

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION 487 OF 2016 WITH M.A
271/2016 IN O.A 487/2016**

DISTRICT : PUNE

1) ORIGINAL APPLICATION NO 487 OF 2016

Shri Amit Jayprakash Chavan,)
Working as Police Constable, [Buckle No.)
2228], Shirur Police Station, Dist-Pune.)
R/o: A/P Chakan, Vashal Garden,)
Tal-Khed, Dist-Pune.)...**Applicant**

Versus

1. The Superintendent of Police,)
Pune [Rural], having office at)
Chavan Nagar, Pashan Road,)
Pune - 8.)
2. The State of Maharashtra,)
Through Principal Secretary,)
Home Department, having office)
At Mantralaya, Mumbai 400 032.)...**Respondents**

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Shri B.A Bandiwadekar, learned advocate for the Applicant.

Mrs Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

W I T H

**2) MISC APPLICATION NO 271 OF 2016
IN
ORIGINAL APPLICATION NO 487 OF 2016**

1. The Superintendent of Police,)
Pune [Rural], having office at)
Chavan Nagar, Pashan Road,)
Pune – 8.)
2. The State of Maharashtra,)
Through Principal Secretary,)
Home Department, having office)
At Mantralaya, Mumbai 400 032.)...**Applicants**
(Ori Respondents)

Versus

Shri Amit Jayprakash Chavan,)
Working as Police Constable, [Buckle No.)
2228], Shirur Police Station, Dist-Pune.)
R/o: A/P Chakan, Vashal Garden,)
Tal-Khed, Dist-Pune.)...**Respondent**
(Ori Applicant)

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Mrs Kranti S. Gaikwad, learned Presenting Officer for the Applicants (Ori Respondents).

Shri B.A Bandiwadekar, learned advocate for the Respondent (Ori. Applicant).

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 19.08.2016

ORDER

1. Heard Shri B.A Bandiwadekar, learned advocate for the Applicant in O.A 487/2016 and for the Respondent (Original Applicant) in M.A 271/2016 and Mrs Kranti S. Gaikwad, learned Presenting Officer for the Respondents in O.A 487/2016 and for the Applicants (Ori. Respondents) M.A 271/2016 in O.A 487/2016 .

2. This Original Application is filed by the Applicant challenging his transfer from Shirur Police Station to Indapur Police Station by order dated 24.5.2016 issued by Respondent no. 1.

3. Learned Counsel for the Applicant argued that the Applicant was posted to Shirur Police Station by order dated 11.5.2011 and joined there on 23.6.2011. He has been transferred by the aforesaid order dated 24.5.2016 to Indapur Police Station. Learned Counsel

for the Applicant argued that the order states that the Applicant is transferred on administrative grounds. The order is issued as per Ordinance dated 1.2.2014, amending the Maharashtra Police Act. However, this Ordinance was superseded by Ordinance dated 5.4.2014 and Ordinance dated 1.2.2014 ceased to exist. The impugned order is passed on the basis of non-existing provision, which is non-est and bad in law. Learned Counsel for the Applicant argued that the real reason for transferring the Applicant is the complaints received against the Applicant by the Respondent no. 1. The Applicant could not have been transferred on the basis of mere complaint. There was no lawful material before the Respondent no. 1 to pass the impugned order. Learned Counsel for the Applicant stated that Section 22N(2) of the Maharashtra Police Act as per Ordinance dated 1.2.2014 talks about the power of the Competent Authority to order mid-term transfer of a Police Personnel in exceptional cases, in public interest and on account of administrative exigencies. There is same provision in the Ordinance of 5.4.2014 also. A Police Personnel cannot be transferred on account of complaints of serious nature.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that Section 22(N)(2) of the Maharashtra Police Act, as amended by the Ordinance of 1.2.2014, substantially remained unchanged by

Ordinance of 5.4.2014. In the order dated 24.5.2016, inadvertently date of Ordinance was mentioned as 1.2.2014, which has been corrected subsequently by order dated 14.6.2016. Learned Presenting Officer argued that the Applicant is transferred as there were numerous complaints against him, which were inquired into by Sub Divisional Police Officer, Daund and scrutinized by the Additional Superintendent of Police, Baramati. The Police Establishment Board at District level has considered various reports against the Applicant in its meeting dated 24.5.2016. Learned Presenting Officer stated that the Competent Authority viz. the Police Establishment Board at District level has decided to transfer the Applicant. It is seen that the Police Establishment Board, in its meeting held on 24.6.2016 has recorded as below:-

“ सदरील अर्जाची चौकशी उपविभागीय पोलीस अधिकारी, दोंड विभाग यांनी केली. चौकशीअंती पोशि २२२८ अमित चव्हाण यांचे विरोधात पत्रकारांनी व इतर लोकांनीही अवैध धंद्यावाल्याकडून हप्ते वसूल करीत असलेबाबतच्या तक्रारीमध्ये तथ्य दिसून आले असून अमित चव्हाण यांची शिरूर पो. स्टेशन येथून बदली करण्यात आली असे स्पष्ट मत दिलेले आहे.”

5. It is seen that the minutes of the P.E.B are at Exhibit R-5, page 123 of the Paper Book. Report of S.D.P.O, Daund is at Exhibit R-3 (page 87 of the Paper Book). It is mentioned that the Applicant collects illegal gratifications from those doing illicit business and there

are witnesses to that. The Applicant has made the following submissions in his affidavit in rejoinder:-

- (i) There were three earlier reports from Police Inspector, Shirur Police Station, which did not find any substance in the complaint against the Applicant.
- (ii) The persons making allegations against the Applicant were themselves indulging in illicit business or supporting them. One Shri Shaukat Mujawar is misusing letter heads of Sahyadri Patrakar Sangh.
- (iii) The S.D.P.O, Daund conducted enquiry behind the back of the Applicant.

The Applicant has submitted voluminous documents in support of his claim. The claim that there were three reports from Police Inspector in his favour does not mean that the Respondent no. 1 could not have ordered a fresh inquiry by a senior Officer. The contention of the Applicant that S.D.P.O, Daund, conducted inquiry against him behind his back is not found to be correct. S.D.P.O, Daund was not asked to conduct a formal enquiry against the Applicant. He was only ascertaining whether there was substance in various complaints against the Applicant. With that in view, he recorded

statements of witness and also of the Applicant. Some of the witnesses may not be of impeccable character. However, the charge against the Applicant was that he was collecting money from those indulging in illicit business, so that witnesses are not likely to be honorable and persons of high character. It appears that there was some material before the Competent Authority, on the basis of which decision was taken to transfer him. The report of S.D.P.O, Daund dated 23.5.2016 can lead to conclusion that the case of the Applicant is covered by ground (c) and (e) of grounds mentioned in Section 22N(1) of the Maharashtra Police Act.

6. As per section 22N(2), a Police Personnel can be transferred on the basis of grounds mentioned in section 22N(1). The Applicant appears to have completed 5 years at Shirur Police Station. This Tribunal in O.A no 19/2016 by judgment dated 7.6.2016 has held that it is not expected that the reasons given for transfers will be measured on some calibrating device. It is sufficient that some relevant reasons are recorded. The present case is clearly covered by Section 22N(2) of Maharashtra Police Act.

6. In the judgment cited by the Applicant, viz. O.A no 980/2010 dated 21.11.2010, it was held that there was no substance in the complaints against the Applicant in that case. Here, S.D.P.O, Daund has found

substance in the complaints against the Applicant. This case is clearly distinguishable.

6. In O.A no 519/2016, this Tribunal by order dated 20.6.2016, granted interim relief as the reports against the Applicant were 'unsigned, cryptic reports about some suspicious activities'. The facts are entirely different here.

7. In O.A no 191/2015 by judgment dated 26.10.2015, this Tribunal held the transfer order invalid as it did not have approval of either the State Government or the Police Establishment Board. Here the transfer has the approval of the Police Establishment Board. O.A nos 466 and 467 of 2016 have been decided by this Tribunal in the context of the claim of the Applicants therein that they were transferred before the completion of their respective tenures. In the present case, the Applicant has not claimed that he was transferred before completion of his tenure. The only ground of challenge of transfer raised by the Applicant is that he is transferred on the basis of complaints against him.

8. It is seen that the cases cited by the Applicant are not applicable as the facts of the present case are totally different. The ground that the impugned order was passed on the basis of legal provision, which is no

longer valid does not deserve serious consideration on two counts, viz. (i) By subsequent Ordinance dated 5.4.2016, the same provision was retained in Maharashtra Police Act and (ii) the mistake has been rectified by order dated 14.6.2016. This objection of technical nature has to be rejected.

9. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs as the impugned transfer order is issued in compliance with the provisions of the Maharashtra Police Act. As the Original Application is dismissed, nothing survives in the Misc Application, which is also dismissed with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 19.08.2016

Dictation taken by : A.K. Nair.