

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 192 OF 2020

DISTRICT: - JALGAON.

Milind S/o. Ashok Bhamre,
Age-46 years, Occu. : Service as
Police Constable at Amalner Police
Station, Tq. Amalner,
District : Jalgaon.

.. APPLICANT.

V E R S U S

1) The Superintendent of Police,
7' Jilha Peth, Mahatma Gandhi Road,
Jalgaon, District Jalgaon 425001.

.. RESPONDENT.

APPEARANCE : Shri. V.B. Wagh, learned Advocate for
the applicant.
: Shri M.P. Gude – learned Presenting
Officer for the respondent.

CORAM : **A.P. KURHEKAR, MEMBER (J)**

DATE : **17.02.2021**

O R D E R

The applicant has challenged the transfer order dated 30.06.2020 passed by the Superintendent of Police, Jalgaon; thereby transferring the applicant from Amalner Police Station, Dist. Jalgaon to the Police Head Quarter, Jalgaon,

Dist. Jalgaon invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

At the time of impugned order, the applicant was serving in the cadre of Police Constable on the establishment of respondent. By an order dated 10.06.2019 he was transferred at Amalner Police Station and accordingly he joined there. He being Police personnel entitled for 5 years' tenure at a post in terms of the Maharashtra Police Act. However, abruptly the respondent by order dated 30.06.2020 transferred him at Police Headquarter, Jalgaon in view of default report dated 29.04.2020 submitted by the Additional Superintendent of Police, Chalisgaon. The applicant has challenged the transfer order dated 30.06.2020 contending that it is midterm as well as mid-tenure transfer and in contravention of provisions of Section 22 (2) of the Maharashtra Police Act and more particularly Section 22-N (2) of the Maharashtra Police Act.

3. Learned Advocate for the applicant has challenged the impugned transfer order contending that the respondent is

not competent to transfer the applicant in midterm and mid – tenure and it is only Police Establishment Board, which is competent authority for such midterm and mid-tenure transfer if case is made out for such transfer Under Section 22 N & 22 N(2) of the Maharashtra Police Act. He has pointed out that on the basis of alleged default report the applicant is transferred under the garb of temporary deputation at Police Headquarter but it amounts to transfer and unsustainable in law. He has further pointed out that subsequent *ex post facto* approval of PEB as per letter dated 28.09.2020 doesn't legalize transfer of the applicant. On these premises he prayed to quash and set aside the impugned transfer order dated 30.06.2020.

4. Per contra, learned Presenting Officer for the respondent sought to contend that there are serious allegations of misconduct against the applicant, and in view of default report submitted by the Additional Superintendent of Police, Chalisgaon on 30.04.2020 the respondent thought it appropriate to transfer the applicant to maintain discipline and accordingly he was deputed at Headquarter, Jalgaon. He further sought to justify the transfer order contending that it

is approved by PEB at district level in its meeting dated 28.09.2020.

5. Undisputedly the applicant has not completed 5 years tenure at Police Station Amalner since he was posted there by an order dated 10.06.2019. As such, there is no denying that the impugned transfer order is midterm and mid-tenure.

6. True, there seems to be complaint of misconduct against the applicant. One news was published in Jalgaon Lokmat under the caption of “अमळनेरच्या पोलीसांची बारमालका सोबत मद्य पार्टी”. Admittedly, there was no mention of name of any police personnel in the said news. However, the applicant allegedly circulated the same news on Whatsapp group and it allegedly maligned the image of Police Department. On that count Additional Superintendent of Police, Chalisgaon submitted default report on 30.04.2020 on the basis of which the applicant was transferred to Police Headquarter at Jalgaon.

7. In transfer order dated 30.06.2020 there is reference of default report submitted by the Additional Superintendent of Police, Chalisgaon dated 30.04.2020 and on the basis of

which he is shown deployed at Police Headquarter at Jalgaon till further orders. What is material to note that no specific period of such alleged deployment is mentioned. In terms of Maharashtra Police Act, in view of the posting of the applicant at Amalner by order dated 10.06.2019, he was entitled to 5 years' tenure at Amalner. However, he has displaced under the garb of deployment, which has trappings of transfer order. One can understand if there is deployment of short period for certain purpose of inadequate staff bandobast etc. However, in the present case the applicant is displaced on the basis of alleged default report. This being the position in the eye of law it amounts to transfer, which cannot be done without due process of law namely observance of Section 22N (2) of the Maharashtra Police Act, which is as follows: -

“(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 :

8. Thus, it is an exceptional case in public interest or on account of administrative exigency, the competent authority viz. PEB at the District level is competent for such midterm transfer of any Police personnel of the Police personnel.

However, in the present case the S.P., Jalgaon transferred the applicant under the garb of deployment. If such orders are allowed to stand it would give license to the respondent and very purpose of the provisions contained in the Maharashtra Police Act incorporated on the basis of the directions given by the Hon'ble Supreme Court in the case of **Prakashsingh & Ors. Vs. Union of India & Ors.** reported at **(2006) 8 SSC 1** would be frustrated.

9. There shall be PEB at District level as provided U/s 22-J(1) of the Maharashtra Police Act, which is as under :-

22J-1. (1) *The State Government shall, by notification in the Official Gazette, constitute for the purpose of this Act, a Board to be called the Police Establishment Board at District Level.*

(2) *The Police Establishment Board at District Level shall consist of the following members, namely :-*

- (a) *District Superintendent of Police –
Chairperson;*
- (b) *Senior most Additional Superintendent of
Police -- Member*
- (c) *Deputy Superintendent of Police
(Head Quarter) -- Member-Secretary*

Provide that, if none of the aforesaid members is from the Backward Class, then the District Superintendent of Police shall appoint an additional member of the rank of the Deputy Superintendent of Police belonging to such class.

Explanation – For the purpose of this sub-section, the expression “Backward Class” means the Schedule Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis) Nomadic Tribes, Special Backward Category and Other Backward Classes.”

10. As such, there has to be notification of PEB in the official gazette, which is completely missing in the present case, which is also fatal to the respondents since it is mandatory requirement.

11. The respondents tried to justify the impugned order contending that PEB has given its approval subsequently on 28.9.2020. As such, attempt is made that there is *ex-post-facto* sanction to the transfer. Needless to mention that there is no such concept of *ex-post-facto* approval of PEB after issuance of transfer order. Therefore, on this count alone in absence of prior recommendation of PEB, the transfer order is not at all sustainable.

12. Apart, what is material to note that PEB in its meeting allegedly held on 28.9.2020 even did not discuss the grounds or the reasons for the transfer of the applicant. Perusal of PEB meeting dated 28.9.2020 (Paper book page 62 of O.A.) reveals that 27 Police Personnel including the applicant were

transferred and many of them were transferred on request. It is stated in the letter that the PEB in its meeting had accepted the request transfer of some of the Police personnel and some are transferred on administrative ground. Out of 27 Police personnel how many police personnel are transferred on administrative ground and how are transferred on request is not made clear. The communication as well as the list of Police personnel attached to the letter is totally silent. It is crystal clear that the aspect of alleged default report was not at all placed much less considered by the PEB. There is absolutely no reference of the alleged default report in the approval of PEB.

13. Indeed, if Police personnel is transferred midterm PEB is under obligation to record its reason as to how the transfer is necessitated though elaborate reasons are not required. There has to be some reasons to show that the matter was placed before the PEB and same has been considered to invoke the provisions of Section 22(2) of the Maharashtra Police Act. This being the position it cannot be said that the PEB had given approval for midterm and mid tenure transfer of the applicant on the basis of the default report.

14. Totality of above discussion leads me to conclude that the impugned order is not in consonance with the Section 22-N(2) of the Maharashtra Police Act. However, it is made clear that the respondents are at liberty to invoke the provisions of Section 22(2) of the Maharashtra Police Act afresh, if found necessary. However, at this stage the impugned transfer order being totally bad in law, deserves to be quashed and set aside. Hence the following order :-

ORDER

- (i) The Original Application is allowed.
- (ii) The impugned transfer order dated 30.6.2020 is quashed and set aside.
- (iii) The respondents are directed to repost the applicant at his earlier post within a period of 2 weeks from today.
- (iv) There shall be no order as to costs.

MEMBER (J)

PLACE : AURANGABAD.

DATE : 17.02.2021

O.A.NO.192-2020(SB-Transfer)-HDD-2021