

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 770 of 2016

Pramod S/o Sitaram Dongre,
Aged about 53 years, Occ. Service,
R/o Ramkrishna Society-2,
Narendra Nagar, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Additional Chief Secretary,
Home Department,
having its office at Mantralaya,
Mumbai-400 032.
- 2) Director General of Police,
having office at near Regal Theatre Colaba,
Mumbai.
- 3) Superintendent of Police,
Chandrapur.

Respondents

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

Shri S.A. Sainis, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGEMENT

(Delivered on this 7th day of October,2017)

Heard Shri S.P. Palshikar, Id. Counsel for the applicant
and Shri S.A. Sainis, Id. P.O. for the respondents.

2. Shri Pramod Sitaram Dongre is the Police Inspector since
2008. In 2014 the applicant was working at Nagpur and was

transferred to Police Station Sawali, Dist. Chandrapur. On 6/5/2014 he was again transferred from Police Station, Sawali, Dist. Chandrapur to Police Station, Rajura, Dist. Chandrapur and at the time of impugned order of his transfer dated 29/9/2016 he was at Rajura, Dist. Chandrapur. Vide impugned order dated 29/9/2016 the applicant has been transferred from the post of Police Inspector, Police Station, Rajura, Dist. Chandrapur to Police Station, Nagpur city and was also relieved from the said post immediately on 30/9/2016. The applicant has challenged both these orders, i.e., his order of transfer dated 29/9/2016 and relieving order dated 30/9/2016 in this O.A. According to the applicant, as per the Maharashtra Police Act, the normal tenure of the Police Officer in the district is two years, but before completion of that normal tenure the applicant has been transferred. The said order is therefore mid-term and mid tenure and against the provisions of the Maharashtra Police Act. The respondent no.2, i.e., the Director General of Police, Mumbai has no authority to issue transfer order of the applicant. The impugned order of transfer on complaint is also illegal and the same has been decided by the Principal Bench of this Tribunal in O.A. 191/2015 on 26/10/2015 and O.A.609/15 on 11/3/2015 and by the Hon'ble Tribunal, Bench at Nagpur Bench in O.A.609/15 decided on 11/3/2015 and O.A.446/467 decided on 12/7/2016 and also again by this Tribunal in O.A.309/2016.

3. It is stated that the applicant is sincere and hard working Police Officer and his ACRs. are Outstanding and such a person is transferred abruptly without completing his normal tenure then certainly a stigma upon the person. The applicant has therefore prayed that both the impugned orders, i.e., dated 29/9/2016 and 30/9/2016 be quashed and set aside and respondents be directed to allow the applicant to continue to work at Police Station, Rajura, Dist. Chandrapur.

4. Vide order dated 30/1/2017 the Hon'ble Chairman of this Tribunal was pleased to direct the respondent no.2, i.e., the Director General of Police, Mumbai himself to affirm the affidavit by calling papers of the O.A. and reading those himself and with other directions.

5. Accordingly, the reply-affidavit has been filed by the respondent no.2. The tenor of the reply-affidavit shows that the applicant's case for transfer was recommended by the Police Establishment Board no.1 to Police Establishment Board no.2 as the conduct of the applicant was not in the public interest and was undesirable. The respondents denied that the service record of the applicant is clean and unblemished and he was working to the utmost satisfaction of his superiors. It is admitted that the applicant has not completed his normal tenure of two years at Rajura Police Station but

it is stated that the said tenure has been curtailed by the Police Establishment Board no.2 invoking the powers conferred upon it to effect the mid-tenure transfer after carefully scrutinising the facts and circumstances. The respondents have also placed reliance on the Judgment delivered by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad Bench in Writ Petition No. 722/2015 and particularly Para nos. 7 to 11 of the said Judgment and also the order passed in WP 1277/2016. The respondents have also placed reliance on the various Judgments of this Tribunal such as O.A.455/2015 in case of one **Shri O.D. Mane** decided by the Tribunal at Aurangabad Bench on 3/11/2015 and so on. According to the respondents the Competent Authority has every right to transfer the employee as per the provisions of the Maharashtra Police Act and such powers are given to Police Establishment Board no.2. It is stated that the case of the applicant was considered in the Police Establishment Board by all the Members and the Members were satisfied about the alleged misconduct or undesirability or unbecoming conduct of the applicant and therefore unanimously decided to transfer the applicant out of district and has also recorded reasons for the same. It is however made clear that the transfer is not affected as a punishment. Reliance has been placed on the Judgment of Hon. Supreme Court of India in the case of **Union of India and Ors Vs. Shri Janardhan Debanath and Ano.** In which the Hon'ble Supreme

Court has laid down the ratio that transferring the Govt. employee utter finding him/her undesirable and unbecoming cannot be term as punitive transfer. The copy of the said Judgment is also placed on record as A-A-7.

6. As regards the applicant it is stated that an inquiry was conducted by Dy. Superintendent of Police probationer about sale of 2 Trucks seized by Rajura Police. These 2 trucks were parked at Sasti Outpost and were in custody of Head Constable Shri Musale working as Muddemal Mohrar. The Head Constable did not follow the procedure while disposing of this property and has kept the sale process with himself. When the purchaser of the Truck inquired the applicant who was having knowledge of the sale, his statement was recorded and the conduct of the applicant was found doubtful. The Superintendent of Police, Chandrapur submitted default report alongwith several correspondence made by him with applicant and also mentioned about the inability of the applicant to control illicit activities in his jurisdiction. The Superintendent of Police, Chandrpur also issued several memorandum and demy official letters for improving the conduct of the applicant. All these correspondence is placed on record at Annex-A-6.

7. According to the respondents all the papers were placed before Police Establishment Board no.2, i.e., the Competent Authority

to pass transfer order and the said Committee in its meeting discussed the matter. As already stated all the Members of the Committee were satisfied about the misconduct or undesirability or unbecoming conduct of the applicant and therefore unanimously decided to transfer the applicant. The transfer was not however not effected as a punishment as mentioned by the applicant in para-7 (vi).

8. Perusal of the transfer order which is at P.B. page-14 (Annex-A-1) dated 29/9/2016 is an order passed by Police Establishment Board no.2 wherein it is mentioned that the Board has considered the report against the applicant and relevant documents and has come to the conclusion that the applicant be transferred out of Chandrapur District and therefore the applicant was transferred to Nagpur City.

9. As per the provisions of Section 22 (J2) (b) the Police Establishment Board no.2 is authorised to pass posting and transfer orders of the Officers to the level of Police Inspector out of District.

The said Section reads as under :-

“22J2 - Functions of Police Establishment Board at District Level

The Police Establishment Board at District Level shall perform the following functions, namely –

(a) The Board shall decide all transfers, postings of Police Personnel to the rank of Police Inspector within the District Police Force.

(b) The Board shall be authorised to make appropriate recommendations to the Police Establishment Board no.2 regarding the postings and transfers out of the District.

Explanation – For the purposes of this section, the expression “Police Personnel” means a Police Personnel to the rank of Police Inspector”.

10. The Id. P.O. has also placed on record the Minutes of the meeting in which the applicant's transfer was considered. In the said Minutes of the meeting the conduct of the applicant has been considered and it was also considered as to whether the working of the applicant at Rajura in the given circumstances would be desirable. It seems that the overall manner of working by applicant was considered and the Members of the Board came to the conclusion that it was not desirable to keep the applicant at Rajura in the interest of public and that it was an unexceptional case whereby it was necessary to transfer him out of Chandrapur district and therefore it was decided to transfer the applicant at Nagpur. The Minutes of the meeting are well supported by the various documents which were placed before Competent Committee.

11. As already stated the Police Establishment Board at District level can decide all transfers, postings of police personnel to the rank of Police Inspector within the District Police Force it includes any transfer including mid-term transfer or mid tenure transfer. The only embargo is that if the transfer is to be made out of District, then the Police Establishment Board at district level has to make recommendation to the Police Establishment Board no.2. In this case

the same has been done and accordingly the Police Establishment Board no.2 has passed the order of transfer of the applicant. The Tribunal is not expected to go into the details of the Minutes of the meeting and prima facie it seems that the Board has considered the conduct of the applicant and his way of working and came to the conclusion unanimously that it will be in the public interest to transfer the applicant out of Rajura, i.e., Chandrapur District. The Tribunal is not expected to interfere in such administrative decision taken by the Competent Authority established under law. It is nowhere seen from the impugned order that it is in any manner punitive. Even for the argument sake, it is accepted that there were complaints against the applicant, the applicant was not transferred on account of such complaint but on the basis of his overall working at particular Station for which admittedly preliminary inquiry was also held. I have carefully gone through the Judgments on which the respondent have relied upon such as Judgment in W.P. 1277/2016 passed by the Hon'ble High Court of Judicature of Bombay at Bench Aurangabad on 5/5/2016 in the case of **Sanjay Gulabrao Deshmukh vs. State & Ors.**, O.A.455/2015 passed by Maharashtra Administrative Tribunal, Bench at Auraganbad on 3/11/2015 in case of **Omprakash Dhondiram Mane vs. The Director General of Police, Maharashtra State, Mumbai & ors.**, and the Review Petition in the same case bearing no.10/2015 on 14/12/2015. I have also gone through

Judgment in W.P. no.14200/2016 passed by the Hon'ble High Court of Judicature at Bombay on 20/1/2017 in the case of **State of Maharashtra Vs. S.K. Kasbse & Ors.**

12. Perusal of the documents on record so also the original Minutes of meeting of the Police Establishment Board no.2 clearly shows that the Police Establishment Board has considered all the pros and cons of the case against the applicant and it came to the conclusion that the recommendation for transfer of the applicant out of district was in the public interest and therefore in the such circumstances it will not be in the interest of administration as well as in the interest of justice to interfere in the transfer of the applicant. Hence, the following order :-

ORDER

The O.A. stands dismissed with no order as to costs.

(J.D. Kulkarni)
Vice-Chairman (J).

dnk.