

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 664 OF 2020

DISTRICT : THANE

Shri Chandrakant J. Jadhav)...**Applicant**

Versus

The State of Maharashtra & Others)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula R. Bhatkar (Chairperson)**

DATE : **12.10.2020**

ORDER

1. Heard Shri M.D Lonkar, learned advocate for the applicant and Smt K.S Gaikwad, learned P.O for the Respondents 1 & 2. Ms Savita T. Suryavanshi, files Vakalatnama on behalf of Respondent no. 3.


2. Perused the minutes of the meeting of the Establishment Board dated 5.11.2020 regarding transfer of Police Officers. Learned P.O submits that the reason for the transfer of the applicant and Respondent no. 3 is inter se transfer, i.e. from Thane Special Branch to Shil Daighar Police Station, Thane and vice-versa. It was only for administrative purpose

3. Admittedly, both the parties were not due for transfer as they have not completed their normal tenure of two years as per Maharashtra Police Act, 1951

4. Section 22N (1) & (2) gives power to the competent authority to issue orders for mid-term transfer. The word transfer on administrative ground can be used to hide the reasons which cannot be approved under the law. There should be complete transparency in the administration and therefore the real reason of transfer which exist should be mentioned somewhere in the record or file of transfer of the Police Personnel, though it is not appearing in the actual order.

5. Learned P.O relied on the judgment dated 30th November, 2010 of the Hon'ble Bombay High Court in the case of Rajendra S. Kalal Vs. State of Maharashtra and Ors, W.P 8898/2010. However, the said judgment cannot be relied on two grounds, firstly it is not relating to transfer of Police Personnel and important amendments were carried out in Section 22 after judgment of the Hon'ble Supreme Court in Prakash Singh & Ors Vs. Union of India & Ors (2006) 8 SCC 1, in respect of mid-term transfers and secondly the word transfer which is defined under Section 2(i) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 is not discussed.

6. Learned P.O relied on judgment dated 22nd December, 2018 of Hon'ble Bombay High Court, Aurangabad Bench, Ashok R Barde Vs The State of Maharashtra & Others. Though judgment is pertaining to transfer of Police Personnel working in Aurangabad, the question addressed whether mid-term, mid-tenure transfer was justified which was issued by Respondent no. 2. In the said case, serious complaints were found against the original applicant and which would have led a problem of law and order. In the said case, the Division Bench has held that mid-term transfer on account of administrative exigency and public interest can be made by the competitive authority under Section 22N(2).




However, in the present case the facts presented before me are yet found different.

7. Learned P.O also relied on the judgment of Hon'ble High Court, Nagpur Bench dated 15.11.2017, in Vazeer H. Shaikh Vs. State of Maharashtra & Ors, W.P W.P 6809/2017. This also pertains to transfer of Police Personnel and the Division Bench of the Nagpur High Court has mainly buttressed the fact whether the prejudice was caused to the petitioner and as the petitioner was transferred in the City limits from one branch to another branch, then he cannot claim prejudice.

8. Shri Lonkar learned counsel for the applicant on the other hand relied on the judgment dated 11.9.2019 in Shri Sheshrao N. Bade Vs. The State of Maharashtra & Ors, O.A 736/2019. This pertains to transfer of Education Officer and it is relied mainly on the point to highlight the elaborate reasons which are in existence in the files of the Government then the order if worded that order is in public interest or on account of administrative exigency is justified. He also relied on another judgment dated 24.12.2018 in Shri Prashant S. Pisal Vs. The Principal Secretary, Revenue & Forest Department & Ors, O.A 900/2018. where the Tribunal had opportunity to deal with the phrase of administrative reasons whether it satisfies the requirement of law of recording reasons.

9. Learned P.O has relied on the minutes of the meeting of the Police Establishment Board dated 5.11.2020 where in the applicant and Respondent no. 3 are transferred only on the ground of administrative exigency. Besides the reasons mentioned in the minutes, the P.O is directed to produce any record against the applicant.

10. Learned counsel for the applicant drew my attention to number of Certificates issued by the competent authority and other superiors for his good service.



11. Learned P.O to file reply along with supporting documents if any to justify administrative exigency as contemplated under Sec 22N(2) of the Maharashtra Police Act.

12. The applicant to join Special Branch, Thane and go ahead with the work without prejudice.

13. S.O to 19.11.2020. The issue of interim relief is kept open. Matter is kept as part heard.

Sd/-

11.12.20
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai

Date : 11.12.2020

Dictation taken by : A.K. Nair.

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

Original Application No.

of 20

DISTRICT

..... Applicant/s

(Advocate

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

| Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders | Tribunal's orders |
|---|--|
| | <p>Date : 12 .11.2020</p> <p align="center">M.A. No.295 of 2020 in O.A. 837 of 2019</p> <p>The State of Maharashtra & Ors.Applicants (Ori. Respondents)</p> <p>Versus</p> <p>D.K. Pajai ...Respondent (Ori. Applicant)</p> <ol style="list-style-type: none">1. Heard Ms. S. P. Manchekar, learned Chief Presenting Officer for the Applicants (Ori. Respondents).2. This Misc. Application is filed for extension of time to pass the final order in D.E. within two months as directed by this Tribunal while deciding O.A.837/2019 by judgment dated 15.09.2020.3. This M.A. is filed for extension of time contending that the period given by the Tribunal is too short for taking necessary steps in accordance to rules. Learned C.P.O. pointed out that D.E. is completed and the enquiry report has been served upon the Applicant with letter dated 29.10.2020 and she had sought one month's time to submit her explanation. The letter of the applicant dated 29.10.2020 is also filed with M.A. which is for grant of time for reply.4. Indeed, Original Applicant Smt. D.K. Pajai has also filed R.A.No.10/2020 in O.A.837/2019 in which notices are issued and R.A. is fixed on 24.11.2020.5. In view of above, this M.A. be also kept with R.A.10/2020 on 24.11.2020.6. In the meantime, issue notice before admission of this M.A. to Ori. Applicant returnable on 24.11.2020. <p align="right">[P.T.O.]</p> |

| Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders | Tribunal's orders |
|---|---|
| | <p>7. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.</p> <p>8. Applicant is authorized and directed to serve on Respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of M.A.. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.</p> <p>9. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.</p> <p>10. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.</p> <p>11. In case notice is not collected within three days or service report on affidavit is not filed 3 days before returnable date, Misc Application shall stand dismissed without reference to Tribunal and papers be consigned to record.</p> <p>12. S.O. to 24.11.2020.</p> <p style="text-align: right;">Sd/- (A.P. Kurhekar) Member(J)</p> <p>vsm</p> |

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| | <p align="center"><u>12.11.2020</u></p> <p align="center"><u>O.A 665/2020</u></p> <p>Shri H.R Jadhav ... Applicant Vs. The State of Maharashtra & Ors ... Respondents</p> <p>1. Heard Shri P.S Bhavake, learned advocate for the applicant and Smt Kranti S. Gaikwad, learned P.O for the Respondents 1 & 2.</p> <p>2. The applicant who is a delinquent Officer before Vishaka Committee challenges the legality of the procedure of conducting the enquiry and so also the report dated 25.9.2020 by the Vishaka Committee. The applicant who is working as Superintendent of Jail, Yerwada, Pune, has earlier filed O.A 443/2014, wherein he has challenged the charge sheet dated 6.12.2013 of departmental enquiry for sexual harassment. The Division Bench of this Tribunal by order dated 4.1.2019 directed that while conducting enquiry under the act by Vishaka Committee the written complaints are required and not the charge sheet and so the Division Bench directed Vishaka Committee to hold enquiry on the basis of complaints of the women employee and not on the basis of text of charges.</p> <p>3. Learned counsel for the applicant points out the present report of 25.9.2020 wherein again the charges in the charge sheet were referred to. Learned counsel points out that by his letter dated 11.3.2020 he has requested the Committee to furnish him copies of written complaints. However, they are not furnished.</p> <p>4. Learned counsel for the applicant apprehends that he is going to be dismissed from service when only last 6 months of service is left. He prays that the Respondents be restrained from issuing any penal order till next date.</p> |

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|---|--|
| | <p>5. Learned P.O points out that in the enquiry report Vishaka Committee has mentioned that all the documents including written complaints were served on him in March, 2020 itself. Learned P.O seeks time to obtain instructions and bring all original documents.</p> <p>6. Issue notice returnable on 19.11.2020.</p> <p>7. Applicant is authorized and directed to serve on Respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Private service is allowed in view of this present COVID-19 Pandemic situation. Respondents are put to notice that the case may be taken up for final disposal at the stage of admission hearing.</p> <p>8. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.</p> <p>9. The service may be done by hand delivery/ speed post/courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week before returnable date or on the same date. Applicant is directed to file affidavit of compliance and notice.</p> <p>10. S.O 19.11.2020, first on Board.</p> <p style="text-align: right;">Sd/-</p> <p style="text-align: right;">(Mridula Bhatkar, J.) Chairperson</p> <p>Akn</p> |