

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.151 OF 2021
(Subject:- Transfer)**

DISTRICT: - Beed.

Dattatraya S/o Asaram Ubale,)
as Police Constable)
Age 43 years, Occ. Service,)
R/o Charhata Phata, Nagar Road, Beed))
Tq. & Dist. Beed.)
Mob. No. 9823612150)...**APPLICANT**

V E R S U S

- 1. The State of Maharashtra**)
Through its Secretary,)
Home Department,)
Mantralaya, Mumbai-32.)
- 2. The District Superintendent of**)
Police, Beed)
Dist. Beed, Shivaji Chowk,)
Beed.)...**RESPONDENTS**

APPEARANCE : Shri R.D. Khadap, learned Advocate for
the applicant.
: Shri V.R. Bhumkar, learned Presenting
Officer for the respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**
DATE : **13.09.2022**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the impugned transfer order of the applicant dated 22.02.2021 (Annex. 'A-7') issued by the respondent No.2 i.e. the District Superintendent of Police, Beed, thereby transferring the applicant from District Transport Branch, Beed to Police Station, Bardapur, Tq. Ambajogai, Dist. Beed.

2. The facts in brief giving rise to this Original Application can be stated as follows:-

(i) The applicant joined services with the respondents on 01.04.1999 on the post of Police Constable. While he was working at Police Head Quarter, Beed, the respondent No.2 transferred him from Police Head Quarter, Beed to District Transport Branch, Beed i.e. on the present posting by its order dated 03.07.2018 (Annex. 'A-1'). Accordingly, the applicant joined on duty at District Transport Branch, Beed. While working there, the respondent No.2 initiated the enquiry against the applicant and two other employees namely Krushna Babasaheb Jadhav and Sachin Kundlik

Jaybhaye, who were working with the applicant on the ground that, as per secrete and confidential information, the applicant and two others were collecting money from the people, who were transporting the sand from Georai border. The respondent No.2 vide order/communication dated 18.08.2020 (Annex. 'A-2') directed the Additional Superintendent of Police, Ambajogai to conduct an enquiry thereof. The additional Superintendent of Police, Ambajogai conducted an enquiry. Meanwhile, the respondent No.2 by another order dated 18.08.2020 (Annex. 'A-3') during pendency of the said enquiry temporarily transferred the applicant and two others at Police Head Quarter, Beed.

(ii) It is further submitted that the Additional Superintendent of Police, Ambajogai conducted an enquiry in which the applicant gave his statement (Annex. 'A-4'), denying the allegations of collection of money from illegal transporters of sand at Georai border. Thereafter the respondent No.2 issued show cause notice dated 10.02.2021 (Annex. 'A-5') to the applicant thereby stating that the allegations of accepting money from illegal transporters of sand were not proved but as per CDR of the phone calls of the applicant, it was found that the applicant was going to the Georai border without

permission to leave Head Quarter and therefore issued show cause notice as to why two annual increments should not be withheld. The applicant submitted his detailed reply (Annex. 'A-6') stating that due to family dispute, his wife had been to the house of her uncle and therefore, after duty hours, he had gone at Georai to meet his wife to pacify her.

(iii) It is further submitted that it appears that after receipt of enquiry report from the Additional Superintendent of Police, Ambajogai, the proposal of transfer of the applicant was placed before the District Police Establishment Board for mid-term transfer and the proposal of transfer is approved in the public interest, but without considering the past good record of the applicant and under the garb of public interest only on some secrete information, which is not proved. In view of the same, the mid-term transfer order of the applicant is not legal and proper and is liable to be quashed and set aside.

3. The application is resisted by filing affidavit-in-reply on behalf of the respondent Nos.1 and 2 by one Swapnil Rajaram Rathod, working as the Sub-Divisional Police Officer, Georai, District Beed. Thereby he denied the adverse contentions raised by the applicant in the Original Application.

(i) It is specifically contended that several oral complaints were received by the respondent No.2 directly about collection of money by the applicant from the illegal transporters of sand. The respondent No.2 by order dated 18.08.2020 (Annex. 'R-1') directed the Additional Superintendent of Police, Ambajogai to conduct an enquiry into the said allegations. The Additional Superintendent of Police, Ambajogai submitted his report dated 18.08.2021 (Annex. 'R-2') informing that no substance is found in the allegation of collection of money, but CDR would show that the applicant and Jaybhaye were found going to Georai often by leaving Head Quarter without permission. It is denied that the applicant was going to Georai due to domestic reasons. The impugned transfer order of the applicant is issued by getting approval from the requisite District Police Establishment Board in the interest of public at large. Moreover, out of entire tenure of about 20 years, the applicant has worked for about seven years in Highway Traffic Branch, Georai and for about one year in present District Traffic Branch. That is also the reason for approval of the midterm transfer of the applicant. The past excellent work of the applicant, if any,

was not relevant and necessary to consider while issuing the transfer order, which is based on other grounds. In the circumstances, impugned transfer order of the applicant is legal and proper and the Original Application is liable to be dismissed.

4. I have heard at length the arguments advanced by Shri R.D. Khadap, learned Advocate for the applicant on one hand and Shri V.R. Bhumkar, learned Presenting Officer representing the respondents on other hand.

5. Perusal of the previous transfer order of the applicant and others dated 03.07.2018 (Annex. 'A-1') would show that the name of the applicant is at Sr.No.1 in the said order and by that order, the applicant was transferred from Police Head Quarter, Beed to District Transport Branch, Beed on his request. The impugned transfer order of the applicant is dated 22.02.2021 (Annex. 'A-7'). Hence the applicant is transferred within the period of two years and seven months. The applicant is a Police Constable and he is covered under the expression "Constabulary" defined under Section 2(4A-1) of the Maharashtra Police Act, which is as follows:-

"2(4A-1) "Constabulary" means Police Constable, Police Naik, Police Head Constable and Assistant Sub-Inspector."

6. As per Section 22N(1) (b), the normal tenure of the Constabulary is of five years at one place of posting. The general transfer is defined under Section 2(6A) of the Maharashtra Police Act, which is as follows:-

“(6A) “General Transfer” means posting of a Police Personnel in the Police Force from one post, office or Department to another post, office or Department in the month of April and May of every year, [after completion of normal tenure as mentioned in sub-section (1) of section 22N)”

7. In view of above, if the impugned transfer order of the applicant is considered, the same is not issued either in the month of April or May and it is issued before completion of normal tenure of the applicant. Hence the impugned transfer order of the applicant is mid-term and mid-tenure. In view of same, the provisions of Section 22(N)(2) of Maharashtra Police Act would come into play, which is as follows:-

“22N (2). In addition to the grounds mentioned in sub-section (1), in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority shall make mid-term transfer of any Police Personnel of the Police Force.”

[Explanation.- For the purposes of this sub-section, the expression “Competent Authority” shall mean:-

Police Personnel	Competent Authority
(a) Officers of the Indian Police Service	Chief Minister;
(b) Maharashtra Police Service	Home Minister;

Officers of and above the rank of Deputy Superintendent of Police.

- (c) Police Personnel up to the rank of Police Inspector for transfer out of the respective Range or Commissionerate or Specialized Agency. Police Establishment Board No.2;
- (d) Police Personnel up to the rank of Police Inspector for transfer within the respective Range, Commissionerate or Specialized Agency. Police Establishment Boards at the Level of Range, Commissionerate or Specialized Agency, as the case may be;
- (e) Police Personnel up to the rank of Police Inspector for transfer within the District. Police Establishment Board at district Level:

Provided that, in case of any serious complaint, irregularity, law and other problem the highest Competent Authority can make the transfer of any Police Personnel without any recommendation of the concerned Police Establishment Board.]

8. As per the abovesaid provisions, the respondents have to establish that mid-term transfer order is issued by the Competent Authority as exceptional case, in public interest and on account of administrative exigencies. As per the provision of Sub Rule 2 of Section 22N of Maharashtra Police Act, the Competent Authority for midterm transfer is the Police Establishment Board at District Level.

9. In view of above, if the impugned transfer order of the applicant dated 22.02.2021 (Annex. 'A-7') is perused, it is

seen that the case of the applicant in view of the default report/enquiry report was placed before the District Police Establishment Board and after approval, the transfer order of the applicant is effected as exceptional case, in public interest and on account of administrative exigencies. Hence, so far as the competent authority for transfer of the applicant is concerned, there is no contravention. However, it is to be seen as to whether the transfer order is issued in proper perspective as exceptional case, in public interest and on account of administrative exigencies.

10. In this regard the learned Advocate for the applicant has placed reliance on the citation of the Hon'ble Apex Court in the matter of **Somesh Tiwari Vs. Union of India and Ors.** reported in (2009) 2 Supreme Court Cases 592. In the said citation case there was anonymous complaint against the appellant, which was investigated by departmental authorities, but nothing adverse was found against the appellant, yet he was transferred from Bhopal to Shillong. He resisted his transfer and did not move out of Bhopal. Subsequently, another transfer order dated 28.12.2005 was passed transferring the appellant to Ahmedabad. He contested the said order also. The learned Administrative

Tribunal dismissed his application, but the Hon'ble High Court found that transfer order dated 28.12.2005 was not a bona fide exercise of power and therefore declared it invalid, but the Hon'ble High Court taking note of the fact that the appellant had not obeyed the transfer order and continued to stay in Bhopal, denied him salary for the period commencing fifteen days after 28.12.2005 till he rejoined duty at Bhopal station. Appellant challenged the said direction of the Hon'ble High Court before the Hon'ble Supreme Court.

The Hon'ble Supreme Court considered validity of appellant's transfer out of Bhopal as well as denial of salary to him. The Hon'ble Supreme court also took note of internal notings in official files which showed that Government itself admitted that appellant's transfer to Shillong was a harsh posting and his second transfer to Ahmedabad was considered as "less harsh posting". The question was whether appellant's transfer in the facts and circumstances of the case was a bona fide exercise of power. Second issue was whether appellant should have been denied salary for the period he did not obey second transfer order. In paragraph No.16 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.”

11. In the background of the ratio laid down in the abovesaid citation case, if the facts of the present case are considered, it can be seen that the respondent No.2 i.e. the Superintendent of Police, Beed after receiving some alleged secrete information that the applicant and two others working in District Traffic Branch, Beed were found visiting Georai often and were collecting money from the illegal sand Transporters, by order dated 18.08.2020 (Annex. 'A-2') directed the Additional Superintendent of Police, Ambajogai to

conduct an enquiry and submit report. During pendency of the said enquiry, the applicant and two others were temporarily transferred from District Traffic Branch, Beed to Police Head Quarter, Beed by another order dated 18.08.2022 (Annex. 'A-3'). The Additional Superintendent of Police, Ambajogai submitted his report dated 18.12.2021 (Annex. 'R-2') to the respondent No.2 stating therein that no substance was found in the allegation of accepting money from illegal sand transporters made against the applicant and two others, but it was found on the basis of CDR that the applicant and one Jaybhaye were found visiting Georai often.

12. In view of the abovesaid report dated 18.12.2021 (Annex. 'R-2'), the respondent No.2 issued show cause notice dated 10.02.2021 (Annex. 'A-5') to the applicant as to why his two annual increments should not be withheld for frequently leaving Head Quarter without permission and going to Georai. The applicant filed his detailed reply (Annex. 'A-6') to the show cause notice. In view of the same, it appears that the respondent No.2 has already started disciplinary action against the applicant, which is punitive in nature. At the same time, the impugned transfer order of the applicant dated 22.02.2021 (Annex. 'A-7') is also issued. It is a fact

that no substance is found in the allegations of accepting money of the applicant and two others from illegal transporters of sand operating at Georai. The said aspect is not found to be considered by the District Police Establishment Bard while giving approval to the transfer of the applicant. What is against the applicant is said to be leaving Head Quarter frequently to go to Georia. The applicant has given his explanation to the show cause notice stating that due to domestic reasons, he was required to go to Georai to meet his estranged wife, who at that time had gone to his uncle's place due to domestic dispute.

13. In the circumstances, the ratio laid down in the abovesaid citation of the Hon'ble Apex Court in **Somesh Tiwari Vs. Union of India and Ors.** would be applicable. The impugned transfer order prima-facie seems to be punitive and *mala fide* in nature. In such circumstances, the said impugned transfer order of the applicant cannot be said to be in consonance with the requirement of provisions of Section 22N (2) of the Maharashtra Police Act in its proper perspective. I, therefore, hold that the impugned transfer order of the applicant is not sustainable in the eyes of law

and therefore the same is required to be quashed and set aside and direct the respondents to repost the applicant at the earlier place within stipulated period. I, therefore, proceed to pass the following order:-

ORDER

The Original Application is allowed in following terms:-

- (A) The impugned transfer order of the applicant dated 22.02.2021 (Annex. 'A-7') issued by the respondent No.2 is hereby quashed and set aside.
- (B) The respondent No.2 is directed to repost the applicant on the post of Police Constable at District Transport Branch, Beed within the period of one month from the date of this order.
- (C) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date :13.09.2022
SAS O.A.151/2021