

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 463 of 2023 (S.B.)**

Parag S/o Bandu Atram,  
Aged about 31 yrs. Occ.- Service  
R/o Talegaon P.S. at present Kapil- Nagar,  
Nari Rd. Nagpur.

**Applicant.**

**Versus**

- 1) State of Maharashtra Through Secretary,  
Home Department, Mantralaya, Mumbai.
- 2) Superintendent of Police,  
Wardha Distt.- Wadha.
- 3) Sub- Divisional Police officer,  
Arvi, District Wardha.
- 4) Director General of Police,  
State of Maharashtra,  
Lion Gate, Fort Mumbai,  
Maharashtra 400 001.

**Respondents.**

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**S/Shri A.P. Mishra, P.K. Mishra, Advocates for the applicant.**  
**Shri M.I. Khan, learned P.O. for respondents.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Vice Chairman.**

**Dated :- 24/07/2023.**

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**JUDGMENT**

Heard Shri P.K. Mishra, learned counsel for the applicant  
and Shri M.I. Khan, learned P.O. for the respondents.

2. On oral request of the learned counsel for applicant,  
permission to amend the prayer clause is allowed.

3. This O.A. is filed to quash and set aside the relieving order issued by the Superintendent of Police, Wardha. During the pendency of O.A., the respondent no.4, the Director General of Police, Mumbai (M.S.) was made party. Today, amendment is made in the prayer clause to quash and set aside the order passed by the respondent no.4.

4. The learned P.O. seeks time to file reply of respondent no.4. This is a transfer matter pending from 01/06/2023. The respondent no.4 was added on 20/06/2023.

5. The learned P.O. has filed copy of transfer order issued by respondent no.4. He could have filed reply. The O.A. was heard finally on 21/07/2023. Today again it was fixed for hearing / order.

6. The submission on behalf of respondent no.4 is considered while deciding this O.A.

7. The case of the applicant in short is as under –

The applicant was recruited as a Police Constable as per the appointment order dated 09/09/2014. He was posted at City Police Station, Wardha. Incidentally, daughter of local M.L.A. fell in love with him. Both married in the year 2020 and started to reside together at Dada Dhuniwale Temple area in Wardha city. Under the political pressure, the applicant was transferred to Talegaon Police

Station in the Wardha District with an intention to separate from the daughter of local M.L.A. The wife of the applicant managed to stay with him frequently at Talegoan and this was again disliked by the politicians and others. Under the political influence, the applicant is transferred from Wardha to Nashik. As per the service conditions of the applicant, he cannot be transferred from Wardha District to other District.

8. The application is strongly opposed by the respondents. It is submitted that respondent no.4 as per the provisions of Section 22N (2) of the Maharashtra Police Act, the applicant is transferred as per the decision taken by the Police Establishment Board (PEB) No.2.

9. The learned counsel for applicant has submitted that the transfer of applicant can only be made by the Police Establishment Board No.1. The Police Establishment Board No.2 is not empowered to transfer the applicant. The transfer is provided under Section 22N (2) of the Maharashtra Police Act. He has pointed out the transfer recommended by the Police Establishment Board No.2.

10. The learned P.O. has filed order dated 09/05/2023 (Exh-X) and submitted that the transfer order is made by the Police Establishment Board No.2. It is a legal order. Respondent no.4, the Director General of Police, Mumbai (M.S.) is empowered to transfer the applicant on the recommendation of the Police Establishment

Board No.2. As per his submission, the applicant has committed serious misconduct and therefore his transfer was proposed by the Superintendent of Police, Wardha. At last submitted that the transfer order is perfectly legal and correct and therefore the O.A. is liable to be dismissed.

11. The learned P.O. has pointed out the decision of the Hon'ble Supreme Court in the case of ***Union of India and others Vs. Janardhan Debanath and Another (2004) 4 SCC,245.***

12. The Hon'ble Supreme Court has held in the above cited judgment that "*Transfer on the ground that the employee concerned was "undesirable" as he had misbehaved - If to be preceded by departmental enquiry - Such transfer unless adversely affecting the service conditions or status or service prospects or leading to penal consequences, held, need not be preceded by the same type of departmental enquiry as is conducted in cases leading to dismissal, discharge, etc. --Prima facie satisfaction of the authority concerned based on contemporary reports, sufficient --Utmost latitude should be given to the department concerned to enforce discipline, decency and decorum in public service---*" The Transfer in the interest of public service, held, requires factual adjudication. The Hon'ble Supreme Court has further held that transfer on such grounds cannot be said to be illegal.

13. In the present case, the applicant is transferred on the ground of misconduct. It is pertinent to note that as per the above cited judgment, if the transfer is not in respect of penal consequences or change of any service condition or status, then it can be transferred on the ground of misconduct. In the present case, the transfer of the applicant will definitely change his service conditions. He will be junior at Nashik. From the perusal of the appointment order filed on record, it is clear that his transfer can be made only in Wardha District. Clause-3 of the appointment order is reproduced as below –

“३. पोलीस शिपाई सेवा प्रवेश नियम २०११ मधील नियम ११ नुसार वर्धा जिल्हा पोलीस घटकात नियुक्ती देण्यात आलेली आहे. त्यामुळे वर्धा जिल्हा पोलीस घटकाव्यतीरीक्त इतर पोलीस घटकात बदली करता येणार नाही.”

14. From the perusal of recommendation of PEB No.2, it is clear that it will change service condition. The relevant portion is reproduced below -

“३) पो.शि. आत्राम मागील दोन वर्षांपासून उपविभागीय पोलीस अधिकारी कार्यालय आर्वी येथे पोक्सो सेल येथे सलग्न आहेत. सदर सेलमध्ये ते पोक्सो कायदा अंतर्गत असलेल्या तपासामध्ये मदतनीस म्हणून काम करीत आहेत. त्यांचेवर सोपविण्यात आलेले कर्तव्य झाल्यानंतर त्यांनी आर्वी येथे मुख्यालयी हजर राहणे आवश्यक आहे मुख्यालयी हजर राहणेबाबत त्यांना वारंवार तोडी सुचना दिलेल्या आहेत. परंतु पो.शि पराग बंडु आत्राम हे मुख्यालयी हजर राहत नाहीत. ते वरीष्ठांचे आदेशाची जाणिवपूर्वक वारंवार अवहेलना करीत असल्याचे दिसून येत आहे. याबाबत, एस.डी.पी.ओ., आर्वी यांनी दिनांक ११/०४/२०२३ अन्वये

कसुरी अहवाल सदर केला आहे. पोलीस अधीक्षक, वर्धा यांनी पोलीस शिपाई आत्राम यांची वर्धा जिल्हा पोलीस दलाचे आस्थापनेवरून इतरत्र बदली होणेस शिफारस केली आहे.

पोलीस अधीक्षक, वर्धा यांच्या दि.१३/०४/२०२३ च्या अहवालावर सर्वकष विचार करून महाराष्ट्र शासन, गृह विभाग शासन निर्णय क्र. संकिर्ण-१०१७/३८४७/ प्र.क्र.४६९/पोल-५ब, दिनांक २६/१०/२०१७ मधील नियम क्र.४ (ii) तसेच महाराष्ट्र पोलीस अधिनियम, १९५१ कलम २२ न (२) नुसार पोलीस आस्थापना मंडळ क्र. २ यांना जनहितार्थ, वर नमूद अपवादात्मक परिस्थितीत व प्रशासकीय निकडीनुसार सक्षम प्राधिकारी म्हणून असलेल्या अधिकाराचा वापर करून पोशि/ १६९९ पराग बंडु आत्राम यांची पोलीस अधीक्षक, वर्धा येथून खाली रकाना क्र. ३ मध्ये नमूद केल्यानुसार बदली करण्याचा निर्णय घेण्यात आला आहे.

पोलीस अंमलदाराचे नांव	सध्याची नेमणूक	पोलीस आस्थापना मंडळ क्र. २ यांचे आदेश
१	२	३
पोशि / १६९९ पराग बंडु आत्राम	पोलीस अधीक्षक, वर्धा चे आस्थापनेवर	नाशिक शहर

(संजीव कुमार सिंघल)  
अपर पोलीस महासंचालक  
(आस्थापना) म.राज्य, मुंबई  
सदस्य सचिव

(निकेत कौशिक)  
महासंचालक, ला.लु.प्र.वि.  
म.राज्य, मुंबई  
(अति. कार्य.)  
सदस्य

(संजय सक्सेना )  
अपर पोलीस महासंचालक  
(का.व.सु.)  
म.राज्य, मुंबई  
सदस्य

(विवेक फणसळकर)  
पोलीस आयुक्त,  
बृहन्मुंबई  
सदस्य

(रजनीश सेठ)  
पोलीस महासंचालक  
म.राज्य, मुंबई  
अध्यक्ष

( आनंद लिमये)  
अपर मुख्य सचिव  
गृह विभाग  
(अपिल व सुरक्षा)  
सदस्य

(राजकुमार व्हटकर)  
अपर पोलीस महासंचालक  
प्रशिक्षण व खास पथके,  
म.राज्य, मुंबई  
मागासवर्गीयांचे प्रतिनिधी,

15. From the recommendation of PEB No.2, it is clear that there is no date below the signatures of Board members. Word 'Nashik' is written in handwriting, whereas, other contents are typed. Therefore, it appears that word 'Nashik' is inserted latteron. When the decision is taken by PEB No.2 is not clear.

16. The service conditions of the applicant show that his service is transferable only in Wardha District. Therefore, transfer of the applicant out of Wardha District against the service conditions stipulated in the appointment order of the applicant. Moreover, the transfer of the applicant from Wardha to Nashik will definitely affect his seniority etc. Therefore, cited Judgment by the side of respondents is not applicable.

17. The transfer on the ground of misconduct shows that it is a malafide transfer because the Superintendent of Police is the Appointing authority of the applicant, he has jurisdiction to initiate departmental inquiry. If the applicant is not fit for service, the Superintendent of Police, Wardha is having authority to dismiss or terminate the applicant. Instead of doing so, the Superintendent of Police, Wardha submitted his report to respondent no.4 to transfer him from Wardha to Nashik. The applicant may continue such type of misconduct at Nashik and thereafter again he will be transferred to other district and this will be continued. Being an administrator it was

the duty of the Superintendent of Police, Wardha to take necessary action against the applicant in respect of misconduct. It appears that there is a substance in the submission of applicant that he fell in love with the daughter of M.L.A. He married with the daughter of M.L.A. and therefore such type of action is taken by the respondents. Hence, it is clear that the transfer is malafide, therefore, liable to be quashed and set aside. Hence, the following order –

**ORDER**

- (i) The O.A. is allowed.
- (ii) The transfer order issued by respondent no.4 and relieving order issued by respondent no.2 are hereby quashed and set aside.
- (iii) No order as to costs.

**Dated** :- 24/07/2023.

**(Justice M.G. Giratkar)**  
**Vice Chairman.**

dnk.



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 Vice Chairman.

Judgment signed on : 24/07/2023.