

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH AT NAGPUR

ORIGINAL APPLICATION NO.817/2015.

Dinkar Chandrabhan Sawarkar,
Aged about 54 years,
Occ-Service,
R/o Shikshak Colony, Bhandara.

Applicant

-Versus-

1. State of Maharashtra,
Through its Additional Chief Secretary,
Department of Home,
Mantralaya, Mumbai-400 032.
2. The Director General of Police (M.S.),
Anti Corruption Bureau, Mumbai.
3. The Superintendent of Police,
Anti Corruption Bureau, Nagpur.

Respondents.

Shri S.P. Palshikar, Advocate for the applicants.
Smt. S.V. Kolhe, P.O. for the respondents.

CORAM: S.S. Hingne, Member (J)

Date:- 5th October, 2016.

Oral order

With the consent of learned counsel for the parties,
matter is heard and decided at the admission stage.

2. The applicant, a Dy. Superintendent of Police in the
specialized branch of Anti Corruption Bureau has challenged the order
dated 10.12.2015 (A.1, P.17) by which he is transferred from Anti
Corruption Bureau, Bhandara to Anti Corruption Bureau, Nagpur.

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3. Heard Shri S.P. Palshikar, the learned counsel for the applicant and Smt. S.V. Kolhe, the learned P.O. for the respondents.
4. The transfer order is assailed mainly on the legal grounds. The applicant was working at Bhandara i.e. the present post from 6.7.2015 (A.4, P.23). The transfer is mid-tenure and mid-term. According to the respondents, the order is issued due to complaints against the applicant. It is also their case that the legal provisions are duly complied with.
5. The respondents have made record of complaints available for perusal. No doubt since the applicant works in the Anti Corruption Bureau and on the higher post it is expected that the work is done promptly and the same should not be suffered due to lapses on the part of the officer. At the same time, ^{disciplinary} ~~indicatory~~ orders need to be ^{followed} ~~maintained~~ so also the discipline in the department.
6. According to the respondents, there were anonymous and other complaints against the applicant. There was also dispute between the two officers and the allegations were made by them against each other. Therefore, the Director General of Police, as the Head of the Police Establishment Board, issued the order U/s 22N of the Maharashtra Police Act (hereinafter referred to as Police Act).
7. The learned counsel for the applicant vehemently urged that about the allegations against the applicant, the enquiry was

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held by the Superintendent of Police, A.C.B., Nagpur and he has submitted the report (P.43) that the applicant is not negligent and he did not find any substance in the complaint against him. Report is at Page 43. Needless to mention that if two officers fight with each other, it does not only affects the administration, but thereby the public work also can suffer. From the perusal of the complaint, it reveals that the officers have made allegations against each others and the allegations can be known to them only and not to the public. This clearly shows that all this ensued due to discordance amongst the officers and in such matters the transfer is only a panacea. No doubt the applicant is exonerated by the Superintendent of Police, A.C.B., Nagpur. But it reveals that the allegations are made against that authority also. Such things are not permissible in any Government department, least said is better about the A.C.B.

8. However, the matter does not end there. According to the learned counsel for the applicant, the order is not legal and valid as per the provisions in Chapter (2-A) of the Act not being issued by the Competent Authority. Chapter (2-A) is introduced by amendment and the provisions regulating the transfer are incorporated u/s 22N of the Act. The learned counsel for the applicant in support of the submission has relied on the judgment rendered by the Member of this Tribunal at Principal Seat at Mumbai in O.A. No. 459/2016 decided on

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27.7.2016 Swapnil Dhule V/s State of Maharashtra and other O.A. Nos. 466 and 467 of 2016 Arun Pawar V/s State of Maharashtra

decided on 12.7.2016, wherein it is held that the State Government is the only authority to issue transfer orders in case of mid-tenure transfers.

9. So far as factual aspects are concerned, in the case in hand, the order is mid-term and mid-tenure. The bird's eye view on the Chapter (2-A) of the Act evinces that the transfers are classified into three categories under the Act.

(i) General transfers, (ii) mid-term transfers and (iii) transfer prior to completion of normal tenure which can be termed as "mid-tenure transfers".

The term "General transfer" is defined in section 2 (6A) as under:

"General Transfer" means posting of a Police Personnel in the Police Force from one post, office or Department to another post, office or Department in the month of April and May of every year, [after completion of normal tenure as mentioned in sub-section (1) of Section 22N].

The term "mid-term transfer" is defined in section 2 (6B) as under:

"Mid-tenure transfer" means transfer of a Police Personnel in the Police Force other than the General Transfer".

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The term "transfer before completion of tenure" is not defined in the Act. But from the very language, it can be said that it is a transfer before completion of normal tenure which is mid-tenure.

10. Under Section 22N (1) (e), the competent authorities are mentioned to issue general transfer orders. The applicant originally being a Police Inspector, competent authority to transfer the Police Inspector is the Police Establishment Board-2. No doubt, the applicant is working as Dy. Superintendent of Police, but that is one step promotion. As such his holding of the original post is to be considered. The proviso regulating the transfer effected before completion of normal tenure under Section 22N (1) (e) runs as under:

"22N: Normal tenure of Police Personnel, and Competent Authority.

(1) (e): For Police Officers of the rank of Police Sub-Inspector, Assistant Police Inspector and the Police Inspector in Specialized Agencies a normal tenure shall be of three years.

The Competent Authority for the general transfer shall be follows namely:-

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Police Personnel**Competent Authority**

| | | |
|---|---|---|
| (a) Officers of Indian Police Service | : | Chief Minister. |
| (b) Maharashtra Police Service Officers of and above the rank of Dy. S.P. | | Home Minister. |
| (a) Officers upto Police Inspector | | (a) Police Establishment Board No.2. |
| | | (b) Police Establishment Board at Range Level. |
| | | (c) Police Establishment Board at Commissionerate Level. |
| | | (d) Police Establishment Board at District Level. |
| | | (e) Police Establishment Board at the level Specialized Agency. |

11. Section 22N (2) regulating the aspect of mid term transfer runs as under:

"In addition to the grounds mentioned in sub-section (1), in exceptional cases, in public interest and on account of administrative exigencies, the Competent Authority shall make mid-term transfer of any Police Personnel of the Police Force;

Explanation- For the purposes of this sub-section, the expression "Competent Authority shall mean :-

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Police Personnel**Competent Authority**

- | | | |
|---|---|-----------------|
| (a) Officers of Indian Police Service | : | Chief Minister. |
| (b) Maharashtra Police Service Officers of and above the rank of Dy. S.P. | | Home Minister." |

12. From the above legal provision, it is manifest that in case of general transfer, the Competent Authority to issue transfer order is Police Establishment Board No.2. As per proviso, the State Government is the authority to issue transfer orders prior to completion of normal tenure. As per section 22N (2), again the Police Establishment Board No.2 is the authority to issue mid term transfer orders. Proviso to section 22N (2) runs as under:

"Provided that, in case of any serious complaint, irregularity, law and order problem, the highest Competent Authority can make the transfer of any Police Personnel without any recommendation of the concerned Police Establishment Board."

13. From this, it is obvious that the highest Competent Authority can make transfer without recommendation of the concerned Police Establishment Board in case of any serious complaint, irregularity and law and order problem. This is enabling provision vesting the power to the highest Competent Authority without referring the matter to the Board, but in certain exigencies.

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14. In the instant case, the order is not issued by any of the authorities referred to above, but by the Director General of Police with the contention that he is the highest Competent Authority of the Police Establishment Board. The learned P.O. in support of the submission has relied upon the observation made by this Tribunal in a case bearing no. 207/2015 decided on 16.7.2015. However, the learned counsel for the applicant relied upon the observation cited by him in Swapnil Dhule's case which is latest one and that view is consistently taken in other cases also. As such, that view cannot be lost sight of particularly in the light of the following discussion:

15. The Police Establishment Board came into existence as per the directions of the Apex Court of the land. Consequently the Act has undergone drastic changes in regulating the matters of transfer. From the above quoted legal provisions, it is crystal clear that the three authorities are mentioned in the cases of transfer covering all types of transfers. Thus the amendments are made with certain objects for the improvement in the Police Department. Powers of transfer are vested with certain limited authorities which can be exercised in certain contingencies and exigencies. When the transfer order is to be issued by the Police Establishment Board and the authorities are also named which consist of such Board, the one authority out of them may be a Head therein cannot alone exercise

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that power. In effect, exercise of such power by the Director General of Police alone is not legal and valid.

16. As a sequel to these reasons, it is obvious that the order is not issued by any of the Competent Authorities and as such it cannot be labelled as "legal and valid". Thus, the O.A. deserves to be allowed.

17. However, in the light of foregoing discussion, order cannot be labelled as legal and valid. Since it is issued in public interest, it is made clear that the respondents are at liberty to issue fresh order following due procedure.

18. Consequently, the O.A. is disposed of in the following terms:

(i) The O.A. is allowed.

(ii) impugned transfer order dated ~~24.5.2016~~ ^{10.12.15} is quashed.
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(iii) The respondents are at liberty to issue fresh transfer order, if they desire following due procedure of law.

(iv) No order as to costs.

Sd /-

(S.S.Hingne)
Member(J)