.

11. In view thereof this Tribunal cannot direct Respondents not to utilize the services of Armourar other than repairs and maintenance of the arms as per Rule 39(3) of Maharashtra Police Manual 1999 and consequently there is no merit in the claim of the applicants, whereby they have claimed that letter dated 01.07.2015 be quashed. In the result, O.A. stands dismissed with no order as to costs.

Sd/-
(J.D. Kulkarni)
Vice-Chairman
29.01.2018