

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.288/2018

DISTRICT: LATUR

Rajendra s/o. Vasant Rao Marale,
Age : 47 years, Occu. : Service as Jailor Grade-I,
Latur District Prison Grade-I,
R/o. Latur, Dist. Latur. ...APPLICANT

V E R S U S

- 1) The Principal Secretary,
Home Department (Prisons),
Maharashtra Government,
Maharashtra State,
Mantralaya, Mumbai-32.
- 2) The Additional Director General
of Police and Inspector General of Prisons,
Maharashtra State, Pune-1.
- 3) The Superintendent,
Latur District Prison,
Latur, Dist. Latur. ...RESPONDENTS

APPEARANCE : Shri S.D.Joshi Advocate for the Applicant.
: Smt. Priya R. Bharaswadkar Presenting
Officer for the respondents.

CORAM : B. P. Patil, Member (J)

DATE : 1st November, 2018

J U D G M E N T
[Delivered on 1st day of November, 2018]

1. The applicant has challenged the impugned order dated 30-04-2018 by which he has been transferred from the post of Jailor Grade-I Latur, District Latur to Aurangabad Central Prison by filing the present O.A.

2. The applicant has initially joined the service as Rakshak in the year 1993 in the Prison Department. He served in that capacity at Parbhani and Nanded. Thereafter, he appeared for the examination of Jailor in the year 2006. By the order dated 19-06-2006 he was appointed as Jailor Group-B and was posted at Nagpur. Thereafter, he was promoted as Jailor Grade-I in the year 2015 and thereafter he has been transferred from Nagpur to Latur. The applicant has joined his promotional post at Latur on 09-12-2015 and since then he has worked there. While working at Latur he was given the powers in respect of the Drawing and Disbursing Officer (DDO) in addition to his charge of in charge Superintendent.

3. It is his contention that on promotion from Nagpur to Latur, he has shifted his family to Latur. His two sons are taking education and his wife is serving in MSRTC,

Osmanabad. His mother aged about 82 years is residing with him.

4. It is further contention of the applicant that he was discharging his duties as Jailor Grade-I at Latur with utmost efficiency, honesty and integrity. He was insisting employees working in the prison to maintain discipline but his discipline was disliked by some of the employees. Therefore, some of the employees have grudge against him, and they have filed complaints against him with his higher authorities. On 06-05-2017 Deputy Inspector General of Prisons, Central Division, Aurangabad has issued order and attached his services to Aurangabad Central Prison with immediate effect. He was relieved accordingly on 07-05-2017. The applicant reported to Aurangabad Central Prison on 13-05-2017 by reserving his rights to seek redressal against the said order. Thereafter, he made representations dated 13-05-2017, 18-05-2017 and 12-06-2017 with his higher authorities to cancel attachment order because of his family problems. Thereafter, he had also filed one more representation dated 27-07-2017 with same request and also requested the higher authorities to permit him to approach the Tribunal.

It is his contention that the respondent no.2 had stayed transfer order of other 2 incumbents on the ground of educational career of their children but representations of the applicant were not considered. Therefore, the applicant has filed O.A.No.556/2017 in this Tribunal on 07-08-2017 challenging order dated 06-05-2017. During the course of hearing of the O.A. the Deputy Inspector General of Prisons, Central Division, Aurangabad had withdrawn the order dated 06-05-2017, and therefore, the O.A. has been disposed of on 23-11-2017. Thereafter, the applicant joined duty at Latur in November, 2017.

5. It is his contention that he has served at Latur since 09-12-2015. He had not completed his normal tenure of posting but the respondent no.1 issued the impugned order and transferred him from Latur to Aurangabad. The transfer order is in violation of the provisions of S.4(4)(ii) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ("Transfer Act" for short). His transfer has been recommended on the basis of complaints filed by employees working in the Prison at Latur. Respondents had not made enquiry in the said

complaints. It is his contention that the impugned order has been issued with mala fides and therefore it is not sustainable in the eyes of law. On these grounds he has challenged the impugned order by filing the present O.A.

6. Respondent nos.1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the applicant was posted on the post of Jailor Grade-I and was transferred from Nagpur to Latur in the year 2015. They have not disputed the fact that the applicant joined the posting at Latur on 09-12-2015 and since then he was working there. They have not disputed the fact that the applicant has shifted his family at Latur. They have admitted the fact that the applicant was not due for transfer in view of the provisions of S.3 of the Transfer Act as he had not completed his normal tenure of posting.

7. It is contention of the respondents that on 13-01-2017 Deputy Inspector General of Prisons, Central Division, Aurangabad visited Latur District Prison for annual inspection part-I and during the inspection near about 32 employees of Latur District Prison made complaints against the applicant regarding insulting

treatment given to them by the applicant and their mental harassment. They have also complained regarding behaviour of the applicant and abusive language used by him and threats given to them for spoiling their career. There were complaints regarding illegal activities of the applicant. The Deputy Inspector General of Prisons, Central Division, Aurangabad submitted report against the applicant to The Additional Director General of Police and Inspector General of Prisons, Maharashtra State, Pune on 16-02-2017. Since the majority of the employees working in Latur District Prison made complaints against the applicant, it was necessary to take immediate decision for smooth functioning in the District Prison at Latur. Therefore, the Deputy Inspector General of Prisons, Central Division, Aurangabad had issued order attaching services of the applicant at Aurangabad Central Jail. It was not a transfer, and therefore, additional charge of the DDO of Latur District Prison was kept with the applicant. It is contended by the respondents that there were several complaints against the applicant including sexual harassment of female employee, and therefore, order of attaching services of the applicant to the Central Prison at Aurangabad was made. Deputy Inspector General of

Prisons, Central Division, Aurangabad sent proposal to the competent authority for transferring the applicant. Therefore, the order of attachment of services of the applicant to the Central Prison Aurangabad was made. They have not disputed the fact that the applicant has made several representations for cancellation of his attachment order. It is their contention that the applicant filed O.A.No.556/2017, and therefore, no decision was taken on his representations. It is their contention that thereafter attachment order had been withdrawn. Thereafter, the O.A. was disposed of and applicant was reposted at Latur.

8. It is their contention that the Deputy Inspector General of Prisons, Central Division, Aurangabad submitted proposal for transferring the applicant to the higher authorities. Said proposal was placed before the Civil Services Board in its meeting dated 18-07-2017. Civil Services Board accepted the proposal of the Deputy Inspector General of Prisons, Central Division, Aurangabad and recommended the transfer of the applicant from Latur to Aurangabad. The proposal along with recommendation of the Civil Services Board was forwarded to the

Government for approval. Said proposal along with recommendation of the Civil Services Board was placed before Hon'ble Chief Minister, who is also holding port folio of Home Ministry. Hon'ble Chief Minister had accepted the proposal and thereafter the Government has communicated its decision to the Additional Director General of Police and Inspector General of Prisons, Maharashtra State, Pune by letter dated 23-04-2018. On the basis of the said letter Additional Director General of Police and Inspector General of Prisons issued impugned order dated 30-04-2018 transferring the applicant from Latur to Aurangabad. It is their contention that the said transfer has been made in view of the provisions of S.4(4)(ii) and 4 (5) of the Transfer Act and there is no illegality in the impugned order. It is their contention that there were serious complaints regarding behaviour of the applicant including serious complaint of sexual harassment of female employee working in the District Prison at Latur. Therefore for the purpose of running smooth administration in Latur District Prison the transfer of the applicant has been made on account of administrative exigencies. It is their contention that the reasons have been recorded while transferring the

applicant. There is no illegality in the same, and therefore, the respondents have prayed to reject the O.A.

9. The applicant has filed affidavit in rejoinder and resisted the contentions of the respondents. It is his contention that while taking round in the prison, he noticed misbehaviour and misconduct of some of the employees and therefore he warned them. One female guard was indulging in illegal and irregular activities in the Jail. Therefore, he informed the Deputy Inspector General of Prisons, Central Division, Aurangabad and requested to effect her transfer elsewhere. Conduct of the said female guard was objectionable. It is his contention that as regards sexual harassment, respondents have to conduct enquiry at Latur but they have directed enquiry at Aurangabad and the said enquiry in the matter at Aurangabad cannot be conducted. It is his contention that he cannot be transferred on the basis of complaints and the transfer made by the respondents is against the provisions of the Transfer Act. Therefore, he has prayed to quash the impugned order.

10. I have heard Shri S.D.Joshi Advocate for the Applicant and Smt. Priya Bharaswadkar Presenting Officer

for the respondents. Perused documents placed on record by the parties.

11. Admittedly, the applicant was initially appointed as Rakshak in the Prison Department in the year 1993. Thereafter, he was promoted as Jailor in the year 2006 and appointed as Jailor Grade-B at Nagpur. In the year 2015, he was promoted on the post of Jailor Grade-I and transferred at District Prison Latur. The applicant joined posting at Latur on 09-12-2015. Admittedly, he had not completed his normal tenure of posting at Latur. Admittedly, some of the employees working in the District Prison at Latur filed complaints with the superior authority of the applicant regarding his misbehaviour and misconduct and about his behaviour with female employee. Admittedly, the complaints included sexual harassment of a female employee. Admittedly, on 06-05-2017 the Deputy Inspector General of Prison, Central Division, Aurangabad had passed order attaching services of the applicant at Aurangabad Central Prison with immediate effect for smooth functioning in the District Prison at Latur. Accordingly, he was relieved on 07-05-2017 and he joined at Central Prison Aurangabad. There is no dispute about

the fact that the applicant challenged the said order by filing O.A.No.556/2017 before this Tribunal. During the pendency of the O.A. the Deputy Inspector General of Prisons, Central Division, Aurangabad had withdrawn the order dated 06-05-2017. Therefore, the O.A. came to be disposed of on 23-11-2017.

12. Admittedly, thereafter the applicant joined his duty at Latur in the month of November, 2017. Admittedly, the applicant has been transferred thereafter from Latur to Aurangabad by the impugned order dated 30-04-2018 on account of administrative exigency. Admittedly, Vishakha Committee constituted for making enquiry in the complaint of sexual harassment of female employees is conducting enquiry in complaint made against the applicant.

13. Learned Advocate for the applicant has submitted that the applicant has not completed his normal tenure of 3 years at Latur and he is not due for transfer. He has submitted that the applicant has hardly completed 2 years and 6 months at Latur and out of that period he has rendered service at Aurangabad for 6 months. He has argued that in view of this applicant will be due for transfer in the month of May, 2019 but the respondents issued the

impugned transfer order on the basis of report submitted by the Deputy Director General of Prison, Aurangabad on the ground that there were several complaints against him by the employees working in the District Prison Latur. He has submitted that false complaints have been filed against the applicant as the applicant wanted to implement discipline in the District Prison at Latur. He has submitted that the applicant noted several illegalities and irregular activities of the employees working in the District Prison Latur and therefore he warned them. Because of discipline maintained by the applicant, the employees working in the Latur District Prison have grudge against the applicant and therefore they have filed false complaints against him. He has submitted that higher authorities without making any enquiry into the complaints, made his transfer before completion of his tenure. He has submitted that the impugned order is mid-term and mid-tenure transfer. Respondents had not followed the guidelines of the Government and more particularly the guidelines given in the G.R. dated 11-02-2015. Guidelines given in paragraph 8 of the said G.R. are relevant. He has submitted the impugned order has been passed by way of or in lieu of punishment, and therefore, it is illegal. He has submitted

that the provisions of S.4(4)(ii) and 4(5) of the Transfer Act have not been strictly followed by the competent authority while issuing the impugned order, and therefore, it is illegal.

14. In support of his submission, he has placed reliance on the judgment of **Somesh Tiwari V/s. Union of India and Ors.** Reported in **(2009) 2 Supreme Court Cases 592** wherein it is observed as follows:

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”

15. Learned Advocate for the applicant has further submitted that Civil Services Board as well the competent authority have not applied mind while issuing the

impugned transfer order. They have not recorded reasons for making mid-term and mid-tenure transfer of the applicant. No exceptional case has been made out for transferring the applicant in the midst of term and before completion of tenure. Therefore, it is in violation of the provisions of S.4(4)(ii) and 4(5) of the Transfer Act. Therefore, the impugned transfer order is illegal.

16. He has submitted that this Tribunal has also quashed some of the illegal transfer orders. In support of this submission he has placed reliance on the judgment of this Tribunal in **O.A.No.952/2017** in the case of **Vilas Ganpatrao Shrolkar V/s. State of Maharashtra & Ors.** dated 23-02-2018 and also in **O.A.No.342/2017** in the case of **Jitendrakumar Khanderao Kundile V/s. State of Maharashtra & Ors.** decided on 19-12-2017. He has submitted that mere filing of complaints is not a sufficient ground for transferring the applicant unless and until enquiry is conducted in the said complaints. He has submitted that the applicant has filed several documents showing that the employees working in the District Prison at Latur were involved in illegal activities in the prison premises. Considering the said documents and provisions

of Transfer Act he has prayed to allow the O.A. and quash the impugned order.

17. Learned P.O. has submitted that the applicant's behaviour towards his subordinates was not proper. He had threatened the employees to spoil their service career. Some of the employees had grievance regarding his functioning. He was harassing the employees working under his control. She has submitted that he was sexually harassing a female employee working in the Prison at Latur, and therefore, as many as 32 employees have put their grievance before the Deputy Inspector General of Prisons, Central Division, Aurangabad at the time of annual inspection part-I. An enquiry has been conducted in that regard and thereafter a default report had been submitted by the Deputy Inspector General of Police Aurangabad to higher authorities with a request to transfer the applicant from Latur to Aurangabad for smooth functioning in the District Prison at Latur. She has submitted that by way of immediate action Deputy Inspector General of Prison, Aurangabad passed an order dated 06-05-2017 attaching the services of the applicant to Aruangabad Central Prison but the applicant had

challenged the said order as the concerned respondent had no powers to transfer the applicant. The applicant challenged the said order by filing the O.A. Thereafter, the said order came to be withdrawn. She has submitted that the Deputy Inspector General of Prisons, Central Division, Aurangabad at the same time had forwarded proposal of transfer of the applicant before higher authorities. Said proposal was placed before the Civil Services Board. The Civil Services Board recommended the transfer of the applicant considering the nature of allegations and seriousness of the complaints on account of administrative exigencies for the smooth running of administration in District Prison at Latur. Proposal regarding transfer of the applicant along with recommendation of the Civil Services Board was placed before Hon'ble Chief Minister who is also holding port folio of Home Ministry. The Hon'ble Chief Minister after considering the recommendation, approved the proposal and therefore the impugned transfer order has been issued.

18. She has submitted that one female employee filed a criminal complaint against the applicant for the offences punishable u/s.354, 354-A, and 509 of the Indian Penal

Code with M.I.D.C. Police Station, Latur. On the basis of her complaint, a crime has been registered against the applicant. She has further submitted that complaints against the applicant were of serious nature and there was restlessness in the employees working in the District Prison at Latur. Therefore, for running administration smoothly, the impugned transfer order has been issued by following the mandatory provisions of S.4(4)(ii) and 4(5) of the Transfer Act. She has submitted that there is no violation of the mandatory provisions of the Transfer Act while passing the impugned order.

19. Learned P.O. has further submitted that as regards complaint of female guard regarding sexual harassment, Vishakha Committee has been constituted as per the directions of the Hon'ble Supreme Court. Said committee is going to make enquiry in the matter and necessary action will be initiated against the applicant on reaching the enquiry report of the committee. She has submitted that the transfer of the applicant has been made in view of the guidelines in the G.R. dated 11-02-2015 and there is no violation of those guidelines.

20. She has further submitted that the Principal Seat of the Tribunal at Mumbai in O.A.No.115/2017 in the case of **Shri Hiralal Rama Jadhav V/s. The Additional Chief Secretary, Home Department, Government of Maharashtra & Anr.** decided on 10-07-2017 had considered the said aspect. She has submitted that the facts and issues involved in the present matter are also similar and therefore on the basis of the said decision and principle laid down therein, the present O.A. deserves to be dismissed. Therefore, she has prayed to dismiss the O.A.

21. On perusal of documents placed on record, it reveals that the Deputy Inspector General of Prisons, Central Division, Aurangabad visited the Latur District Prison on 13-01-2017 on account of annual inspection part-I. At that time, 32 employees including a female employee filed written complaint against the applicant regarding his behaviour and misconduct. Deputy Inspector General of Prisons, Central Division, Aurangabad made enquiry in the complaints and submitted his report to the Additional Director General of Police and Inspector General of Prisons, Maharashtra State, Pune on 18-02-2017 and requested to transfer the applicant from Latur District Prison in order to

avoid any untoward incident in the prison and to run the administration of the prison smoothly. On the basis of said report, the proposal regarding transfer of the applicant had been prepared and it was placed before the Civil Services Board on 18-07-2017. The Civil Services Board considered the proposal and the complaints against the applicant. Considering the seriousness of the complaints filed against the applicant by the employees working in the Latur District Prison and for running the administration in the prison smoothly and to avoid any untoward incident, the committee recommended transfer of the applicant from Latur to Aurangabad.

22. Thereafter, the proposal of transfer of the applicant along with recommendation of the Civil Services Board has been placed before the competent authority i.e. Hon'ble Chief Minister who is also holding the port folio of the Home Ministry for approval. Hon'ble Chief Minister considered the proposal and recommendation of the Civil Services Board and approved the same and decided to transfer the applicant from Latur to Aurangabad. He has approved the said proposal on 28-02-2018. On the basis of approval given by the competent transferring authority, the

Government directed the Additional Director General of Police and Inspector General of Prisons, Maharashtra State, Pune to issue transfer order by communication dated 23-04-2018. On the basis of said communication and approval given by the competent authority, respondent no.2 issued the impugned order of transfer dated 30-04-2018. Said facts show that the proposal regarding transfer of the applicant has been prepared. Same was placed before the Civil Services Board and after recording reasons, the Civil Services Board recommended transfer of the applicant. The competent authority i.e. Hon'ble Chief Minister had also considered the said aspect and approved the proposal. With prior approval of the highest transferring authority i.e. Hon'ble Chief Minister, the impugned order has been issued.

23. The allegations made against the applicant are of serious nature. One female guard made allegations of sexual harassment against the applicant and the complaint has been referred to the Vishakha Committee for enquiry. Not only this but the female guard has filed complaint against the applicant with police station for the offences punishable u/s.354, 354-A and 509 of the Indian Penal

Code. On the basis of same a crime has been registered against the applicant. Allegations against the applicant are of serious nature. Majority of the employees were aggrieved and harassed by the functioning of the applicant and they are not satisfied with his behaviour. In these circumstances, higher authorities of the applicant as well as the competent authority thought it proper to transfer the applicant to avoid any untoward incident in the Latur Prison and for the purpose of running administration smoothly. These are sufficient reasons for mid-term and mid-tenure transfer of the applicant. In view of the exceptional case and circumstances, competent authority decided to transfer the applicant by resorting to provision of S.4(4)(ii) and 4(5) of the Transfer Act.

24. In these circumstances, in my opinion there was sufficient compliance of the mandatory provisions of S.4(4)(ii) and S.4(5) of the Transfer Act. The competent authority has followed the guidelines given in the G.R. dated 11-02-2015 which provide that the competent transferring authority has to take decision for transferring the Government employee after considering the prima facie case and if substance is found in the allegations made

against the applicant and on considering the recommendation of Civil Services Board. In the instant case Civil Services Board as well as the competent authority have gone through the proposal for transfer of the applicant and after recording reasons, they accepted the proposal of transfer of the applicant submitted by the Government. Consequently the impugned order of transfer has been issued.

25. I have gone through the decision cited by the learned Advocate for the applicant. I have no dispute about the settled legal principle laid down by the Hon'ble Supreme Court in the case of **Somesh Tiwari V/s. Union of India and Ors.** reported in **(2009) 2 Supreme Court Cases 592.** In the instant case, the applicant has failed to establish that there are mala fides on the part of the competent authority while transferring him. The impugned transfer order has not been issued on the basis of anonymous complaint. On the contrary, the employees working in Latur District Prison have made specific allegations against the applicant. Therefore, on account of administrative exigency the impugned order of transfer has been made. Therefore the impugned order cannot be termed as illegal.

26. I have also gone through the judgment relied by the learned P.O. The principle laid down in the said decision is appropriately applicable in the instant case. The respondents have shown justification for transfer of the applicant. The impugned transfer order is in accordance with the provisions of S.4(4)(ii) and 4(5) of the Transfer Act. There is no illegality in the same, and therefore, no interference is called for in the impugned order.

27. In view of the abovesaid discussion, in my opinion there is no illegality in the impugned order. Therefore, there is no merit in the O.A. Consequently, O.A. deserves to be dismissed.

28. In view of the discussion in the foregoing paragraphs O.A. stands dismissed with no order as to costs.

(B. P. PATIL)
MEMBER (J)

Place : Aurangabad

Date : 01-11-2018.