

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 442/2019 (S.B.)

Sanjay Rajaram Gorle,
Aged 53 years, Occ. Service,
R/o Flat No.303, Mayuresh Heights,
Gorakshan Road, Akola.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Chief Secretary,
Home Department, Mantralaya, Mumbai.
- 2) Director General,
Anti Corruption Bureau (Headquarters),
Maharashtra State, Worli, Mumbai.
- 3) Superintendent of Police,
Anti Corruption Bureau,
Amravati Range, Amravati.
- 4) Shri Sharad Shankarrao Memane,
Aged about 50 years,
Deputy Superintendent of Police, Anti
Corruption Bureau, Behind District
Central Bank, Akola-444 001.

Respondents.

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

Shri A.M. Ghogre, P.O. for respondent nos. 1 to 3.

None for respondent No.4.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 3rd September, 2019.

Date of Pronouncement of Judgment : 3rd September, 2019.

JUDGMENT

(Delivered on this 3rd day of September,2019)

Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri A.M. Ghogre, Id. P.O. for respondent nos. 1 to 3. None for respondent no.4.

2. The applicant was appointed as PSI in the year 1999, in year 2005 the applicant was promoted as API and in year 2010 the applicant was promoted as PI.

3. The applicant was sent on deputation vide order dated 5/5/2017 to work as Deputy Superintendent of Police (ACB) and he was posted at Akola. According to the applicant, the minimum tenure of Deputy Superintendent of Police in the Maharashtra Police Force was two years and in ACB this minimum tenure was three years.

4. It is grievance of the applicant that he was on medical leave and during that period the impugned transfer order at Annex-A-2 dated 14/6/2019 was issued and the applicant was transferred in the mid-term before completion of the normal tenure from ACB, Akola to the Headquarters of ACB, Mumbai. The transfer order is mainly attacked on the ground that in the transfer order it is mentioned that it was issued under Section 22 (J) (3) of the Maharashtra Police Act,2005. It is submitted that the transfers of the Police Officers are

governed by Section 22N of the Maharashtra Police Act and Section 22J was not at all applicable.

5. The transfer order is also challenged on the ground that the transfer order is silent, no reason is mentioned, what was the exigency or the administrative reason for the premature mid-term transfer of the applicant. It is submitted that in absence of the reasons the transfer order is illegal and it is in violation of the law. It is submission of the applicant that the applicant was on earned leave from 20/5/2019 to 29/5/2019. Thereafter on medical advice the applicant proceeded on medical leave from 29/5/2019. The applicant was advised four weeks bed rest. It is submission of the applicant that in the impugned order of transfer it is mentioned that the applicant was relieved from this post for joining the new station i.e. ACB Headquarters, Mumbai. It is submitted that though the applicant was on leave the respondent no.4 resumed the duty and this was in violation of the law. It is contention of the applicant that as per Rule-31 of the Maharashtra Civil Services (Joining time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981, the applicant was legally bound to hand over charge of this post to the incoming officer, but it was not done, therefore, the respondent no.4 was permitted to resume the duty in violation of law. It is submission of the applicant that when the applicant was on leave

the respondent no.4 was transferred to Akola as Deputy Superintendent of Police and this order was passed on 14/6/2019. It is submitted that this was malafide exercise of the jurisdiction by the Competent Authority, therefore, the transfer is vitiated.

6. It is contended that this transfer was only to accommodate the respondent no.4 and there was no propriety to transfer the applicant before completion of the normal tenure. On the basis of this it is submitted that the transfer order is illegal. It is contention of the learned counsel for the applicant that the proceeding before the Police Establishment Board was very suspicious. It is submitted that the Meeting of the Police Establishment Board held on 14/6/2019 and one of the Members who wrote the date below his signature was scored and corrected as 14/6/2019. It is submitted that in the proceeding of the Meeting, it is nowhere specifically mentioned what was the urgency to transfer the applicant for the administrative reasons. It is submitted that the proceeding of the Meeting signed by Smt. Seema Mehandale discloses that earlier some other date was mentioned and the date was corrected as 14th. It is submitted that the backdated proceeding of the Meeting was prepared to justify the transfer and this material is sufficient to show the transfer of the applicant is not only illegal, but also it is malafide exercise of the jurisdiction. For all these reasons, it is submitted that the impugned transfer order be set aside.

7. The respondent nos. 2&3 have submitted their reply which is at page no.59. The respondents have justified their action on the ground that the applicant made false statement before this Bench and secured the interim relief. It is contended that though the applicant was aware that he was relieved after his transfer, but he suppressed this fact the applicant also suppressed that the respondent no.4 had already joined when the O.A. was presented. It is submitted that the provisions of Maharashtra Police Act are applicable to the applicant and after following the procedure, the applicant was transferred. It is submitted that the normal tenure of the applicant was two years and not three years, consequently there is no substance in the case of the applicant. It is submitted that the applicant was transferred as per the decision taken by the Police Establishment Board and the Police Establishment Board had considered the material which was placed before it and decision was taken to transfer the applicant. It is submitted that there is no illegality committed and consequently there is no substance in the application.

8. The respondent no.4 has submitted reply at page no.79 and justified the transfer order. It is submission of the respondent no.4 that on 17/6/2019 he resumed his duty as Deputy Superintendent of Police (ACB), Akola. It is contention of the respondent no.4 that the applicant was already relieved and as the post was vacant, the

respondent no.4 joined duty as Deputy Superintendent of Police (ACB), Akola. It is contention of the respondent no.4 that he resumed duty on 17/6/2019 at 3.00 p.m. and took the charge from Shri Ramkrushna Malghane. It is submitted that the hamdast was received on 19/6/2019, but by that time the respondent no.4 had resumed the duty.

9. In the course of argument it is submitted by the respondent nos. 1 to 3 that the applicant misused his official position and he used the Railway Warrants for his personal journey, when objection was raised, direction was issued to recover amount Rs.14,843/- from the applicant. It is submitted that the applicant used the Railway Warrants during period from 14/5/2017 to 8/3/2018 and thereafter this amount was deposited by the applicant on 4/2/2019. It is submitted that the applicant admitted the fact that he was aware that the Police Officer above the rank of PI was not authorised to use Railway Warrants. According to the respondents, cognizance of this matter was taken by the higher authorities of the applicant and it was recommended to punish the applicant.

10. Though it is contended by the applicant that his normal tenure was three years, but nothing is produced in support of the contention to show that the normal tenure of the applicant while in ACB was three years. There is no dispute about the fact that the

provisions of the Maharashtra Police Act are applicable. The Section 22 N of the Maharashtra Police Act says that the normal tenure of the Police Officers of the rank of the Dy. Superintendent of Police and above shall be two years and normal tenure of PSI and up to PI was also two years. Thus it seems that the applicant who joined duty in ACB as per the order dated 5/5/2017 had completed normal tenure of two years and he was due for transfer.

11. Secondly, it is to be seen whether the procedure laid down under Section 22N of the Maharashtra Police Act was followed by the Department for transferring the applicant. As per Section 22N of the Maharashtra Police Act the Police Establishment Board was the Transferring Authority of the Police Officers upto rank of PI. In the present matter though it is contention of the applicant that he was the Dy. Superintendent of Police, but fact remains that the applicant was entitled for that designation so long as he was working on the establishment of ACB and the original status of the applicant that of PI. As per the provisions of the G.R. issued in the year 1985 the applicant was entitled to the upgraded post of Dy. Superintendent of Police though he was PI.

12. The learned P.O. submitted that the representation was made by the applicant on 16/10/2018 and it was submitted that his mother was staying at Pune with his wife, his mother was aged about

75 years, she was under medical treatment for diabetes, high blood pressure and she had heart trouble. On this basis the applicant requested for transfer near Satara, Kolhapur, Sangli, Solapur. It is submission of the learned P.O. that considering this request the applicant was posted at Mumbai and this posting is convenient to the applicant.

13. It is also submitted that the Additional Police Superintendent (ACB), Headquarters, Mumbai made inquiry regarding the complaints against the applicant and it was noticed that the applicant used Railway Warrants for his personal use, he was in habit to leave headquarter without seeking prior permission of the higher authorities. After inquiry it was reported by the Additional Police Superintendent (ACB), Headquarters, Mumbai that the applicant misused his authority as Dy. Superintendent of Police (ACB), Akola, he used the Railway Warrants for his personal benefit and he was in habit to leave the headquarter and consequently it was recommended to initiate the disciplinary action against the applicant. After perusing the report of the Police Establishment Board, it seems that the report of the Superintendent of Police (ACB), Amravati was received and considering that report decision was taken to transfer the applicant in view of his misconduct. The disciplinary authority has right to transfer the Government servant, in contemplation of the disciplinary enquiry.

Section 22 N Sub-section (1) proviso of the Maharashtra Police Act is as under -

“Provided that, the State Government may transfer any Police Personnel prior to the completion of his normal tenure, if –

(a) disciplinary proceedings are instituted or contemplated against the Police Personnel ; or

(b) the Police Personnel is convicted by a court of law; or

(c) there are allegations of corruption against the Police Personnel ; or

(d) the Police Personnel is otherwise incapacitated from discharging his responsibility ; or

(e) the Police Personnel is guilty of dereliction of duty”.

14. The Clause (a) of the proviso says that the State Government may transfer any Police Personnel prior to completion of his normal tenure, if disciplinary proceedings are instituted or contemplated against the Police Personnel. In the present matter it seems that the applicant admitted unauthorised use of the Railway Warrants for his personal benefit and when he was directed by the Department, thereafter he deposited the amount of the Warrants utilized by him. The applicant himself stated that he was aware of the fact that the Police Officer of the rank of PI and above, were not authorised to use the Railway Warrants. In view of this material it can be said that there was some material against the applicant for proceeding against him.

15. In view of above material, it seems that the decision to transfer the applicant was taken by the Police Establishment Board after considering the report submitted by the Superintendent of Police (ACB) and Dy. S.P. (ACB), Headquarters, Mumbai and in both the reports it was mentioned that the applicant misused his official position as a Dy. SP (ACB), consequently the decision was taken. In this proceeding it is not permissible to decide whether the applicant was guilty of the misconduct or not, but prima facie this material is sufficient to show that it was reasonable foundation for transferring the applicant. The decision to transfer the applicant was not taken by one person, but this decision was taken by the Police Establishment Board which was constituted by the Chairman and four Members. Under these circumstances, it is not possible to accept that the transfer of the applicant was malafide exercise of jurisdiction.

16. So far as contention of the applicant that there was illegality in handing over the charge is concerned, the Rule 31 (c) of the Maharashtra Civil Services (Joining time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 says that in exceptional circumstances, which should be recorded, a competent authority may permit the charge of a post to be made over in the absence of the relieved Government Servant by a letter or by a telegram at or outside the headquarters of the post. In the present

matter, it seems that the applicant prayed for interim relief on 17/6/2019 and on the same day at 3.00 p.m. the respondent no.4 resumed duty. Considering all these circumstances, in my opinion it is not possible to accept that the transfer of the applicant is either illegal or it is a malafide exercise of jurisdiction by the Police Establishment Board. Hence, the following order –

ORDER

The O.A. stands dismissed. No order as to costs.

Dated :- 03/09/2019.

(A.D. Karanjkar)
Member (J).

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 03/09/2019.
and pronounced on

Uploaded on : 04/09/2019.

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