

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 14 of 2018
WITH CIVIL APPLICATION NO.19 of 2018 (S.B.)

Shri Damdeo S/o Wamanrao Mandalwar,
Aged 54 years, Occ : Service,
R/o C/o P.S. Lakhandur, Distt. Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
through Secretary, Home Department,
Mantralaya, Mumbai-32.
- 2) The Superintendent of Police,
Bhandara.
- 3) The B.D. Bansode,
Age : Major, Occu : Service,
R/o C/o Control Office, Bhandara.

Respondents

Shri G.G. Bade, Advocate for the applicant.

Shri M.I. Khan, learned P.O. for the respondent nos.1&2.

S/Shri S.M. Khan, A.A. Khwaja, Advocates for respondent no.3.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 9th day of March,2018)

Heard Shri G.G. Bade, Id. counsel for the applicant and
Shri M.I. Khan, Id. P.O. for respondent nos. 1&2. None for respondent
no.3.

2. The applicant is a Police Inspector and was transferred to Lakhandur, District Bhandara on 28/07/2017. He joined at Lakhandur on 07/08/2017 and since then he is at Lakhandur. Vide impugned order dated 05/01/2018 issued by respondent no.2, the Superintendent of Police, Bhandara the applicant has been transferred to Bhandara as Reader to the Superintendent of Police, Bhandara. According to the applicant, the said order is contrary to Section 22N(C) of the Maharashtra Police (Amended) Act, 1951. The applicant has not completed his normal tenure of two years at Lakhandur and therefore the same needs to be quashed and set aside.

3. On 08/01/2018 when the matter came up before this Tribunal, this Tribunal observed that the order is prima facie mid-term and mid tenure and therefore the respondent no.2 was directed not to relieve the applicant, if the applicant was not relieved.

4. During pendency of the O.A. the applicant has preferred the C.A. No. 19/2018 wherein he has stated that though this Tribunal has passed an order that the applicant shall not be relieved, the applicant has been relieved on 16/01/2018 which is against the order passed by this Tribunal and therefore the respondent no.2 be directed to allow the applicant to resume his duties as Police Inspector at Police Station, Lakhandur in view of the order dated 08/01/2018. The O.A. and C.A. are being disposed of by this common order.

5. The material questions arise in O.A. and C.A. are that (1) Whether the impugned order of transfer of the applicant from Lakhandur to

Head Quarter, Bhandara as Reader to Superintendent of Police, Bhandara is against the provisions of Maharashtra Police (Amended) Act, 1951 and (2) Whether the applicant has been relieved wrongly in spite of the order dated 08/01/2018 directing the respondent no.2 not to relieve him.

6. So far as the impugned order dated 05/01/2018 is concerned, prima facie it is admitted fact that the said order has not been issued in the month of April / May of the year and therefore it is mid-term order. The applicant has placed on record the copy of the order dated 05/08/2017 which is at Annex-A-3 from which it seems that the applicant was transferred to Lakhandur from Head Quarter, Bhandara on 05/08/2017, whereas, the impugned order of his transfer again to Head Quarter, Bhandara is dated 05/01/2018 and therefore the impugned order of transfer is mid tenure also. However this proposition may not be applicable under Maharashtra Police Act. It is, therefore, necessary to see as to whether such order has been passed as per the provisions under the Maharashtra Police Act.

7. In the reply-affidavit filed on behalf of respondent no.2, it is stated that the approval of the Police Establishment Board at District level was taken for transfer of the applicant. The learned P.O. has placed on record the Minutes of meeting in which the sanction was granted to the applicant's transfer. The said meeting of dated 05/01/2018 and its copy is placed on record at P.B. page no.47. It seems that in the meeting dated 05/01/2018 as many as 5 Police Officers in Bhandara District were

transferred. In the said minutes it has been stated that the officers are being transferred on administrative ground. The learned counsel for the applicant submits that the order of transfer of the applicant is against the provisions of Section 22(N) (C) of the Maharashtra Police (amended) Act. However the transfer as per Section 22J-2 of the Maharashtra Police Act provides for the functions of Police Establishment Board at district level. The said section reads as under :-

“22-J-2 – Functions of Police Establishment Board at District Level–

The Police Establishment Board at District Level shall perform the following functions, namely –

(a) The Board shall decide all transfers, postings of Police Personnel to the rank of Police Inspector within the District Police Force.

(b) The Board shall be authorised to make appropriate recommendations to the Police Establishment Board no.2 regarding the postings and transfers out of the District.

Explanation – *For the purposes of this section, the expression “Police Personnel” means a Police Personnel to the rank of Police Inspector.”*

8. The plain reading of aforesaid provision clearly shows that as per Sub Clause (a) of the Section 22J-2 the Police Establishment Board at District level shall decide all transfers, postings of Police Personnel to the rank of Police Inspector within the District Police Force. This clearly shows that the Police Establishment Board is authorised to issue any transfer order at any time within District. Such transfer order however shall pertain to the Police Personnel upto the rank of Police Inspector. If the Board wants that any Officer shall be transferred out of district, it may forward recommendation to that effect to the Police Establishment Board no.2.

9. In the impugned order of transfer it has been stated that the order has been issued on getting approval from the Police Establishment Board and it has also been mentioned that the said order is issued in the interest of administration. The applicant is not the only person who is transferred, but there are in all 5 officers who have been transferred including the applicant. In such circumstances, I do not find any illegality in the impugned order. The word 'all transfers' in Section 22J-2 (i) includes transfer at any time, whether regular transfers or mid-term transfer.

10. The Minutes of the meeting at P.B. page no.47 dated 05/01/2018 also shows that it was mentioned that the transfer of the Officers was in the interest of administration and there is no need to go into the merits as to whether the administrative exigency was in existence or not as it is for the competent authority to decide such exigency.

11. The learned counsel for the applicant submits that the applicant has filed representation and requested that he be transferred to Nagpur since his children were taking education at Nagpur and therefore such transfer would have been out of District and therefore the respondent no.2 or Establishment Board at District level was having no authority to transfer the applicant. The learned counsel for the applicant has invited my attention to the representation filed by applicant to the Special Inspector General of Police, Nagpur letter dated 05/01/2018 which is at P.B. page no.25-A. It is material to note that this representation has been filed on the

date of impugned order of transfer passed by the Establishment Board and not prior to that.

12. The learned P.O. invited my attention to para-8 of the reply-affidavit filed on behalf of respondent no.2. In para-8 the respondent no.2 has stated as under :-

“(8) It is again submitted that the transfer order of the applicant issued after due considerations as per request made by applicant the same request had been made during the annual inspection of SDPO Office, Pauni, before all senior officers and Special Inspector General of Police, Nagpur Range, Nagpur. Thereafter, the applicant was called and given due information about the decision taken by District Police Establishment Board, to which applicant showed his willingness and acceptance and expressed due satisfaction. The applicant has restored to in disciplinary acts, despite being relieved from Police Station, Lakhandur and knowing that the respondent no.3 has taken over charge from 06/01/2018 vide Station Diary Entry no.26/2018 dated 06/01/2018. The copy of the abovementioned joining entry is annexed at Annex-R-2-III.”

13. The learned counsel for the applicant submits that in the additional affidavit the applicant has denied that he was called by the Establishment Board or that he made any request before the Annual Inspection of SDPO, Pauni and before all senior Officers and the Special Inspector General of Police, Nagpur as stated in the para-8 of the reply-affidavit. I am unable to accept the contention of the learned counsel for the applicant for simple reason that no malafides are alleged by the applicant against the competent authorities and there is no reason to disbelieve the statement made by an Officer like the Superintendent of

Police in the reply-affidavit. Had it been a fact that the applicant was not called by the competent authority, there was no reason for applicant to file immediately another representation dated 5/1/2018, i.e., on the date of impugned order. Admittedly the said representation dated 5/1/2018 is pending. It is addressed to the Special Inspector General of Police, Nagpur who is not party in this O.A. and it is expected that the Special Inspector General of Police will take appropriate decision on the said representation in due course or in any case at the time of general annual transfers of 2018 according to its own merits.

14. So far as the C.A. is concerned, it is stated that though the applicant was directed not to be relieved vide order dated 08/01/2018 passed by this Tribunal, the respondent no.2 has relieved the applicant on 16/01/2018. It is therefore stated that the relieving order is nothing, but Contempt of Court and therefore the applicant claims that he shall be allowed to resume duty at Lakhandur. The learned counsel for the applicant submits that the applicant was on leave and therefore the impugned order of transfer was not served on him. It is stated that the applicant has been relieved ex-party when he was on medical leave. The learned P.O. has invited my attention to Telegraphic intimation to applicant wherefrom it seems that the applicant was on casual leave only for one day on 07/01/2018 and said leave was extended for another one day on the condition that he will not get extended the leave. The said communication is at Annex-R-2IV at P.B. page no.28 shows that the applicant's charge was handed over to Shri B.D. Bansode (R/3) on 06/01/2018 itself. While

obtaining the interim order on 08/01/2018, the applicant did not disclose the fact that he proceeded on leave on 05/01/2018 after getting transfer order. He has also not disclosed the fact that his charge was kept with Shri Bansode (R/3) and therefore the order was passed that in case the applicant is not relieved, he may not be relieved. It is therefore clear that the applicant has also suppressed the material fact while obtaining interim stay. Obviously the applicant might have proceeded on leave only with intention to obtain some relief from this Tribunal under pretext that he was proceeding on leave for one day and now he is saying that he was on medical leave. The conduct of the applicant, therefore, seems to be not bonafide.

15. The learned P.O. submits that the applicant was claiming transfer from Lakhandur to Nagpur, but it was not within the jurisdiction of respondent no.2 and therefore the applicant was called by the Competent Board in the meeting dated 5/1/2018 wherein the applicant agreed for his transfer to Bhandara. Admittedly Bhandara is nearer to Nagpur than Lakhandur and the possibility that the applicant might have agreed for such transfer and considering the convenience and consent of the applicant he might have been transferred to Bhandara cannot be ruled out though there is no written communication in this regard. However there is no reason to disbelieve the contention of para-8 of the reply-affidavit of respondent no.2, as already stated.

16. The learned P.O. has placed reliance on the Judgment delivered by this Tribunal in O.A.No. 467/2017 in the case of **Vazeer Hussain Sheikh Vs. State of Maharashtra & Ors.**, delivered on 12/10/2017. In the said Judgment this Tribunal has observed that there is no doubt that the Competent Police Establishment Board can transfer any Officer in the interest of administration and considering the administrative exigency and it is not necessary for this Tribunal to go into details as to decision taken by the competent authority to transfer the applicant from one branch to other branch. The learned P.O. submits that the said view has been confirmed by the Hon'ble High Court.

17. The learned counsel for the applicant has placed reliance on the Judgment reported in 2015 (2) Mh.L.J., 679 in the case of **State of Maharashtra & Ors. Vs. Dr. (Ms.) Padmashri Shriram Bainade & Ors.**, and Judgment reported in 2013 (3) Mh.L.J., 464 in the case of **Kishor Shridharrao Mhaske Vs. Maharashtra OBC Finance & Development Corporation, Mumbai & Ors.**, I have carefully gone through these Judgments. Both these Judgments are pertaining to Transfers Act of, 2005. Admittedly the transfers of the Police Officers are governed by Maharashtra Police Act and not by the Transfers Act. The facts in the said cases are not analogues that in the present O.A.

18. In view of the discussion in forgoing paras, I am therefore satisfied that impugned order of transfer of the applicant dated 5/1/2018

issued by the respondent no.2 is legal and proper and there is no merits in the O.A. Hence, the following order :-

ORDER

(i) The O.A. and C.A. No. 19/2018 stand dismissed with no order as to costs.

(ii) The applicant was protected, in case he was not relieved vide order dated 08/01/2018, and thereafter vide order dated 18/01/2018, the respondent no.2 was directed not to insist the applicant to join at Head Quarter, Bhandara. In view of the fact that the order passed by the respondent no.2 is legal, the applicant is directed to immediately join at Head Quarter, Bhandara and in any case on or before 12/03/2018. In case the applicant joins as directed, his non joining from the date of transfer till 12/03/2018 may be treated as compulsory waiting period. No order as to costs.

Dated :- 09/03/2018.

**(J.D. Kulkarni)
Vice-Chairman (J).**