

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH AT NAGPUR

ORIGINAL APPLICATION NO.309/2016.

Pradeep Vasant Pullarwar,
Aged about 47 years,
Occ-Service as A.P.I.,
R/o C/o Anti Corruption Bureau,
Bhandara.

Applicant

-Versus-

1. State of Maharashtra,
Through its Additional Chief Secretary,
Department of Home,
Mantralaya, Mumbai-400 032.
2. The Director General of Police (Admn.) (M.S.),
Colaba, Mumbai.
3. The Dy. Commissioner of Police/
The Superintendent of Police,
Anti Corruption Bureau,
Civil Lines, Nagpur.

Respondents.

Shri S.P. Palshikar, Advocate for the applicants.

Shri A.M. Ghogre, P.O. for the respondents.

CORAM: S.S. Hingne, Member (J)

Date:- 6th October, 2016.

Oral order

With the consent of learned counsel for the parties,
matter is heard and decided at the admission stage.

2. The applicant, an Assistant Police Inspector having one stage promotion with the Specialized Branch and working as a Police Inspector in the Anti Corruption Bureau (A.C.B.), has impugned

the order dated 24.5.2016 (A.1, P.23) by which he is transferred from Anti Corruption Bureau, Bhandara to Anti Corruption Bureau, Gadchiroli.

3. Heard Shri S.P. Palshikar, the learned counsel for the applicant and Shri A.M. Ghogre, the learned P.O. for the respondents.

4. The applicant was posted in A.C.B., Bhadara vide order dated 6.7.2015 (A.3, P.27). However, before completion of tenure, he is transferred by impugned order within a year.

5. According to the respondents, there are several complaints against the applicant and his work was not upto the mark and, therefore, in the public interest the applicant is transferred for the administrative exigency.

6. According to the learned counsel for the applicant, the order is not legal and valid as per the provisions in Chapter (2-A) of the Act not having issued by Competent Authority. Chapter (2-A) is introduced by amendment and the provisions regulating the transfer are incorporated u/s 22N of the Act. The learned counsel for the applicant in support of the submission has relied on the judgment rendered by the Member of this Tribunal at Principal Seat at Mumbai in **O.A. No. 459/2016 decided on 27.7.2016 Swapnil Dhule V/s State of Maharashtra and other O.A. Nos. 466 and 467 of 2016 Arun Pawar V/s State of Maharashtra decided on 24.5.2016**, wherein it is held

that the State Government is the only authority to issue transfer orders in case of mid-tenure transfers.

7. So far as factual aspects are concerned, in the case in hand, the order is mid-tenure. The bird's eye view on the Chapter (2-A) of the Act evinces that the transfers are classified into three categories under the Act.

(i) General transfers, (ii) Mid-term transfers (iii)

Transfers prior to completion of normal tenure which can be termed as "mid-tenure transfers".

The term "General transfer" is defined in section 2 (6A) as under:

"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].

The term "mid-term transfer" is defined in section 2 (6B) as under:

"Mid-tenure transfer" means transfer of a Police Personnel in the Police Force other than the General Transfer".

The term "transfer before completion of tenure" is not defined in the Act. But from the very language, it can be said that it is a transfer before completion of normal tenure.

8. Under Section 22N (1) (e), the competent authorities are mentioned to issue general transfer orders. The applicant originally being a Police Inspector, competent authority to transfer the Police Inspector is the Police Establishment Board-2. No doubt, the applicant is working as Dy. Superintendent of Police, but that is on one such term. As such his holding of the original post is to be considered. The proviso regulating the transfer effected before completion of normal tenure thereof under Section 22N (1) (e) runs as under:

“22N: Normal tenure of Police Personnel, and Competent Authority.

(1) (e): For Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and the Police Inspector in Specialized Agencies a normal tenure shall be of three years.

The Competent Authority for the general transfer shall be follows namely:-

<u>Police Personnel</u>	<u>Competent Authority</u>
(a)Officers of Indian Police Service	: Chief Minister.
(b)Maharashtra Police Service Officers of and above the rank of Dy. S.P.	Home Minister.
(a) Officers upto Police Inspector	(a) Police Establishment Board No.2.

- (b) Police Establishment Board at Range Level.
- (c) Police Establishment Board at Commissionerate Level.
- (d) Police Establishment Board at District Level.
- (e) Police Establishment Board at the level Specialized Agency.

9. Section 22N (2) regulating the aspect of mid term transfer which runs as under:

“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 :-

<u>Police Personnel</u>	<u>Competent Authority</u>
(a) Officers of Indian Police Service	: Chief Minister.
(b) Maharashtra Police Service Officers of and above the rank of Dy. S.P.	Home Minister.”

10. From the above legal provision, it is manifest that in case of general transfer, the Competent Authority to issue transfer order is Police Establishment Board No.2. As per proviso, the State Government is the authority to issue transfer orders prior to completion of normal tenure. As per section 22N (2), again the Police Establishment Board No.2 is the authority to issue mid term transfer orders. Proviso to section 22N (2) runs as under:

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

11. From this, it is obvious that the highest Competent Authority can make transfer without recommendation of the concerned Police Establishment Board in case of any serious complaint, irregularity and law and order problem. This is enabling provision vesting the power to the highest Competent Authority without referring the matter to the Board, but in certain exigencies.

12. In the case in hand, the order is issued by the Director General of Police, (A.C.B.) (A.3, P.27) and on that basis in the case of transfer, the Police Establishment Board at the level of Specialized Agencies is the Competent Authority as per section 22N of

the Act. The order is not issued by the said authority, but by the D.G.P.

13. The Police Establishment Board came into existence as per the directions of the Apex Court of the land. Consequently the Act has undergone drastic changes in regulating the matters of transfer. From the above quoted legal provision, it is crystal clear that the three authorities are mentioned in the cases of transfer covering all types of transfers. Thus the amendments are made with certain objects for the improvement in the Police Department. Powers of transfer are vested with certain limited authorities, that too in certain contingencies and exigencies. When the transfer order is to be issued by the Police Establishment Board and the authorities are also named which consist of such Board, the one authority may be a Head therein cannot alone exercise that power. In effect, exercise of such power by the Director General of Police alone is not legal and valid.

14. Thus the order cannot be legal and void in the eye of law. However, it is also the case of the respondents that the applicant is transferred due to his unsatisfactory performance. He has not laid the trap. The memos were issued to him. His work was found poor and unsatisfactory. He is also lacking professionalism in the work, since he is required to work in the Specialized Wing like A.C.B.

Consequently, the transfer order is issued in public interest and for administrative exigency.

15. It is well settled that paramount consideration in the Government service is to be given to the work so that the public and Government work should not suffer. If any Government servant is lethargic and inefficient and neglects the work, he can be transferred and such a transfer cannot be punitive, but a panacea for the administration and public interest. As laid down in the case **Union of India and others V/s Jandardhan Debanath and another** by the Summit Court of the land on 13.2.2014 on which the learned P.O. has relied on. Their Lordships observed thus:

“The manner, nature and extent of exercise to be undertaken by Courts / Tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions, status, service prospects financially and same yardstick, norms or standards cannot be applied to all category of cases. Transfers unless they involve any such adverse impact or visits the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be

left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration”.

Additionally, it was pointed out by learned counsel for the Union of India that as indicated in the special leave petition itself there was no question of any loss of seniority or promotional prospects. These are the aspects which can be gone into in an appropriate proceedings, if at all there is any adverse order in the matter of seniority or promotion. It was also submitted that transfer was within the same circle i.e. the North Eastern Circle and therefore, the question of any seniority getting affected by the transfer prima facie does not arise”.

16. The applicant has filed some documents to demonstrate that he is prompt in his work and has given a Chart to show that what type of work he did. The data of certain dates are at Page Nos. 69 to 72. Every Government servant does some work every day and he cannot sit idle for the whole day. Even if that work is not upto the mark or as required, it cannot be said that the employee is efficient in his work. The higher authority can have the entire data of

the employees before it so also the nature of the pending work or the work to be done. Considering the performance of each employee, in the light of work done, the authority can assess whether the performance of a particular employee is upto the mark or there is any dereliction of duty. By mere filing such a Chart, the Court cannot reach to the conclusion that the particular employee is very efficient. Not only that but it reveals from the communication dated 24.7.2015 (P.73) that the D.G.P. has expressed his displeasure about the work where the applicant was working. The Superintendent of Police vide communication dated 2.4.2016 had also apprised the D.G.P. about negligent attitude and unsatisfactory work of the applicant. The another Superintendent of Police, by filing communication dated 11.1.2016 has given details how the applicant works negligent. The explanation given by the applicant was not found satisfactory. The applicant has relied on the C.Rs from 8.6.2015 to 14.1.2016 as "very good" (P.49). However, one C.R. for the short duration cannot be sufficient particularly when his assessment of work is done by different authorities as discussed above.

17. Needless to mention that the Court cannot reach to any concrete conclusion to assess the performance of the employee for want of sufficient material available before it. Higher authority can observe day to day working and can assess the performance of the

employee. He is the best Judge for that work. Unless some malice or personal grievance is expressed, assessment done by the higher authority cannot be ignored. There is no an iota of material on record alleging malafides personally against the superior higher authority so as to ignore their remarks. The Court cannot sit as an appellate authority to re-assess its opinion unless very clinching and cogent material is placed. No such data is made available by the applicant. Consequently, reports made by the authorities cannot be ignored.

18. As stated earlier, the transfer can be a panacea in such matters and it can be with a view to give one opportunity to employee to improve. From these factual aspects, transfer order cannot be assailed. When the Govt. work and public interest is suffered, transfers made on such grounds can be a transfer in public interest and it can be an administrative exigency.

19. However, in the light of foregoing discussion, order cannot be labelled as legal and valid. Since it is issued in public interest, it is made clear that the respondents are at liberty to issue fresh order following due procedure.

20. Consequently, the O.A. is disposed of in the following terms:

(i) The O.A. is allowed.

(ii) impugned transfer order dated 24.5.2016 is quashed.

(iii) The respondents are at liberty to issue fresh transfer order, if they desire following due procedure of law.

(iv) No order as to costs.

(S.S.Hingne)
Member(J)

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