

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 404 OF 2017**

DISTRICT : PUNE

Mrs Vaishali Vikrant Jadhav,)
Working as Assistant Commissioner of Police)
Residing at Kirti Elegant, Flat no. 4,)
Mhalunge, Pune.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Chief Secretary,)
Mantralaya, Mumbai 400 032.)
2. The Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
3. The Commissioner of Police,)
Police Commissioner Office, Camp,)
Pune 411 001.)
4. Shri Vikram B. Patil,)
Assistant Commissioner of Police,)
Special Branch No. 1,)
Police Commissioner Office, Camp,)
Pune 411 001.)...**Respondents**

Smt Punam Mahajan, learned advocate for the Applicant.

Shri N.K Rajpurohit, learned Presenting Officer for the Respondents no 1 to 3.

Shri R.S Samant, learned advocate for Respondent no. 4.



CORAM : Shri Justice A.H Joshi (Chairman)

RESERVED ON : 06.12.2017

PRONOUNCED ON : 20.12.2017

ORDER

1. Heard Smt Punam Mahajan, learned advocate for the Applicant, Shri N.K Rajpurohit, learned Presenting Officer for the Respondents no 1 to 3 and Shri R.S Samant, learned advocate for Respondent no. 4.
2. By the present Original Application, the applicant has challenged order of posting by which applicant is posted/transferred from her last posting at Chaturshringi Division Pune as A.C.P (Administration), and in her place Respondent no. 4 Shri Vikrma B. Patil, is posted by transferring him from Special Branch No. 1.
3. Case proceeds on following admitted background:-
 - (a) Applicant as well as Respondent no. 4 have not completed two years tenure which is statutory duration.
 - (b) Both of them are transferred / posted within the establishment of Pune Commissionerate.
 - (c) Competent Authority to transfer as averred by the applicant as provided in Section 22N(1)(b) and 22N(2)(b) is Home Minister.
 - (d) The impugned order is neither passed, nor passed upon approval of Home Minister.
 - (e) Admittedly, the Commissioner of Police, Pune has sent a report to the Director General of Police, Mumbai, which is purportedly adverse/unfavourable to the applicant and so far no action is taken by D.G.P on said report.

(f) The impugned transfer/posting is mid-term and mid-tenure.

4. The impugned order is sought to be justified by the Commissioner of Police, Pune. The justification is recorded in the affidavit in reply, while answering averments contained in paragraphs 6.10 and 6.15.1 to 6.15.4.

5. The contents of reply travels long and long. However, it shall suffice to refer to the averments contained in para 19, which answers para 6.10, alone since it condenses the averments contained in para 22 to para 26 of the affidavit in reply of the Commissioner of Police.

6. Learned Advocate for the applicant has relied on the following judgments:-

- (i) Judgment of Hon'ble Supreme Court in Prakash Singh & others Vs. Union of India & Others, (2006) 8 SCC 1.
- (ii) Judgment of this Tribunal dated 10.3.2016, Shri Rajendra M. Todkar Vs. The State of Maharashtra & Ors, O.A no 609/2015.
- (iii) Judgment of this Tribunal dated 20.11.2015 in Mr Sham Mahadev Sundkar & Ors Vs. The State of Maharashtra & Ors, O.A nos 562/2015 & Ors.
- (iv) Judgment of this Tribunal dated 12.7.2016 in Shri A.R Pwar & Anr Vs. State of Maharashtra & Ors, O.A no 466 & 467/2016.
- (v) Judgment of this Tribunal dated 26.8.2016 in Shri Rajesh S. Devare Vs. The State of Maharashtra & Ors, O.A 555/2016.

7. It is sought to be asserted as has been shown by the Respondents that the issue as to whether the Commissioner of



Police has power to arrange posting within the territory of Commissionerate is no more res-integra and no more open for debate as it is finally adjudicated by a binding precedent of Hon'ble High Court of Judicature at Bombay as decided in Rajan R. Bhogale Vs. State of Maharashtra, Writ Petition No. 10622 of 2013.

8. Perusal of judgment of Hon'ble High Court in case of Rajan R. Bhogale Vs. State of Maharashtra, Writ Petition No. 10622 of 2013, relying on the judgment of Hon'ble Supreme Court and after long discussion, Hon'ble High Court has recorded in paras 26, 27 & 28 as follows:-

"26. To our mind, the observations in the Tribunal's order that even the posting orders have to be issued by Police Commissioner with the permission of the State has no basis in law. The Tribunal is aware that power of internal posting vests in the superior, in this case, the Police Commissioner of Pune and he can exercise all such powers as are conferred in the police commissioner by law. In such circumstances, in matters of posting, the interference by the tribunal was totally uncalled for and wholly unwarranted.

27. The Tribunal completely lost sight of the fact that the documents produced before it would show that the respondent no. 3 reported to the Commissioner, Pune and was firstly appointed as ACP Control Room. Thereafter, he was brought to the post of ACP Special Branch from ACP Control Room. In such circumstances, to urge that he had a vested right to be posted at Wanawadi cannot be accepted. The present petitioner was also ACP Traffic and was transferred as ACP Traffic and was transferred as ACP Wanawadi Division. Therefore, such issues are beyond the purview of the Tribunal dealing with service matters. More so, when the transfer was as ACP, Pune city and in the post of Vitthal Pawar, is an arrangement which confers some rights, yet, the respondent No.3 did not bring in any material to show that he was transferred and/or posted as ACP Wanawadi. He just relied upon the wording of transfer order and claimed the right. If that right could be claimed by such persons, then, the whole concept of transfer and posting would turn upside down and it would mean that transfer and posting are both matters within the exclusive domain of

the State Government. That they are not so and posting can be done by the Pune Police Commissioner is apparent and clarified all through out and even before us.

28. In the above circumstances, we do not find that the Tribunal was justified in allowing the original application and interfering with matters of posting of the officers in the Pune Commissionerate. That has caused grave prejudice not only to the individual officers but results in total miscarriage of justice. The Government Resolutions do not in any manner indicate that posting of Government officers within the division or the commissionerate is a power not vesting with the police commissioner of city but exclusively in the State Government. In such circumstances, by some circuitous reasoning the Tribunal has taken away that power from the commissionerate.”

9. In the result, this Tribunal is guided as well as bounded by the law laid down by the Hon'ble High Court.

10. Disposal of this Original Application does not call for any longer discussion, than what is done before.

11. It is not shown by the applicant that judgment of Hon'ble High Court of Judicature at Bombay in Rajan R. Bhogale Vs. State of Maharashtra, Writ Petition No. 10622 of 2013, supra is either overruled/set aside or distinguished.

12. Hence Original Application has no merit and is dismissed.

Sd/-

(A.H Joshi, J.)
Chairman

Place : Mumbai
Date : 20.12.2017
Dictation taken by : A.K. Nair.